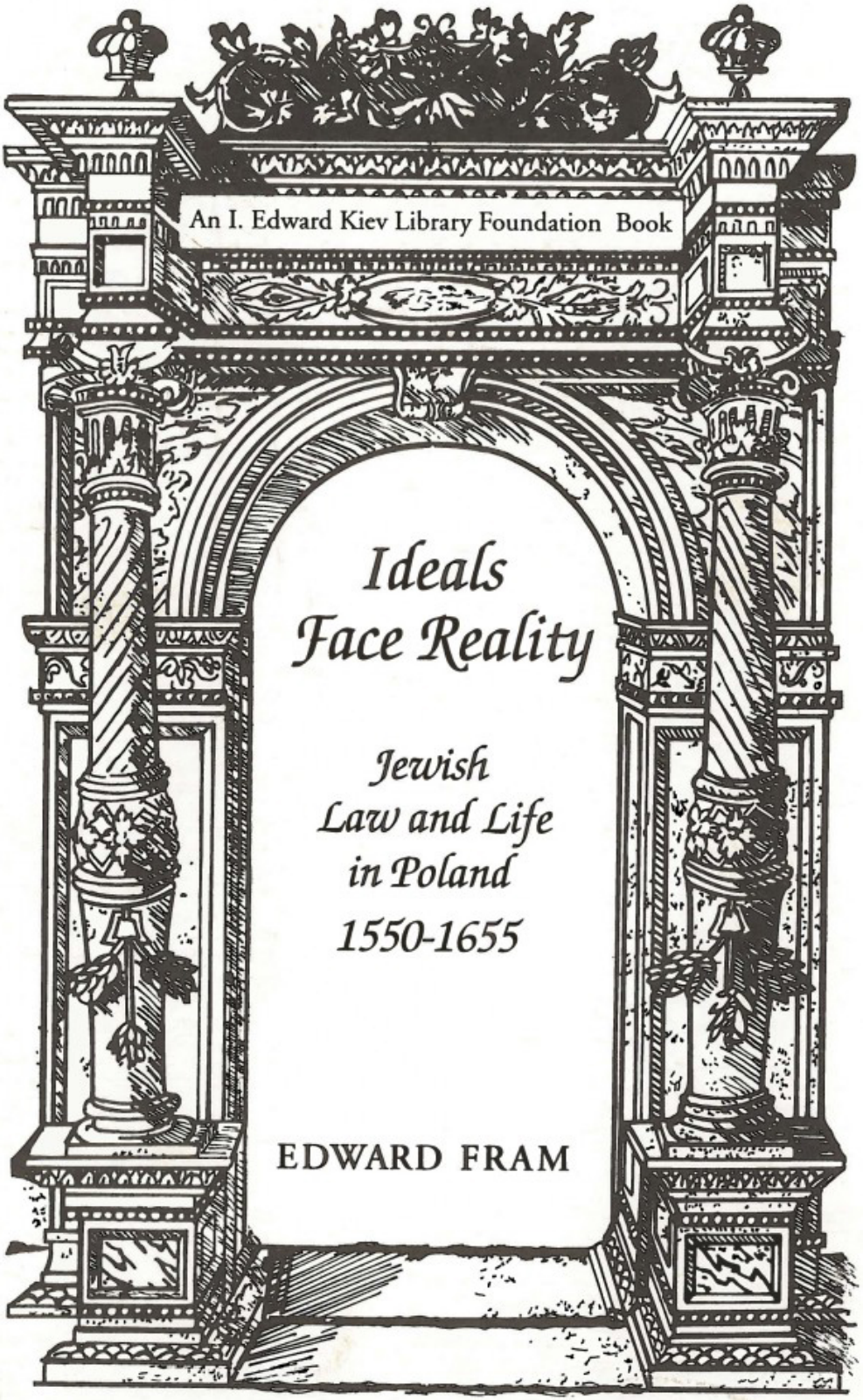

An I. Edward Kiev Library Foundation Book
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Face Reality
Jewish
Law and Life
in Poland
1550-1655
EDWARD FRAM

Ideals Face Reality

Jewish Law and Life in Poland 1550–1655

EDWARD FRAM

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DR. I. EDWARD KIEV

1905–1975

Distinguished Rabbi, Chaplain, and Librarian

In September 1976, Dr. Kiev's family and friends established a Library Foundation bearing his name to support and encourage the knowledge, understanding, and appreciation of scholarship in Judaica and Hebraica.

In cooperation with the Hebrew Union College Press, the foundation presents this study by Edward Fram as an I. Edward Kiev Library Foundation volume.

For my wife and friend
Liane

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Abbreviations and Style

B.T.	Babylonian Talmud
BZIH	*Biuletyn żydowskiego instytutu historycznego*
J.T.	Jerusalem Talmud
PH	*Pinqas ha-medinah o pinqas shel va'ad ha-qehillot ha-ro'shiyyot be-medinat Liṭa'*. Edited by Simon Dubnow. Berlin: Ajanoth, 1925.
PVAA	*Pinqas va'ad arba' araẓot.* Edited by Israel Halperin. Revised and edited by Israel Bartal. With an Introduction by Shmuel Ettinger. Jerusalem: Mossad Bialik, 1990. (References to the index are to the first edition of 1945.)
TMM	*Taqqanot medinat Ma'hareyn.* Edited by Israel Halperin. Jerusalem: Mekize Nirdamim, 1952.
YSS	*Yam shel Shelomoh*

Books of the Bible are abbreviated according to the guidelines of *The Chicago Manual of Style*, 14th ed. (Chicago: University of Chicago Press, 1993). Names of publishers have been provided for works published since 1900.

Place names have been spelled according to *Webster's New Geographical Dictionary* (Springfield, Mass.: Meriam-Webster, 1984) following English forms. Thus "Kraków" is spelled "Cracow" and "Lwów," "Lvov." Towns that do not appear in this reference work have been spelled according to Polish orthography. Hebrew names that appear in the Bible have been written in their standard English form (e.g., "Jacob" not "Ya'aqob") while non-biblical names and all other Hebrew terms have been transliterated following the rules found in *The Jewish Encyclopedia* (New York: Funk and Wagnalls, 1907) although the *quf* is represented here as a "q" instead of a "ḳ" and the *vav* as "v" in place of a "w." The object of the transliteration has been to allow the reader who so desires to recreate the original Hebrew as accurately and easily as possible rather than obtaining a close modern vocalization.

Readers may cringe with each use of "sixteenth and seventeenth centuries" as a code to refer to approximately the second half of the sixteenth century and the first fifty-five years of the seventeenth century. If so, I apologize but I have found it a convenient matter of style.

Introduction

Jewish life in early modern Poland was characterized by an adherence to the rabbinic law (halakhah) that Polish Jewry had inherited from medieval Franco-German Jewry. Almost all aspects of Jewish activity, even the most personal of matters, fell within its purview. Some areas, such as that prohibiting adultery and consanguineous sexual relationships, remained constant throughout the ages. Yet, as had always been the case, in other areas, particularly commerce, rabbis were constantly forced to grapple with the complexities of contemporary life and reinterpret the law.

This study attempts to analyze how sixteenth- and seventeenth-century Polish jurists, responding to those complexities and applying particular legal principles to novel situations, adapted the halakhah to the evolving sensibilities of Jewish society. Through an examination of cases in which the law confronted unfamiliar circumstances or the special needs of individuals or groups within the community, not only do the dynamics of the halakhah come under scrutiny but, perhaps more importantly, a greater understanding of the attitudes of rabbis of the period toward changes in certain communal values is possible. These changes became apparent, for example, when families attempted to insure inheritances for daughters even though the Torah (Pentateuch) appears to prohibit them; or when letters of credit enjoyed wide popularity even though they were halakhicly invalid. Such situations posed difficult problems for rabbis committed to the preservation of a tradition perceived to represent divine law.

Rabbis were not the sole source of Jewish legal authority. The halakhah also recognized the right of the community to issue legally binding enactments on residents. Most such rulings were in complete harmony with the halakhah; occasionally, however, particularly in areas of commerce, they were not. The very existence of those few public laws calls the centrality of the halakhah and the place of the rabbinate in daily life in sixteenth- and seventeenth-century Poland into question.

In this study, rabbinic legal decisions (responsa), talmudic and legal exegesis, the ordinances of Polish Jewry's political leadership, and Polish legal records all serve as tools to define the role and limits of the halakhah in Polish-Jewish society and to delineate rabbinic responses to its nonobservance.

The relationship of Jewish law and Jewish life in early modern Poland

has generally not been treated by scholars. Some of the legal issues faced by Polish halakhists have been discussed by historians and students of Jewish law, including Philip Bloch and Paltiel Dickstein, but their work deals only with the legal issues at hand and does not analyze the character of the legal discussions or place them in social or historical context. Other scholars, most notably Majer Bałaban, P. H. Wettstein, and Israel Halperin, have transcribed or collected communal ordinances of the Polish-Jewish community without considering their relationship to the halakhah. Only Jacob Katz has explored the tensions imposed by Jewish law on Jewish life in Poland, although his most detailed study of the subject is limited to a particular aspect of Sabbath law and does not concern itself with the dynamics of the legal process.[1]

In contrast to the popes who headed the Catholic church, rabbis in the post-talmudic age could not simply alter rules found in Scripture or change talmudic decrees to meet the needs of their day.[2] Jewish laws were considered binding even if the factors that had motivated their enactment had vanished. Rabbis and laymen in subsequent periods had the right to enact statutes to meet the needs of their age but could not openly disregard any aspect of the law or take legal precedent lightly. At the same time, if rabbis failed to integrate modern life into the framework of the law, they threatened to render the latter irrelevant and undermine its authority. Thus in each generation and in every locale rabbis had to interpret the law in light of the needs of those who lived by it.[3] Some of their decisions were informed not only by the law itself but by a host of variables, among them

1. See Jacob Katz, *Goy shel Shabbat* (Jerusalem: Zalman Shazar Center, 1984), pp. 70–83. Also see Katz's *Masoret u-mashber* (Jerusalem: Mossad Bialik, 1958), pp. 78–87.

2. On the extent of the medieval papacy's legal power see Kenneth Pennington, *Pope and Bishops* (Philadelphia: University of Pennsylvania Press, 1984), pp. 28–29.

3. See, however, Samuel Morell, *Precedent and Judicial Discretion: The Case of Joseph Ibn Lev*, South Florida Studies in the History of Judaism, no. 26 (Atlanta: Scholars Press, 1991), who writes that "it is doubtful whether the rabbinic authorities knowingly recognized this type of tendentiousness as legitimate in most areas of halakha and utilized it consciously and openly in judicial methodology" (p. 96). Elsewhere in his work, Morell cites a number of examples in which practical considerations appear to have shaped the legist's legal conclusions quite consciously (pp. 136, 146). A blatant example of a jurist allowing practical considerations and communal pressure to convince him to alter his legal judgment can be found in Isaac ben Abraham of Poznań, *She'elot u-teshubot Rabbeynu Yizḥaq me-Pozna'*, Ya'aqob Aharonfeld, et al., eds., (Jerusalem: Machon Yerushalayim, 1982), no. 93, p. 199, a responsum from a decade or two beyond the period under discussion here.

public policy considerations, social and economic concerns—indeed, even by the temperament of the *poseq* (a rabbinic scholar who decides issues of law).[4]

A number of exegetical methods were available for expanding the parameters of the law while respecting the integrity of authoritative sources. Practical or inductive reasoning, or simply conjecture, could be used to reinterpret a talmudic passage and to suggest that the text was discussing something other than what it seemed. The provenance of a troublesome legal text could be limited to circumstances dissimilar to what a jurist faced, effectively neutralizing the legal impact of the original case. Precedents could be narrowed or broadened to afford much greater flexibility in dealing with a problem. If the present situation was extreme, a text could even be deliberately misinterpreted in the course of developing a line of thought. A jurist had to separate contemporary cases from previous legal thought if he was to follow an independent approach. Hermeneutical methods, however, did not tell Jewish legists when to attempt a reinterpretation of the law.[5]

Admittedly, the notion that law is shaped by external forces, if pursued too vigorously, can lead to reductionism. Yet halakhists remained bound to both custom (*minhag*) and to canonical legal texts such as the Talmud and the commentaries of the medieval Franco-German legists. Polish rabbis could only interpret texts; they could not forsake them. Interpretation, much of which involves meanings added by the reader, ultimately had to fit texts, whether well or poorly. And since Polish rabbis also believed that Polish Jewry was descended from the thirteenth-century German Jewish pietists, Ḥasidey Ashkenaz, for at least one Polish rabbi, Joel Sirkes (1561–1640), this meant not accepting leniency in legal matters where a tradition of lenience did not exist.[6]

---

4. While such forces pressured and shaped halakhic thought, it is unlikely that one can arrive at an overarching concept of justice that explains all judicial decision making on the basis of these concerns. At best one can use case studies to demonstrate the nature of the process.

5. Examples of some of the legal methods used by a sixteenth-century Ottoman decisor to gain greater legal flexibility are analyzed in Morell, *Precedent and Judicial Discretion.*

6. See Joel Sirkes, *She'elot u-teshubot ha-bayit ḥadash* (Frankfurt, 1697), no. 79. Sirkes was, however, the only one to record such a position in the name of Ḥasidey Ashkenaz. He grounded the idea of stringency in the concepts of holiness and piety (see *Responsa*, nos. 110, 139; Joel Sirkes, *She'elot u-teshubot ha-bayit ḥadash ha-ḥadashot* [Koretz, 1785], no. 32, 43, 51, 89).

The authority to rule in halakhic matters had been imparted to rabbis from earlier generations in a chain that was ultimately traced back to the Talmud and Mount Sinai. No one else was similarly authorized. While philosophers may have been intimately familiar with the values of Judaism, ethical thought was not inextricably bound up with revelation. Moreover, philosophers, unlike halakhists, owed no particular allegiance to the legal precedents of earlier authorities.[7] And while the law is not a closed logical system, philosophers and others used sources of knowledge that the Franco-German halakhic tradition did not admit. And while Jewish mysticism had a limited role in the halakhic process among a number of Polish halakhists, the halakhah remained the supreme legal source among Polish jurists of the age.[8]

When deciding matters of law, rabbis were generally not required to provide the basis for their decisions, many of which were given as they were asked, orally. However, in written responses to the inquiries of colleagues, jurists were obliged to justify their conclusions. Rarely did rabbis articulate their nonhalakhic concerns in the course of their legal arguments; a nontextual approach would leave a rabbi's view unmoored in classical sources and with diminished claims to obedience.[9] Generally, then, traces of nonlegal concerns in halakhic thought must be sought in a jurist's interpretation of texts. One must examine to what extent a legist reinterpreted his sources, endowing them with new meaning.[10] When a number of such reinterpretations are combined and analyzed in light of the realities of contemporary society, they may suggest a marked concern for something other than a purely objective reading of the law.

Thus the *poseq* straddled a fine line between tradition and innovation. The very purpose of his quoting earlier sources was to anchor his decisions

7. See Frank Easterbrook, "Method, Result, and Authority: A Reply," *Harvard Law Review* 98.3 (January 1985): 627–29.

8. On the role of both Jewish mysticism and philosophy in the halakhic thought of contemporary Polish jurists, see my "Jewish Law and Social and Economic Realities in Sixteenth and Seventeenth Century Poland" (Ph.D. diss., Columbia University, 1991), pp. 129–74.

9. See Frank Easterbrook, "Legal Interpretation and the Power of the Judiciary," *Harvard Journal of Law and Public Policy* 7.1 (Winter 1984): 97–98.

10. Not every reinterpretation is a sign of change. Care must be taken to determine whether texts take on a new meaning simply because words convey different meanings to people in different times and places. Exegetes also produce novel ideas while trying to harmonize seemingly contradictory texts.

in tradition and halakhic authority and make it appear as if he were conservatively following the Mosaic tradition. Yet these highly sophisticated and intelligent men surely knew that all their prooftexts and sources did not always address head-on the questions they were discussing. On the other hand, they never stated that they were trying to intuit what the Torah, or rabbis of the Talmud, or even God Himself, would have wanted in any given situation.[11] Legislative intent had little, if any, place in Jewish jurisprudence. Rabbis were propagators of an ancient legal tradition that was characterized by specific legal rules and assumptions. They tried to deal with the evolving needs of their societies within the rubric of this legal system. So long as they respected the legitimacy (i.e., authority) of canonical texts, legal fictions and textual reinterpretations were valuable tools in reshaping the law. Even the boldest jurists couched innovation in the language of tradition.

The time frame of this study encompasses approximately the years between 1550 and 1655, a period of exceptional creativity in the annals of Polish Jewry, particularly in the fields of self-government and halakhah. The cultural blossoming of Polish Jewry was in part a reflection of the personalities of the day. Rabbinic intellectual activity came to life in Poland with the arrival of Rabbi Jacob Pollak (1460/70–after 1522) and flourished in the talmudic academy of Rabbi Shalom Shakna (d. 1558). Although both Pollak and Shakna left little written material, Shakna's students, such as Rabbis Moses Isserles (d. 1572) and Solomon Luria (ca. 1510–1574), evidenced little literary reticence. Not only did they leave volumes of halakhic thought, but they produced students who themselves produced students who continued their exegetical and legal activities. It was only the combination of the Cossack rebellions in the eastern lands of the Polish-Lithuanian Commonwealth in 1648–1649, the Swedish invasions that rocked the western half of the country and reached Poznań and Cracow in 1655, and the Muscovite attacks in the east that saw slaughters in Vilnius, Lvov, and Lublin in the same year, that caused a serious, albeit temporary, rupture in the development of talmudic scholarship in Poland. While Polish yeshivot

11. Some authorities did attribute Divine inspiration (*ruaḥ ha-qodesh*) to works that eventually gained universal acceptance such as the Mishnah, Moses Maimonides' *Code of Law*, and Joseph Karo and Moses Isserles's *Shulḥan 'aruk*. See Jacob Spiegel, "Derek qeẓarah bi-lshon tanna'im ve-'al peshat ve-derash ba-mishnah," *Asufot* 4 (1990): 23–26, and particularly n. 58. But, as Spiegel points out, contemporaries of the authors of these works hardly thought of them in such terms.

(talmudic academies) continued to attract students from western Europe even after the events of the mid-seventeenth century,[12] many Jews, including leading scholars such as Rabbi Shabbetay ben Me'ir ha-Kohen (1621–1662), fled their homes in the wake of the devastation and epidemics that follow war.[13]

The extended period of peace enjoyed by Poland in the sixteenth and first half of the seventeenth century afforded teachers the opportunity to transmit their values from one generation to the next. Perhaps even more important than the establishment of schools of higher learning for spreading rabbinic culture during this period was the development of printing.[14] With printed books readers could spend time studying texts instead of copying them and learn about a wide range of material without a teacher.[15] More Jews had access to rabbinic texts at the beginning of the seventeenth century than at any time in the age of manuscripts, although their numbers should not be exaggerated—printed books remained relatively expensive and few people owned more than a handful.[16]

12. Although many assume that talmudic academies in Poland declined after 1648, M. Rosman has cogently argued that while Polish yeshivot did not reach the scholarly heights that they occupied during the sixteenth century, the country remained a center for Torah study until the mid-eighteenth century. See Mosheh Rosman, "Dimmuyav shel beyt Yisra'el be-Polin ke-merkaz Torah aḥarey gezerot Ta"Ḥ—Ta"Ṭ," *Zion* 51.4 (1986): 442–48.

13. Many Jews had left Poland for western centers before 1648 but Jewish emigration from Poland intensified after the Cossack rebellion. See Moses Shulvass, *From East to West* (Detroit: Wayne State University Press, 1971), pp. 19–37. On the extent of the decline in the total Polish population as a result of the devastation, see Jerzy Topolski, "Wpływ wojen połowy XVII wieku na sytuacje ekonomiczna Podlasia," in *Studia historica w 35-lecie pracy naukowej Henryka Łowmianskiego*, Aleksander Gieysztor, ed., (Warsaw: Państwowe Wydawnictwo Naukowe, 1958), pp. 324–28, who estimates that the population of Mazovia shrunk from approximately 990,000 people before the war to 360,000 in 1662–1663, a drop of about 65 percent. The population of Great Poland fell by 42 percent to 830,000 people in the same period, and that of Little Poland by 27 percent to 1.06 million people. Surprisingly, Topolski emphasizes the effects of increased child mortality and not emigration in the wake of the wars.

14. See Elizabeth Eisenstein, *The Printing Press as an Agent of Change*, vol. 1 (Cambridge: Cambridge University Press, 1979), pp. 71–73.

15. The development of printing did not totally absolve the need for manuscript copies. Books that were not available in the local marketplace and manuscripts from earlier ages that had yet to be printed still had to be copied by hand.

16. As Natalie Davis points out, the price of books was not the only impediment to purchasing printed works. Those living outside printing centers like Cracow and Lublin somehow had to connect with booksellers, who did not always have a book the buyer wanted. See Davis's article "Printing and the People," in a collection of her essays entitled *Society and Culture in Early Modern France* (Stanford: Stanford University Press, 1975), pp. 196–97.

Printing not only brought previously unavailable works to a relatively large audience but also increased the possibilities of preserving works for posterity. Two hundred copies of a book printed on high rag content paper dispersed among different owners in various places had a much better chance of surviving war, fire, theft, wear and tear, moisture, and the other vicissitudes that written records had to endure, than one manuscript.

Among the works of Polish rabbis that have survived to the present, two types are particularly useful in tracing those instances where rabbis shaped the law on the basis of economic and social factors in sixteenth- and seventeenth-century Poland. One is the glosses of Polish rabbis on earlier legal/talmudic texts; the other is the responsa literature, answers to specific questions asked of rabbis by colleagues or laymen unfamiliar with a point of law. The latter are particularly useful. Not only do they deal with concrete situations rather than theoretical textual interpretations, but they often reflect the values of both the rabbi answering the question and the community that asked it. No rabbi appointed himself an authority. If his views were not in harmony with those of his community, people would quickly stop referring their questions to him and consult someone else. That people continued to turn to a particular jurist time and time again can only mean that his approach to problems and his answers were in consonance with the values of his contemporaries.

There are obvious hazards in using such literature for historical purposes.[17] One problem is establishing the accuracy of texts. A sixteenth- or seventeenth-century responsum was usually written by its author and generally copied twice into a legible hand by a scribe before one copy was signed by the rabbi and sent to the questioner. The other copy was kept for the rabbi's files. In some cases the original letters that were signed and sent still exist; usually they do not.[18] Many sixteenth- and seventeenth-century Polish collections were set in type from the rabbi's files,[19] a process that pre-

17. No work takes a reader through the step by step textual difficulties and rewards of using responsa literature better than Haym Soloveitchik's *Shu"t ke-meqor hiṣṭori* (Jerusalem: Zalman Shazar Center, 1990). While Soloveitchik's work focuses on responsa from eleventh-century Franco-Germany, the tools employed can be used with responsa written in a later age.18. A number of such responsa can be found in J.T.S. Rabbinics MS. 1542 that contains three signed responsa of Joel Sirkes (fols. 30b-31a, 73a-75a) that appear in Sirkes's *Responsa* (old), as numbers 85, 86, and 87.

19. See, for example, Sirkes, *Responsa* (new), no. 43 (end), that states that it has been copied from a holograph of Sirkes. The printed text is therefore likely but one step away from what Sirkes actually wrote.