

JEWISH LIFE IN GERMANY OF THE 12TH CENTURY:  
A STUDY OF THE EBEN HAEZER OF RABBI ELIEZER  
BAR NATHAN OF MAYENCE (ca. 1090-1170) AS A  
SOURCE FOR THE HISTORY OF THE PERIOD

by

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A P P R O V A L

This dissertation, entitled

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## INTRODUCTION

The purpose of this dissertation is to study the life and work of R. Eliezer b. Nathan of Mayence (1090-1170) with particular reference to Eben Haezer, his magnum opus, as a source for the political, social, economic, and religious history of the time. While R. Eliezer was well known to his contemporaries as well as to the generations that immediately followed him, his influence became somewhat vitiated over the course of the years. He was overshadowed by many of his contemporaries whose works won for them much wider acceptance than what was granted to him. This was particularly so for his contemporaries in France, the Tosafot, who found their interpretations and novellae studied almost as much as the Talmud itself. R. Eliezer, on the other hand, just as much a giant in his own time, was gradually forgotten, except for passing references in the later literature. The very paucity of available texts of Eben Haezer was itself proof of the limitations of his later influence.<sup>1</sup>

R. Eliezer's work remains of great importance to all those concerned with the development of Halacha. We note

<sup>1</sup>Note the discussion in Chapter II on the discovery of the manuscript of our text.

with interest the ties that existed between the Gaonim of the East and the scholars of Western Europe as exemplified by R. Eliezer. We marvel, too, at the extent to which local conditions had their effect upon the halachic standards by which the Jews of the time lived and worked. It is to R. Eliezer that we owe a great debt for the sensitive fashion in which he sought out the narrow ridge between the demands of his own times and the ideals and strictures of prior generations. Of even greater importance is the historical material noted by R. Eliezer tangentially, while engaged in halachic commentary. Abstracting historical material from halachic literature is not new. On the contrary, it has provided the basis for a great many monographs on Jewish life. In the case of R. Eliezer, random quotations have been noted by a number of authors in order to support their own historical theories. Comments made by R. Eliezer have often been taken out of context.<sup>2</sup> At no point, however, has there ever been a monograph devoted totally to his work. In part because of the absence of manuscripts that could be published scholars of this generation have turned their

<sup>2</sup>A groundless but nonetheless characteristic utilization of R. Eliezer's response was the attempt to utilize it as a major source for the early beginnings of East-European Jewry as well as the establishment of trade routes with Russia. An evaluation of these attempts to exploit an historical source in a purely subjective fashion can be found in Chapters I and VII. See also B. Weinryb, The Beginnings of East European Jewry in Legend and Historiography, passim.

attention away from the work of R. Eliezer.<sup>3</sup> The attempt in this work has been to impart some fuller measure of understanding for the contribution of R. Eliezer, as well as an objective evaluation of the historical materials contained in his responsa.

The work is divided into two parts. The first deals with a biography of R. Eliezer and contains within its scope information on R. Eliezer's contemporaries, as well as a listing and evaluation of the works ascribed to R. Eliezer. In addition, an analysis of the nature and structure of Eben Haezer is appended to give the reader greater understanding of the manner in which the text was edited and came into being. The second part of the work deals with an analysis of R. Eliezer's text from the standpoint of the economic, social, political, and religious factors that were active in the world of which he was a part. For the first time, an effort has been made to systematize all the material contained in Eben Haezer in terms of whatever light it tends to cast upon our period. Clearly R. Eliezer's statements were not sufficient in themselves to provide a full history

<sup>3</sup>There is a great dearth of adequate monographs on the work of medieval halachists. Jewish scholarship, under the influence of the Wissenschaft school of the 19th century, focused on the publication of manuscripts and the establishment of proper texts of Jewish classics. R. Eliezer was known, but was reduced to a series of historical footnotes. The two notable exceptions are the works of V. Aptowitz and S. Albeck, dealt with in Chapter II. Unfortunately, Albeck never had the opportunity to conclude his work. Aptowitz's interest in R. Eliezer was tangential. His primary concern was for the work of R. Eliezer b. Joel Halevi, R. Eliezer's grandson.

of Jewish life in Germany of the 12th century. Parallel sources for the period were utilized. The primary focus, however, was on Eben Haezer and the information that it provided. Additional information garnered through other sources was intended for contrast and comparison. A definitive history of Jewish life in the 12th century must await the completion of other monographs on R. Eliezer's contemporaries, which together with this work, would give a rounded picture of Jewish life in our period. Till that time, the critical use of Eben Haezer provides an excellent means for the investigation of our period. The literature is replete with overgeneralizations based upon extremely small samplings of evidence, particularly from the responsa literature. Every attempt was made here to guard against that danger through the careful counting and weighing of all relevant references.<sup>4</sup>

The historical background of Eben Haezer is dealt with to some degree in the body of the text itself. Its concern, however, was primarily with the inner world of the Jewish community rather than the outer world of which Jews were a part. Yet, a sound consideration of that outer world is a

<sup>4</sup>Note, e.g., the generalizations contained in Irving Agus's volume with the pretentious title of Urban Civilization in Pre-Crusade Europe that deals with the political and economic life of Western Europe with the exclusive use of sources from the responsa literature. As a result, Agus's volume is filled with overgeneralization and exaggeration both of the role of the Jewish trader in the medieval world as well as the uniqueness of his position.

necessity if the history of the period is to be truly understood. The 12th century was a period in Jewish life usually associated with the negative after-effects of the Crusades. The quality of Jewish writing in the period was mournful, based in large part on the attacks by the crusading mobs on Jewish centers of population. The dirges that were sounded in the Jewish community tended to obscure for later generations the fact that the period as a whole was one of far different quality. Though the crusading mobs did exact a heavy toll among Jews of Western Europe, as we shall see, their immediate effects were not long lasting. On the contrary, the communities of Western Europe were far less affected than is generally realized.<sup>5</sup> Twelfth century Europe still had the character of an open society. Open mindedness prevailed not only in the secular institutions of society, but in the Church and religious life as a whole. It was only after the 13th century that the Church became increasingly bureaucratic and sacerdotal. The 12th century

<sup>5</sup>A. M. Habermann, Gezerot Ashkenaz V'Tsorfat, passim. It is filled with the most mournful poetry as well as deeply moving and maudlin chronicles of the 1st Crusade. Part of the burden of this work is the illustration of the immediate limited effects of the Crusades upon the Jewish community. Despite the attacks the careers of R. Eliezer and his colleagues belie the destruction of the community. Even now, the popular view of the Crusades blinds some scholars to the true nature of the 12th century Jewish history. See, e.g., S. Steinman, Custom and Survival, p. 12. Though Steinman shows understanding of later German Jewish history, he generalized about the earlier centuries from the later experience. His view, moreover, is by no means unique among Jewish scholars.

was one in which there was still talk of Christendom and relatively little of a ponderous Church, weighed down by its own sinecures and vested interest. The hold of the Church upon the people was still rather loose.<sup>6</sup> The individual peasant periodically still worshipped his pagan dieties. Church celibacy proved extremely difficult to impose. National consciousness was ill defined; though at times the lower classes were prone to the preaching of fanatics, discord between Jew and Gentile did not yet play the overwhelming role it was to play in future centuries. It was a time of great change and ferment in Europe. The population increased greatly, and there was movement from the countryside to the towns. Prosperous towns sprang up on all sides. Though they did not compare with the grandeur and splendor of the East, there was a sense of freedom and individuality about them. They were often garrulous and quarrelsome, not to say dirty and unsanitary. The houses were made entirely of wood, even those at the highest levels of urban society. The 12th century town was not large. Many of them did not involve more than a few hundred people. Yet, the fact that urban society of the century proved it-

<sup>6</sup> See infra, Chapter V. The material noted by R. Eliezer which disclosed a depth of contact between individual Jew and individual Christian illustrated the lack of a hold by the Church on its people. Cf. F. Heer, The Medieval World, p. 21 ff. Heer's thesis of the 12th century as one of an open society is compatible with the trends noted in this work.

self to be so flexible, so open to change, and to that which was novel created the kind of society in which a Jewish community could thrive.<sup>7</sup> Despite the overtones of hate engendered by the Crusades, the reality of freedom made such outbursts still temporary and passing. Jewish relationships with the burgher group were still reasonably good even through the Crusades. The burghers still had not reached the state which enabled them to seek complete domination over the cities.<sup>8</sup> The real effects of the Crusades were to be felt later. Similarly, the decay of the towns in the 14th century had their effect on a totally different pattern of Jewish settlement, as they were expelled from city after city. It was the later stagnation of town life accompanied by a precipitous decline in population that helped to produce a mistrustful defensive mentality so inimical to the interests of the Jewish community and so self-destructive within German society.<sup>9</sup>

The prosperity of the towns in our period will be

<sup>7</sup>The fate of the Jew in Germany was intertwined with that of the medieval town. The towns were in their early stages, and, therefore, we do not possess all the information we have for a later period. Its major institutions were still in a state of flux and were not fully formed. This factor, perhaps as much as any other, was important in creating a good climate for the Jewish community. See H. Pirenne, Medieval Cities, pp. 75-119.

<sup>8</sup>S. Baron, A Social and Religious History of the Jews, Vol. IV, 75.

<sup>9</sup>F. Heer, op. cit., p. 75.

documented through material from Jewish sources. However, the prosperity extended not only to the Jewish community. It was part of the economic pattern of the total community. The town of our period in Germany was the center of a flourishing and significant trade with the hinterland of Europe. It was largely through the active development of that trade that the Jewish community was able to hold its own. Major economic progress was noted in many areas. There was rapid growth in the money economy, great multiplication of fairs and markets, a rising standard of living. In all of these developments, the town played a major role. Economic developments in the 12th century constituted a veritable revolution in which wealth derived from commerce and industry began to displace wealth derived from agriculture.<sup>10</sup> As the towns developed, they brought forth their own governing groups, an urban patriciate. The urban ruling classes were, however, far removed from the feudal system and the landed gentry, for whom a natural antipathy existed. They turned much more to the monarchy as their protector and ally. Jewish authorities tended to highlight the role played by the monarchy in attracting and holding Jewish settlers in the towns under its protection.<sup>11</sup> The monarchy was,

<sup>10</sup>J. Thompson, An Economic and Social History of Medieval Europe, p. 513.

<sup>11</sup>See, e.g., S. Baron, A Social and Religious History, Vol. IV, 68-71.

however, firmly aligned not only with the Jews, but with the aspirations of the entire burgher group. Our period was one in which the interests of the Jewish community and that of the burghers were still more or less identical with one another.

The 12th century is spoken of as a period of great cultural awakening. It was a period of renaissance in art, literature, science, and philosophy, and represented a high point in the flowering of medieval genius.<sup>12</sup> The center for such cultural inventiveness was not, however, in the cities where the Jews of Germany lived. The towns of 12th century Europe were essentially industrial centers. The townspeople were preoccupied with trade and handiwork primarily, and were far removed from the strong intellectual currents of the century that had their sources in far more cloistered halls.<sup>13</sup> Unlike the Jews of Spain or Provence who lived in a rich cultural atmosphere and reacted positively to that environment, the Jew of the urban areas of Germany was not

<sup>12</sup>A full description of the nature of that medieval awakening is to be found in all its variety of forms in a volume by Charles Howe Haskins, entitled The Renaissance of the 12th Century. It comes particularly as testimony against those who would conceive of this period as being part of the Dark Ages that was not broken till the Renaissance of the 15th century. That view of history, claimed Hawkins, is remote from reality.

<sup>13</sup>H. Taylor, The Medieval Mind, Vol. I, 344.

exposed to the same intensive cultural environment. The Medieval Renaissance, as it became known, bypassed the German city. It is for that reason, perhaps more than any other, that Jewish cultural expression of our time remained confined largely to Jewish tradition, parallel to developments within the Christian community.<sup>14</sup> Though the university was considered by most scholars to be the contribution of the twelfth century to mankind, the earliest beginnings of the university were confined to areas of Europe other than the Rhenish cities. Those beginnings were tied closely to the growth and development of the cathedral schools, and bypassed the Jewish community.<sup>15</sup> Perhaps most significant among the cultural development of our period was the increased use of the vernacular in the society of the time. The development of a vernacular literature was paralleled by a far greater development of the spoken vernacular, as noted in the sources collected in this work.<sup>16</sup>

Most clearly felt in the twelfth century was the Eastern

<sup>14</sup>The remarkable parallels between Jewish cultural developments and those of the Christian world has been noted by Christian as well as Jewish scholars. See, e.g., F. Heer, op. cit., p. 313. The differences in cultural development between the Jews of Spain and those of Germany are deeply related to the differences in cultural development among non-Jews in the two communities.

<sup>15</sup>C. H. Haskins, op. cit., p. 369.

<sup>16</sup>See infra, Chapter VI.

expansion of Germany that went hand in hand with the growth of population and the expansion of trade. The traces of that movement to the East will be clearly seen in our sources. The trend of expansion was most clearly noted in the areas of Silesia and Bohemia.<sup>17</sup> Often the settlers in the East were accompanied by merchants and slave traders. The political system of the new areas of development was an extremely fluid one. Political fluidity was, however, characteristic of the older areas of Germany as well. Though a central authority existed, most governmental functions were local in nature. Differences of great significance existed from area to area, and local tolls became a source of dissatisfaction and conflict.<sup>18</sup> Local jurisdictions were often in conflict with one another, and there was tension between the countryside and the urban areas. Because of the lack of a truly effective central authority, the roads were often unsafe and journeys entailed great danger. Local authorities whose jurisdiction overlapped were often vicars of the church.

Aside from the vagaries of the local situation that varied from place to place, there were at least two major institutions with which the Jewish community had to contend.

<sup>17</sup>J. H. Thompson, op. cit., p. 535-6. The movement of German expansion to the East represents one of the most significant developments of our period. It had begun much before our time. This is not to be confused with the question of Jewish settlement in Russia, discussed in Chapter III.

<sup>18</sup>Ibid., p. 510.

Both political institutions operated at cross purposes with one another. The first was that of the Holy Roman Emperor who was a threat to the German princes and their autonomy. Those princes often made common cause with the Pope against their rival, the Emperor. That was so, for example, in 1077, when the princes, under the prodding of Rome, set up Rudolf of Swabia as a rival to Henry with the understanding that he would not make the throne hereditary. Our period was one in which the conflict between the monarchy and Rome was formidable. Henry V, at his coronation in Rome in 1111, seized the Pope and compelled him to consent to a treaty he designated. Once he was set free, Pope Paschal II disavowed the extorted concession. It was not until later in 1122 that the Concordat of Worms was entered into between Pope Calixtus II and Henry V, solving in part the problem of investiture. Yet the Papacy remained to a large degree supreme. The Emperor found himself increasingly isolated, both from the Church and from the nobility.<sup>19</sup> His natural ally increasingly became the town burgher. Even more important, his nonalignment with the Church came at just the time that the Church had embarked upon its Holy War. It meant that the German Emperor was forever deprived of the possibility of leading the great nations of Europe. Beyond the

<sup>19</sup>J. Bryce, The Holy Roman Empire, p. 204. Bryce's intensive study relates very much to our work, for it underlines the disunity in Germany of our period. It is that very disunity that allowed the Jewish community to develop and thrive.

difficulties that existed between Pope and Emperor, the local situation often made its own demands. Both Rome and the Emperor were distant, and local government authorities as well as local church authorities often went their own way and made their own decisions irrespective of the pronouncement of their chiefs. Church doctrines proclaimed by highly placed Church Prelates represented one aspect of the life of the Church. The day to day functioning of the Church represented still another. Similarly, under the condition of twelfth century Europe what happened under local, daily conditions was a lot more important than the grandiose proclamation of an Emperor, removed from the scene. That lesson was learned well by the Jews, whose protection by the Emperor availed little in 1096. For most of the Century the period was one of an increasing degree of feudalization. The jurisdiction of the Crown was diminished; the choosing of the Emperor had become a matter of election dependent on princely Electors rather than being based on hereditary rise to office. Only the career of the brilliant Frederick I Barbarossa (1152-1189) stemmed the tide of decentralization and even then only temporarily.

Conditions for Jewish settlement, then, were not at all bad. Europe of the 12th century was flexible enough to allow an entirely foreign group an opportunity to make its way in its society. In truth, the wonder of the Middle Ages

is not that Jews suffered at the hands of Christians. Rather, it is nothing less than wondrous that they survived altogether. The fact is that they did more than survive. As we shall see, despite the Crusades and despite the occasional incidents that boded ill for the future, the Jews of Germany did well. They held their own, both in economic and social terms. The very decentralization and feudalization of Germany encouraged the Jew to make his own way. Even if expulsions occurred from one or more communities, it was always possible to go into another area in which an edict of expulsion had not been made. The Jews had come to Mayence at a very early period.<sup>20</sup> It is said by some scholars that they might well have settled in Mayence in the wake of the Roman Legions. At a minimum they were active in Mayence in the 10th century. They continued to expand and to develop not only the commercial activity of the Jewish community, but also its religious and cultural life. There were setbacks in the growth of the community. In 1084 the Jews were accused of having set a conflagration which destroyed a large part of the city. A great many were forced into temporary exile, and were received by the Bishop of Speyer. As will be spelled out later, the Crusades did have a crushing effect on the Jewish community of Mayence, but not nearly to the extent that is often assessed. The 12th century proved to be most congenial for the Jews of Mayence as for the Jews

<sup>20</sup>For a treatment of the early history of the Mayence community, see infra, p. 24.

of Western Europe. It is within that context that we must see the work of R. Eliezer, the leader of Mayence community, and the great scholar of his time.

It was only later, with the rise of nationalism and the consolidation of the guilds, that the lesson of the Crusades were finally driven home. Later changes in economic and social conditions finally squeezed the Jewish community out of its place in German society. It is only then that the tide of expulsion began in earnest and the Jew resumed his wandering.

## PART I

R. ELIEZER BAR NATHAN

### CHAPTER I

#### THE LIFE AND WORK OF R. ELIEZER

R. Eliezer bar Nathan of Mayence lived a long and productive life. While it is difficult to pinpoint the exact date of his birth, it is probable that he was born in 1090.<sup>1</sup> He lived to a ripe old age, and was privileged to witness the academic accomplishments of one of his grand-

<sup>1</sup>As in many other details of his life, one is hard pressed to be accurate in giving an exact date for R. Eliezer's birth. We must depend on material R. Eliezer transmitted to us through his writings. In Eben Haezer, 36ab, we read in a responsum of an exchange of correspondence between R. Eliezer and R. Samuel, his son-in-law. The responsum contains the date 1133, representing the latest date by which R. Eliezer could have married off his eldest daughter. The same responsum contains the phrase **היש בינה לימים צעירים להגיע לארבעים** (ים)

**עוברים** an allusion to the fact that R. Eliezer had reached his fortieth year. On that basis, an approximate date of birth in 1090 would seem certain. As we shall see later, R. Eliezer's chronicle of the First Crusade was based on second hand information, a fact that is consistent with his being a child of six at the onset of the Crusades. There does exist an allegation on the part of some authorities (see particularly Michal, Hayyim, Or Hahayyim, p. 212) that R. Eliezer sat at the feet of Rashi, a possibility that would make his birth date much earlier. Such an allegation has no basis in fact. Note the thorough destruction of the hypothesis by S. Albeck in his introduction to our text, Chapter I. For a fuller treatment of R. Eliezer's relationship with Rashi, see *infra*, p. 15, as well as footnote 10. R. Eliezer was known most widely by his abbreviated name, RaBan.

children.<sup>2</sup> He died, revered and respected by all, in 1170.<sup>3</sup> R. Eliezer was born in Mayence, and it was in that city that he married and raised a family.<sup>4</sup> Of his own immediate forebears we know very little. Not only is the name of his mother unknown to us; we know nothing of his father except his name. R. Eliezer had at least one brother, Hezekiah,

<sup>2</sup>Responsa of R. Meir of Rothenburg, par. 581. This particular responsum is also to be found in Mordecai, Ket. par. 250. In both copies of the responsum, it is said that the question was posed to R. Eliezer by his grandson. Our text in which the question first appears has no such reference. (Eben Haezer, 68c). The inclusion of a serious question from the pen of his grandson attests to the academic achievement of the young man. (R. Eliezer b. Joel Halevi was born ca. 1140 according to Aptowitzer, V., Mabo L'Sefer Rabiah, and was probably the grandson cited.)

<sup>3</sup>The exact date of R. Eliezer's death is open to question. In Sefer Hayyashar of R. Tam (par. 293) the following statement is to be found: נפטר ר' אליעזר ממנצא, נ"ז Since R. Tam died in 1171, R. Eliezer could not have lived beyond 1170. The statement, however, is not conclusive, for it is possible that it was added by R. Tam's students. It is clear, however, that R. Eliezer died before 1175, since he predeceased Ephraim of Regensburg whose death occurred in that year. A responsum from Joel Halevi to Ephraim already noted R. Eliezer's death. See Sefer Rabiah, Pt. I, p. 221. Note also Aptowitzer's extended remarks on the date of R. Eliezer's death in his introductory volume, p. 49.

<sup>4</sup>Nowhere do our sources give us a clear and unequivocal judgment on the place of R. Eliezer's birth. There is no question that his land of birth was Germany. His thoroughgoing familiarity with the German vernacular is itself far reaching proof that he came from a German speaking environment. R. Eliezer was often referred to by his contemporaries as coming from Mayence. Although that does not necessarily mean that Mayence was his birthplace, the overall weight of the evidence seems to point in that direction. (Cf. S. Albeck, Introduction, Chapter II). Wherever R. Eliezer was born, it is clear that he spent many years living and working in Mayence.

but even he was mentioned but once in Eben Haezer. Though he was knowledgeable enough to pose a question to R. Eliezer, it is improbable that he ever attained profundity of scholarship for his name does not appear in any other contemporary source.<sup>5</sup> R. Eliezer also had a brother-in-law, Isaac, similarly unknown in any other context. There is no indication whether Isaac was his sister's husband or his wife's brother.<sup>6</sup> The immediate family of R. Eliezer was not distinguished for its scholarship, although R. Eliezer was distantly related to a number of individuals who occupied important places in the Jewish world of his day.

R. Eliezer's childhood was not recorded in any of his writings, not even in his chronicle of the First Crusade that swept over the city of his birth. He was a child of six at the time, but if the First Crusade struck in any way at his immediate family, not a memory of it was left for historians to ponder.<sup>7</sup> Though we know nothing of the

<sup>5</sup>Eben Haezer, 58a. Even his question was minor and uncomplicated. It is impossible to draw final conclusions from a single reference. There is, however, the greatest difference between the passing reference to Hezekiah and the much fuller treatment accorded others in R. Eliezer's family. It is clear that R. Eliezer's brother never assumed prominence in the community.

<sup>6</sup>Ibid., 1a. This represents the one and only reference to R. Isaac in the entire work.

<sup>7</sup>Autobiographical elements are, of course, difficult to uncover, even at a later point. For the earlier period of his life, there is almost nothing in his writing. If, indeed, the first Crusade had a cataclysmic effect upon the lives of the Jews of Mayence, it seems hardly conceivable that they would not be reflected in R. Eliezer's writing.

occupation of R. Eliezer's father, the absolute lack of filial scholarly traditions leads one to believe that he was a businessman.<sup>8</sup> R. Eliezer was, at any rate, free to pursue his studies and in the custom of the day left his home to study with the venerable scholars of the age.<sup>9</sup> There is some question whether R. Eliezer even knew Rashi or ever studied with him. Despite the many complimentary and warm references made about Rashi throughout the entire course of our work, it is evident that R. Eliezer never saw Rashi personally, and, of course, never had the opportunity to study with him.<sup>10</sup> R. Eliezer spent a period of time in Speyer

<sup>8</sup>There is not a single reference in the entire work to an academic tradition derived specifically from his father. In light of the veneration and the frequency with which such traditions are mentioned by contemporaries, it is likely that they never existed in R. Eliezer's case. This is all the more so because of the prominence given by R. Eliezer to academic traditions supplied by other relatives whose degree of familial closeness was not specified. It is highly suggestive, though far from proven, to assume that R. Eliezer came from a well-to-do, though unscholarly family. His acceptance as a son-in-law by the most renowned scholar of Mayence was a tribute to R. Eliezer's own intellectual prowess rather than the quality of his immediate family.

<sup>9</sup>We shall deal shortly with the extent of R. Eliezer's travel. Unfortunately, he did not leave any information that would allow us to date his various trips. Most of them took place during the course of R. Eliezer's later service to his community. Other trips were undoubtedly taken during the course of his early student days. How far he travelled in those years is seriously open to question, but it is evident that he was influenced by customs and traditions he witnessed in the East.

<sup>10</sup>The work of Rashi had a most profound effect upon R. Eliezer, and he was counted among Rashi's most vigorous defenders. We shall consider later on the full extent of Rashi's influence. He was, however, more the spiritual disciple of Rashi than his actual student. The view that R.

where he studied with R. Isaac b. Asher Halevi, whom he considered to be his mentor throughout the course of R. Eliezer's lifetime.<sup>11</sup> Similarly, he spent time with R. Jacob b. Isaac Halevi (יעב"י) in the city of Worms. R. Jacob, a distant relative of R. Eliezer, was also his teacher and acknowledged as such over the course of the years.<sup>12</sup> R. Eliezer's

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Eliezer never knew Rashi was not universally held. According to Z. Margaliot, R. Eliezer did indeed have opportunity for direct contact with Rashi. He based this view on a statement in Siddur Raban, allegedly written by R. Eliezer, that read

כך שמעתי מפי ר"ש בר יצחק זצ"ל מחפ"ל בראש השנה...

Note the discussion in S. Albeck, Introduction, Chapter I. As Albeck indicated, the attempt on the part of Margaliot to trace direct contact between R. Eliezer and Rashi had no basis in fact. For a fuller discussion of Siddur Raban as a source, see infra,

<sup>11</sup>Aptowitzer has held that it is impossible to identify R. Eliezer's teachers, and that all one can say is that he studied with many teachers in the vicinity of Mayence. According to Aptowitzer, Eliakim b. Joseph, his father-in-law, designated in our text as מורי, was so named only as a designation of honor. (V, Aptowitzer, Mabo, p. 52). Such reasoning would make it next to impossible to identify any teacher-student relationship. The pattern of the time, as reflected in the life of Rashi, was for a young man to go out into the world and there search for teachers. That pattern was repeated in the life of R. Eliezer, and was reflected in his work. The correspondence between R. Eliezer and R. Isaac clearly betrayed the student-teacher relationship. Even when R. Eliezer quarreled with R. Isaac over an interpretation of a statement attributed to Rashi, R. Isaac's references to R. Eliezer displayed the honor given a favorite student. See the long discussion in Eben Haezer from 75d to 78a. Note particularly R. Eliezer's closing statement to R. Isaac מורי...  
מורי אם שגיתי אהא הורוני ומה שלא ידעתי הבינני למען אמצא חן בעיניך

<sup>12</sup>R. Eliezer did not indicate exactly what the family relationship was between himself and R. Jacob. There was some closeness between the two men despite the fact that R. Jacob was far the older. R. Eliezer never specifically referred to him as his teacher. This was, however, evident in the manner in which R. Eliezer wrote of the historical traditions derived from R. Jacob in Eben Haezer, 2lab. See also S. Albeck,

relationship to R. Jacob was so close that in later years, he was the guarantor for the dowry of R. Jacob's daughter.<sup>13</sup>

R. Eliezer must have attained a high level of scholarship at an early age, for he was chosen as son-in-law of the most important scholar in Mayence, R. Eliakim b. Joseph. R. Eliakim was at the time the head of the Mayence Yeshiva and well known to the scholarly world. He functioned as chief judge of Mayence, and was embroiled in the political controversies of his time.<sup>14</sup> He was often turned to as a source of authority by many within his community. R. Eliakim's fame had spread beyond the confines of Mayence and he was known to the scholars of France as well. He was primarily a teacher, but some elements of his thought were incorporated

Introduction, Chapter 3, par. 3. R. Eliezer was probably the first to refer to R. Jacob by the name "יעב"ץ" which was used to identify him by all later authorities (Eben Haezer, 59c). See infra, footnote 183.

<sup>13</sup>Mordecai, B. Bathra, par. 751. Mordecai b. Hillel quoted R. Eliezer b. Joel Halevi who transmitted the information in the name of his father. ... ואמר לי שראבן זקני היה ערב לחתן של רבי יעב"ץ על נדונייתו שקצבו להם לחתן.

The same tradition was transmitted by R. Isaac b. Moses (Or Zarua, par. 752).

<sup>14</sup>Eben Haezer, 283ab. The only reference we have to this incident involving fraudulent Kiddushin that literally shook the entire Jewish community is in our text. R. Eliezer himself played a minor role in the controversy. The major role was played by R. Eliakim, as was fitting for the titular head of the community. For a full treatment of the incident and its attendant concern for interference by the government, see infra, Chapter III. See also Eben Haezer, 79c in which R. Eliakim was drawn into an incident of murder on the highway primarily because of its potential dangers to the Jewish community.

into the works of R. Eliezer and that of his great-grandson, R. Eliezer b. Joel Halevi.<sup>15</sup> Largely because of the scarcity of his writings even R. Eliakim's name was somewhat in dispute among later authorities. In the course of correspondence with R. Eliezer, R. Samuel ben Meir made reference to R. Eliezer's father-in-law, "Leontin." Some authorities sought to explain the name by positing a second wife for R. Eliezer. Others assumed that R. Eliakim had become ill and had his name changed. What is more probable than either explanation is that the text itself should be read as Eliakim.<sup>16</sup> R. Eliakim lived a long life; he was born in

<sup>15</sup>E.g., Eben Haezer, 16d, 79c. The material originating with R. Eliakim that is to be found in the work of R. Eliezer b. Joel Halevi is listed by Aptowitz on pp. 247 and 292 of his Mabo L'Sefer Rabiah. Note also that some elements of his teaching were transcribed in Or Zarua, e.g., Pt. 1, par. 272.

<sup>16</sup>The original reference is to be found at the beginning of an extensive correspondence between R. Samuel ben Meir and R. Eliezer (Eben Haezer, 290b). It is the only place in which such a designation of R. Eliezer's father-in-law occurs. Each and every time that R. Eliezer referred to him, the designation was unmistakably Eliakim. Yet on that shred of evidence numerous authorities projected their theories. Michal suggested that R. Eliezer had another wife and hence another father-in-law (Or Mahayyim, p. 211). There is nothing in the sources to support such a view. R. Samuel's epilogue to his correspondence reads  
 שלום לרבינו חמיר בראש  
 ואחריו אלה בני בחיהם....

Such a reference can only be to the great scholar we know as R. Eliakim in our sources. The name Leontin was ordinarily used as an alternate to Judah (Note, e.g., the French scholar Judah bar Isaac surnamed ser Leon). It was that fact which led Aptowitz to assume that the name Eliakim was given to R. Eliezer's father-in-law during the course of an illness, but that his real name was Judah. (V. Aptowitz, Mabo, p. 49). As we have noted, an alternate and perfectly plausible

1070 and died sometime between 1145 and 1148.<sup>17</sup> He took his son-in-law, Eliezer, under his wing, allowed him to function as a judge under his supervision, and eventually designated R. Eliezer as his successor. Among those associated with R. Eliakim on his Beth Din, was Kalonymus bar Yehuda.<sup>18</sup> In all major cases R. Eliakim spoke for the Beth Din and for the elders of the community. R. Eliakim was conservative in his interpretations of Jewish law. That conservatism is perhaps best illustrated by his ruling on the use of stained glass

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suggestion is that the reading Leontin is actually a scribal error. It should read Eliakim. See E. Urbach, Baale Hatesafot, p. 149.

<sup>17</sup>R. Eliakim's birth date is only an approximate one. It is based on the assumption that he must have been about twenty years older than R. Eliezer. (Note V. Aptowitzer, Mabo, p. 48). His date of death is somewhat easier to establish. We know from our sources (Eben Haezer, 49c) that R. Eliakim was still alive in 1145, because in that year he was embroiled in the controversy over the blowing of a ram's horn in the Mayence synagogue. By 1148 (Eben Haezer, 17a) R. Eliezer was sitting as the head of the Beth Din with his own son-in-law at his side. R. Eliakim had died by that time, for R. Eliezer contrasted that time with an earlier one in which he sat at the feet of R. Eliakim as a minor member of his court. The later date of death is probably the better one since R. Eliakim did have the opportunity to study with his great-grandson who was born in 1140. Note the comment of R. Eliezer b. Joel Halevi יוסף זקני' ר' אליקים בר' יוסף זקני' (V. Aptowitzer, Mabo, p. 247). שלמה' עמר

<sup>18</sup>R. Eliezer functioned as a judge not only under the tutelage of his father-in-law but also that of Kalonymus b. Yehuda (Eben Haezer, 16d). It is impossible to determine the date of R. Kalonymus's death. Even if he outlived R. Eliakim, it is probable that R. Eliezer would have taken over the Beth Din, from his older colleague. Without question, R. Eliezer far outstripped the younger scholars of Mayence.

windows with paintings of lions and snakes in a synagogue in Cologne. R. Eliakim, though living at the time in Mayence, was called upon to rule on its permissibility. He was shocked at the very thought, and expressed his opposition forcefully.<sup>19</sup> R. Eliezer's relationship with his father-in-law was a close and intimate one. He referred to him continually, not only as 'חמ' , but also as 'מור' , and studied with him frequently. R. Eliezer spoke of his scholarship in the most complimentary terms and considered himself to be not only the son-in-law of R. Eliakim but his disciple as well.<sup>20</sup>

The Jewish community of Mayence which R. Eliezer headed was long prominent in the Jewish world. According to legend, the Academy in Mayence had been founded by Kalonymus of Lucca, who had been brought into the country

<sup>19</sup>R. Eliakim was by no means unopposed in his stringent views on this issue. R. Eliakim's Teshubah was preserved for us in a number of places. It was recopied in Or Zarua, par. 207 as well as Mordecai, Ab. Zara, par. 840. Aptowitzer noted that the version in Mordecai was highly corrupted, and, therefore, brought the following text preserved by R. Eliezer b. Joel Halevi (V. Aptowitzer, Mabo, p. 292) על הבנין שבנו לשם בית כנסת בקולוניא וזכרתי צפוני ציירו אריות ונחשים...כן רבותי יחשו לכבודם ויסלקו אותן הצורות מן הכותל כדי שלא יבואו לידי מכשול ועון. See infra, Chapter VIII, footnote 5, for a fuller discussion of the religious and legal problems involved in R. Eliakim's decision.

<sup>20</sup>Eben Haezer 23d. This attitude was still evident even when R. Eliakim had died and R. Eliezer had established his reputation as a scholar. Cf. supra, footnote 11.

by Charlemagne, but there is no documentary evidence to support that view.<sup>21</sup> The first reference we possess to the Jewish community dates from the first half of the tenth century when an unsuccessful attempt was made on the part of Archbishop Frederick to limit Jewish commercial activity.<sup>22</sup> The Kalonymus family was deeply involved in the early years in the establishment of the Academy, followed in later years by a succession of brilliant scholars. The most illustrious of them was R. Gershom, "Meor HaGolah," whose students spread the study of Torah throughout the Jewish world. R. Jacob b. Yakar, the teacher of Rashi, was among the most important of those students. Of importance also were R. Eliezer b. Isaac (HaGadol) as well as R. Isaac b. Judah.<sup>23</sup> The Yeshiva of Mayence was one of the places

<sup>21</sup>The entire question of the origin of the Mayence community and its Yeshiva is very much at issue among the authorities. Some sources (e.g., Joseph Hacoheh, Emek HaBaha, p. 17) told of Kalonymus of Lucca being brought from Italy by קרלו מאגני (Carolus Magnus) in order to restore learning to Germany. It is difficult to identify the Emperor cited. Some authorities place the settlement of Jews in 876, holding that the reference is to Charles the Bold, who was in Italy in that year. Still others hold that it was Charlemagne, himself, who brought the Kalonymides into Germany. S. Albeck, Introduction, Chapter 2, was apparently confused and held that the scholar was R. Moses b. Kalonymus who actually lived in the tenth century and was not a contemporary of either Emperor. One other possibility could perhaps be Otto II (973-983) who was known to have had contact with a Jew named Kalonymus.

<sup>22</sup>J. Aronius, Regesta, pp. 54 and 125.

<sup>23</sup>S. Albeck, loc. cit. See infra, Chapter II, for a full description of their work.

where Rashi came to study after pursuing his studies for a time at Worms.<sup>24</sup> R. Eliakim, and after him R. Eliezer, took their places at the head of an institution that already had a long uninterrupted history of being in the forefront of Jewish academic life. The influence of R. Eliezer, in his generation at least, was to rival those who had preceded him both in the quality of his students as well as in his own contributions to the world of Jewish scholarship.

There is no record of the name of R. Eliezer's wife and he never referred to her even obliquely in his work. He had no sons, or at least none that survived.<sup>25</sup> He did have four daughters, most of whom married scholars of some repute, and grandchildren who were to bring considerable glory to the family. The first of his sons-in-law was

<sup>24</sup>Rashi, Ketubot, 77a. Rashi traveled widely in Germany, making himself familiar with German customs and traditions. Zeitlin believes that Rashi came to Germany as a mature scholar. See S. Zeitlin, "Rashi and the Rabbinat," JQR, Vol. 31.

<sup>25</sup>There is an attempt by some authorities to establish that R. Eliezer did have a son, but it was not based on material transmitted by R. Eliezer himself. Rather, it was based on a variant reading to a Tosafot in Hullin, 46b. The text there reads as follows: וכן פסק בה"ג ורב אלפס ורבינו יעקב... According to a Vatican manuscript of the Tosafot, the text should actually read רבינו יעקב בראב"ן. Note Zunz's comment reproduced in Germania Judaica, p. 198, as well as Urbach's comments (E. Urbach, op. cit., p. 158). It seems rather strange, however, for such a statement to constitute the only reference to R. Eliezer's son. It is even more peculiar that our amended text considered him to be a scholar of some repute, but without a trace of his work outside of that text. Despite the ingenuity of the thesis, it is utterly without foundation.

Eliakim, the one non-scholar in the group. Eliakim was mentioned only once in the entire work, but he was not portrayed as a participant in academic dialogue.<sup>26</sup> The appellation Rabbi was not applied to him by R. Eliezer. It is probable that Eliakim was a person of substance, and that he made his living as a wine merchant.<sup>27</sup> The second son-in-law was R. Uri, who did attain scholarly status, but was not a man of influence in the Jewish community. Though R. Uri corresponded with R. Eliezer who considered his questions to be of significance, he left no writings or responsa. No quotations of his works appear in the Tosafist literature, nor did he occupy an important teaching post.<sup>28</sup>

<sup>26</sup>Eben Haezer, 23d. The context for his being mentioned was one in which Eliakim erred in the handling of wine. He had absolutely no part to play in halachic discussion, nor was he mentioned by any other authority.

<sup>27</sup>V. Aptowitz, Mabo, p. 51. Aptowitz's conclusions on the nature of Eliakim's occupation appear to be substantially correct, though they are hardly based on incontrovertible evidence. There is precious little in our sources on which to base any conclusions. The use of the term Rabbi was indeed very common in our period and was applied by R. Eliezer to all his other sons-in-law. For a fuller understanding of the significance of the term as used in our period as well as its historical development, note S. Assaf, L'Korot HaRabanut, p. 27.

<sup>28</sup>Eben Haezer, 30d. While Eliakim was totally out of the mainstream of the scholarly world, R. Uri was only partially within it. All we have of his work is this scant reference in Eben Haezer and there are no references at all to him in the contemporary literature. It is possible that R. Uri was a brilliant student of promise who died early in life but there is absolutely nothing in our sources to prove such an hypothesis.

Of much greater importance were the two sons-in-law who made significant contributions to the world of Jewish scholarship in their time. The first of these was R. Samuel bar Natronai. R. Samuel was a frequent correspondent of R. Eliezer, and an active participant with him in halachic dialogue.<sup>29</sup> R. Samuel was born ca. 1110.<sup>30</sup> He lived in many cities, viz., Bonn, Mayence, Cologne, and Regensburg. However, his exact birthplace is not known.<sup>31</sup> Similarly, his date of death is not known, but he was already dead in 1175.<sup>32</sup> Although he was always referred to by R. Eliezer as R. Samuel, he referred to himself often as

<sup>29</sup>There are twenty-three different references to R. Samuel in Eben Haezer. Though he was at all times respectful to R. Eliezer, R. Samuel did not hesitate to express most forcefully his own independent views.

<sup>30</sup>His exact date of birth is not known. The approximate date is based on two factors. The first is that R. Samuel was already married to R. Eliezer's daughter in 1133. A responsum dated in that year was probably written when R. Samuel was in his late twenties. In addition, he was older than R. Joel who refers to him as 'רמ' and whose birthdate is ca. 1120. Note Aptowitzer's rather thorough discussion (V. Aptowitzer, Mabo, pp. 79-81).

<sup>31</sup>Urbach, op. cit., p. 178. The phrase "of Bonn" often added to R. Samuel's name was supplied by R. Isaac, Or Zarua (Pt. 2, Par. 75). The phrase does not, however, establish Bonn as his birthplace but rather a city with which he was identified.

<sup>32</sup>Supra, footnote 3. It is clear from the text that not only R. Eliezer, but also R. Samuel predeceased R. Ephraim of Regensburg, who died in 1175. He is, therefore, not to be identified with the martyrs of Neuss in 1197 chronicled by Joseph Hakohen (Emek HaBach, p. 43), an error of identification made by Albeck, op. cit., Chapter 5, par. 20. Cf. M. Gudemann, Quellen zur Geschichte der Juden in Deutschland, pt. 2, pp. 73 f.

ו"א and it is by this name that he was often known in our sources.<sup>33</sup> R. Samuel sat at his father-in-law's feet as a judge in Mayence for a period of time.<sup>34</sup> He had married by 1133, and after spending some time in Mayence took his wife with him to set up their new home in Cologne.<sup>35</sup> R. Samuel was a spirited young man, and did not hesitate to attack his own father-in-law on halachic issues in dispute. At times this was disconcerting to R. Eliezer, who evidenced both respect and love for his son-in-law.<sup>36</sup> This was particularly noticeable in the case of one problem debated by R. Eliezer b. Samson of Cologne and R. Samuel, on the one side, and a group of other scholars on the other. R. Eliezer was called in to give his views, and he ruled against his son-in-law.

<sup>33</sup>This is the way he referred to himself in a letter to his nephew ר' יעקב ראי' אב' ש"ט. Sefer Rabiah, par. 1, p. 159. H. Michael, op. cit., p. 596, indicated that he saw such a signature on a manuscript of Seder Tanaim V'Amoraim that was in his possession. See also the Teshuba of R. Samuel that was in front of R. Meir Hakohen, a pupil of R. Meir of Rothenburg. (Hagahot Maimuniot, Hilchot Ishut, Ch. 23, Par. 9). The name was played on by later generations to praise R. Samuel's work. See Mordecai, Hullin, Par. 731, as well as Teshubot R. Meir of Rothenburg, Par. 736. The abbreviation was a source of confusion for later generations, some of whom called him Samuel ben Tubiah. That his name was Samuel bar Natronai was clearly attested to by R. Eliezer b. Joel Halevi (Sefer Rabiah, par. 1088). Note Aptowitzer's full discussion of the problem (V. Aptowitzer, Mabo, p. 69).

<sup>34</sup>Eben Haezer, 16a.

<sup>35</sup>Ibid., 36ab. Then in his late twenties, R. Samuel did not remain permanently, but returned to Mayence in 1148.

<sup>36</sup>Ibid., 24a. R. Eliezer's language betrayed some impatience with his young son-in-law. ראי' אב' אליעזר אב' האיל. המנוח ימה וצפרנה הוא חתני ר' שמואל עומד ומחריס נגדי...

During a long correspondence that followed, the language used by father-in-law and son-in-law was extremely sharp. Its sharpness reflected the issues of the halachic discussion, but did not reflect personal conflict between the two men.<sup>37</sup> R. Samuel was capable of mounting a barbed attack on his opponents, and was possessed of a temper that manifested itself often.<sup>38</sup> His stormy temperament did not prevent his opinions from gaining wide acceptance, both during the course of his lifetime and after his death, in part through the good offices of his wife who long outlived him.<sup>39</sup> Though he was not the author of a great halachic text, he did write a series of Tosafot to a number of

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Aptowitzer went too far in asserting that R. Eliezer could not be considered one of R. Samuel's teachers. It is true that R. Samuel was a caustic young man, not averse to disagreeing publicly and passionately with his elders. All the same, his extensive correspondence with R. Eliezer clearly displayed scholarly indebtedness of a student to his teacher. Cf. V. Aptowitzer, Mabo, p. 69.

<sup>37</sup>Ibid., 36b, 37c. The language of the responsa literature was not always simple prose. Often it was poetic, as here, softening somewhat the impact of the literary blows that were landed. In this particular case, the allusion was to the image of the vineyard developed by Isaiah, Chapter 5. Note e.g., the following: לא... וכתבתי להם סחור סחור לכרמא... וקרב סביב סביב לדין הלכתם ולעיקרו לא קירבתם... והשיב לי חתני ודאי לכרמן לא ירדנו כי איננו מעוזק ומטוקל ועלה כולו קמשוניים... The ingenuity of the responses could not obscure the basic respect each of the protagonists had for one another.

<sup>38</sup>See e.g., Sefer Rabiah, pt. 1, p. 459. ...יען אני... ראיתי אני שב"ט, מנהג הבל וחולי רע נחנקין וחולין באילן גדול לילך ביום השבת מהלך פרסה ויותר... ונחתתי לבי לתור ולדרוש בהבליהם ומצאתיו מעשה תעוועים... ולכן אנשי לבב ישמעון לי ולא יפרצו גדר ולא יחייבו את עצמן נשיכת צפעון אשר אין להם לחש

<sup>39</sup>E. Urbach, op. cit., p. 179. Note also Or Zarua, pt. 2, par. 430.

tractates of the Talmud.<sup>40</sup> We also have in our possession reference to Sefer Shel Rabbi Shevet, containing a series of responsa.<sup>41</sup> He wrote liturgical poetry, and at least one S'licha for the Day of Atonement survived.<sup>42</sup> Most of the extant references to R. Samuel are contained in Eben Haezer as well as in Sefer Rabbiah of his nephew, and it is through their transmission of his comments and questions that anything at all remains for us of R. Samuel's work. Two of R. Samuel's sons are known as scholars in their own right: R. Mordecai and R. Solomon of Bruhl.<sup>43</sup>

<sup>40</sup>R. Eliezer b. Joel Halevi provided us with some information on the nature of these glosses. Unfortunately, the texts themselves have been lost. Note the comment of R. Eliezer b. Joel Halevi: . . . ושרב אחר שדנתי כך מסברהי מצאתי בתוספות עבודה זרה של רבינו שב"ט.

(V. Aptowitzer, Mabo, p. 289). In addition to Aboda Zara, he wrote Tosafot for Erubin and Niddah. Some authorities have maintained that R. Samuel wrote Tosafot for many other tractates (note, e.g., J. Freiman, Germania Judaica, Vol. 1, 48. Freiman lists Tosafot on sixteen different tractates. All we possess, however, are isolated statements of R. Samuel rather than any more organized work. Note the treatment of the problem in E. Urbach, loc. cit., p. 179.

<sup>41</sup>The basis for assuming the existence of such a book is to be found in a reference to it in Sefer Assufot, a fourteenth century collection of liturgy and halachic references appropriate to our period. However, whatever we possess is fragmentary in character and it is difficult, therefore, to draw definitive conclusions. See V. Aptowitzer, Mabo, p. 72. Note also the suggestion of Urbach that the book is to be identified with ספר רבינו שב"ט referred to by R. Eliezer b. Joel Halevi: (E. Urbach, loc. cit.).

<sup>42</sup>J. Freiman, Germania Judaica, Vol. I, 48. The S'licha is not listed in Davidson's monumental work, Otzar HaShira V'haPiyyut.

<sup>43</sup>V. Aptowitzer, Mabo, p. 70.

The second son-in-law of note was R. Joel b. Isaac Halevi. R. Joel was younger than R. Samuel and had studied under him in the City of Bonn.<sup>44</sup> Although little is known of R. Joel's own family, it is probable that his father was R. Isaac b. Joel Halevi, one of the martyrs of the Second Crusade of 1146.<sup>45</sup> R. Isaac was not a scholar; whatever claim he had to academic fame came to him from the exploits of his children and grandchildren.<sup>46</sup> R. Joel's

<sup>44</sup>S. Albeck, Introduction, Ch. 5, par. 13. The two were cousins, and they were close to one another before their association with R. Eliezer. It is, perhaps, no accident that the two brilliant young scholars were chosen as husbands for R. Eliezer's daughters.

<sup>45</sup>A. M. Haberman, Sefer Gezerot Ashkenaz V'Tzorfat, p. 117. Reference here is to the chronicle of R. Ephraim b. Jacob of Bonn who wrote of the events of 1146 as follows:  
 ושני יהודים ממגנצא היו עושין יין בימי הבציר, ר' יצחק ב"ר יואל הלוי ומר יהודה, ויארוב עליהם צורר אחד מחורבן שתי וערב ויכנס נפש...והיהודים ההרוגים הובאו מגנצא ויקברו שם בקברות אבותם.  
 The question of whether the individual named here was actually R. Joel's father has been debated. It has been pointed out, e.g., that the events of 1146 occurred before the birth of R. Joel's first child and he was still not named after his grandfather, contrary to tradition. Aptowitzer dealt with the problem ingeniously by pointing out that it was not only R. Isaac who died violently but R. Isaac's grandfather who perished similarly in the period of the first Crusade. There was, therefore, a reluctance on the part of R. Joel to name his child after his father for primarily superstitious reasons. See V. Aptowitzer, Mabo, pp. 37-38. An even greater objection is grounded on the fact that R. Joel never mentioned the martyrdom of his father or his grandfather. It did not appear in his son's writings, nor did the frequent references of R. Eliezer to R. Joel betray any knowledge of such unique occurrences. The significance of martyrdom for the period would make it hardly possible that it would be passed over in total silence. Cf. E. Urbach, op. cit., p. 179.

<sup>46</sup>We have no reference to R. Isaac in our academic literature. There is not even a passing reference in R. Joel's work to a word of Torah spoken to him by his father, and the

mother, the second wife of R. Isaac, was the sister of R. Samuel's mother, which would explain the closeness of the two sons, later to be brothers-in-law. Although no other member of the family can be identified, R. Joel did have a half-sister, Miriam, related through his mother, though not his father.<sup>47</sup> R. Joel was born in 1120 and lived a rather long life, dying ca. 1200.<sup>48</sup> He was brought up in Mayence, but spent most of his life in other German cities. Most notable among them was Bonn, a city most often associated with R. Joel's name, where he established his own

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same is true of R. Joel's even more illustrious son. Some clue as to the activity of R. Isaac can be gleaned from R. Ephraim's chronicle. His murder was said to have taken place while he was making wine in the vintage season. He may well have been a simple vintner. See A. M. Habermann, loc. cit. Neither R. Eliezer nor his famous sons-in-law came from families whose immediate forebears were scholarly.

<sup>47</sup> Sefer Rabiah, Part 2, Par. 545. כשנפטר אהורו מרה... מרים שהיתה אהורו נשאה מאמו שלא התאבל עליה והלך בו ביום למרחץ, לא מפני שהיה צריך לכן אלא להורות הלכה לחלמידיים  
In contrast, note the related responsum discussed by R. Eliezer (Eben Haezer, 13d) that had come from R. Joel. Although R. Joel's half sister, Miriam, was not mentioned by R. Eliezer, it is evident that it was her death that motivated the question. Cf. Mordecai, Moed Katan, par. 887. R. Eliezer and R. Joel were in halachic disagreement over the resolution of the problem. For the relationship between R. Samuel's mother and R. Joel's mother, see Sefer Rabiah, par. 1069. ורבינו שבט בן אהורא אם רבינו אבא מרי

<sup>48</sup> V. Aptowitzer, Mabo, p. 39. See Supra, footnote 1. The chronologies are intertwined with one another. Aptowitzer's theory of R. Joel's marriage being his second one is, however, unnecessary and is not reflected in any other source. The date of death is based on a responsum directed to R. Eliezer b. Joel rather than to R. Joel himself after he was succeeded by his son. See also V. Aptowitzer, Mabo, p. 422.

Yeshiva.<sup>49</sup> In his youth, R. Joel traveled from city to city. He spent some time as a student in Regensburg,<sup>50</sup> and visited the City of Wurzburg.<sup>51</sup> In Cologne, he functioned as a Rabbi and leader of the community.<sup>52</sup> It was apparently during his travels to Regensburg that R. Joel first made the acquaintance of the famous proselyte he referred to in his writing.<sup>53</sup>

<sup>49</sup>According to Albeck, R. Joel was born in Bonn. (S. Albeck, Introduction, p. 422) A similar view was held by H. Michal, op. cit., p. 472 and Germania Judaica, p. 48. Aptowitzer, however, felt that the identification of a man with a city does not necessarily mean that it was the city of his birth. On the contrary, it might mean, as it assuredly does here, that it was a city closely associated with his work. See SeMag, Hilchot Gerushin, 132a. (The text there actually reads ר' יואל מנרונא but the text of SeMag has two dots over the word נרונא). Aptowitzer established Mayence as the city of R. Joel's birth, based on his reading of the material in R. Ephraim's chronicle, supra, footnote 43. It is attested there that R. Isaac was buried in his family's plot in the City of Mayence, establishing the fact that both R. Joel's family as well as R. Eliezer's originated in Mayence.

<sup>50</sup>Eben Haezer, 195d. קושיות שהביא חתני ר' יואל מרי (ג) נשמוק. Aptowitzer theorized that R. Joel spent two periods of time in Regensburg. The first occurred when he was quite young and wandered from city to city seeking instruction. The second stay in Regensburg occurred when he was a mature scholar, already married to R. Eliezer's daughter. See V. Aptowitzer, Mabo, pp. 39-40.

<sup>51</sup>Ibid., 13cd. R. Joel did not spend a long time in Wurzburg, and there is no expression in Eben Haezer of contact with a center of Torah in Wurzburg. We possess not a single name of a scholar from Wurzburg in communication with R. Eliezer. Despite this, note the rather exaggerated view of R. Joel's work in the city to be found in Germania Judaica, Pt. 2, p. 480.

<sup>52</sup>Or Zarua, Part 2, Par. 341. מעשה היה בקולוניא שאפר לכתחילה פשטידא מיום טוב לחבירו והחירו רבני קולוניא בדיעבד באכילה וכו' רבינו יואל אטר. Note also Germania Judaica, Part 1, p. 74.

<sup>53</sup>V. Aptowitzer, Sefer Rabiah, Pt. 2, pp. 253-256.

R. Joel was perhaps the most loved of R. Eliezer's sons-in-law. Although he was certainly on friendly terms with R. Samuel, it was only to R. Joel that R. Eliezer spoke with great warmth, calling him "מחמד לבי," and exhibiting great interest in his development.<sup>54</sup> R. Eliezer always commented on R. Joel's knowledge with respect, and even when R. Eliezer was chiding him for an academic oversight, the tone was never biting.<sup>55</sup> On the other hand, R. Joel was far more even tempered than his brother-in-law and couched his infrequent disagreements in a most respectful way.<sup>56</sup> It was to R. Joel that R. Eliezer sent a copy of Eben Haezer for his comments when R. Joel was resident for a period in Regensburg.<sup>57</sup> R. Joel then circularized the text among his colleagues and teachers as well as commenting upon it himself. The questions that were raised by R. Joel's colleagues were then forwarded to R. Eliezer who incorporated his answers to the problems that were posed into the body of

<sup>54</sup>Eben Haezer, 59d.

<sup>55</sup>Ibid. In this case, R. Joel was being prodded gently over a misinterpretation of a comment by Rashi.

<sup>56</sup>There are twenty-one separate references to R. Joel in Eben Haezer. Frequent among those references is the phrase "הזקיקני חתני ר' יואל סיינעני" (e.g., Eben Haezer, 304a) or "הזקיקני חתני ר' יואל" (e.g., Eben Haezer, 255a); throughout the course of a long relationship there were no heated words between the two. Judging by R. Joel's relationship with his colleagues his own personality was a significant factor in the evenness of the relationship with R. Eliezer. (See V. Aptowitzer, Mabo, pp. 43-44 on his confrontation with an aggressive R. Ephraim)

<sup>57</sup>Eben Haezer, 237d. רבשהגניע פירושי ליד חתני ר' יואל בריגשבורק

his manuscript. Both the questions and R. Eliezer's answers were often written into the blank spaces between tractates, and the text was later printed in that fashion. Those questions that were not included in the body of the text were appended to the end of the text.<sup>58</sup> R. Joel, though of considerable standing in the academic world, stood in the shadow of his teachers and colleagues in Regensburg. Foremost among them was R. Isaac bar Mordecai at whose feet R. Joel sat. Included also were R. Ephraim b. Isaac and R. Moses b. Joel whose names appeared frequently among R. Eliezer's correspondents.<sup>59</sup>

R. Joel enjoyed success in his work, both as a teacher and a scholar. He had many students, especially in Bonn, where his Yeshiva was thronged with scholars.<sup>60</sup> His writings were mainly halachic in nature; as in the case of his

<sup>58</sup>The action of R. Eliezer was a significant expression of the great respect he held for the Regensburg Academy. Note Eben Haezer, 224bc, for a typical example of the manner in which R. Eliezer integrated the reactions of Regensburg scholars into the body of his work. At times, R. Eliezer was defensive about his work, and it was discussed and argued overheatedly in the Regensburg Academy (e.g., Eben Haezer, 78a). For greater detail on the nature of the editing process, see infra, Chapter II.

<sup>59</sup>These three were the "חכמי ריגנסבורק" indicated in our text (e.g., Eben Haezer, 32a) and they constituted an important unit in the German-Jewish community of the time (Infra, Chapter III). Their influence was great on R. Eliezer, but it was widespread in Germany as a whole. Note S. Albeck, Introduction, Chapter 4. On the particular relationship between R. Joel and R. Isaac b. Mordecai, note R. Joel's comments as preserved for us by Sefer Rabiah, par. 916.

<sup>60</sup>It is clear from statements made by his son that R. Joel's Yeshiva in Bonn was filled with students. Note Sefer

brother-in-law, they were scattered in many places. In part, his interpretations, as well as his responsa, were reflected in our text.<sup>61</sup> In greater number, they appeared in Sefer Rabiah, compiled by his son.<sup>62</sup> In addition, R. Joel wrote Tosafot for Sanhedrin, as well as for B. Mezia, though there are authorities who hold that he was much more prolific.<sup>63</sup> He was the author of at least seven liturgical

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Rabiah, par. 289. It is difficult to identify those scholars who considered themselves his disciples. Perhaps among them could be found R. Ephraim b. Jacob of Bonn, if we can accept the statements made by R. Joel in his correspondence with R. Judah b. Kalonymus of Speyer. (Sefer Rabiah, par. 407) Most important among his students was his own son, R. Eliezer.

<sup>61</sup>The Eben Haezer is important primarily for the exchange of correspondence on halachic matters that took place between R. Eliezer and R. Joel. Our text also preserves some elements of R. Joel's teaching, quite independent of his contact with R. Eliezer. See e.g., Eben Haezer, 49bc.

<sup>62</sup>Not only is Sefer Rabiah the single most important source for R. Joel Halevi. It also constitutes an important repository for R. Eliezer's comments as well. For a full listing of materials in Sefer Rabiah that relate directly to the work of R. Joel, see V. Aptowitzer, Mabo, pp. 252-257.

<sup>63</sup>Germania Judaica, Vol. I, p. 49, lists Tosafot by R. Joel for eleven tractates of the Talmud, based, however, on rather flimsy evidence. Aptowitzer cut that list rather severely, since Sefer Rabiah mentioned only Tosafot for Sanhedrin, B. Mezia, and B. Pathra (V. Aptowitzer, Mabo, p. 46). Urbach, in his updating of Aptowitzer, holds that Tosafot to Gittin and Sotah also were probable. (E. Urbach, op. cit., p. 181).

poems.<sup>64</sup> R. Joel was highly respected by the Jews of his time, and achieved prominence that must have been a source of gratification for R. Eliezer. His fame as a scholar, like that of his father-in-law, spread beyond the confines of Germany. R. Isaac bar Samuel, who took upon himself R. Tam's mantle of leadership, thought very highly of R. Joel.<sup>65</sup>

R. Joel had two sons. The first of them, R. Eliezer b. Joel Halevi (Rabiah) was a major figure in the German community whose influence was felt not only in his generation, but in later generations as well. He was a great teacher, counting among his students R. Isaac Or Zarua of Vienna. It was through his work that R. Eliezer's teaching continued as an active and vital force within the German community.<sup>66</sup> R. Eliezer was privileged to see with his own

<sup>64</sup>E. Landshuth, Amude Ha'Avoda, p. 83, listed only four of the poems. Zunz, in his Literaturgeschichte, p. 209, listed six of them. It was I. Davidson, op. cit., passim, who identified all seven. His citations are given by V. Aptowitzer, Mabo, p. 48. Of the seven poems, six were S'lichot, and one a dirge.

<sup>65</sup>V. Aptowitzer, Mabo, p. 48. כ"י מי ליה...  
לצורך מים בארץ וכללם במגילתו להאזין עיני חכמים

<sup>66</sup>R. Eliezer b. Joel Halevi constituted one of the great rabbinic personalities of our period. His life and work was dealt with in the most minute detail by V. Aptowitzer. The greatness of Aptowitzer's work also lies in the copious material he collected about Rabiah's contemporaries, with special reference to his family, including R. Eliezer. See V. Aptowitzer, Mabo L'Sefer Rabiah, passim. Any full consideration of Rabiah and his impact upon our period is far beyond the scope of this work.

eyes the very early development of his grandson, for their lives overlapped and Rabbah spent at least some of his early years in his grandfather's house. As an extremely young child, he even had the privilege of studying with his great grandfather.<sup>67</sup> Although Rabbah's great contributions had long been known, it remained for the scholars of our generation to publish the magnificent Sefer Rabbah and to establish his reputation even more completely.<sup>68</sup> R. Joel had another son, R. Uri, who was not particularly distinguished. Unfortunately, R. Uri died a martyr's death under circumstances that are not entirely clear, but were highly embellished by legend.<sup>69</sup> His tragic death greatly embittered the last days

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Our interest lies primarily in the extent to which the grandson reflected in his writing the influence of his illustrious grandfather as well as the historical material bearing on our period that may have been preserved by R. Joel's son.

<sup>67</sup>Cf. supra, footnote 2. V. Aptowitzer, Mabo, pp. 6-8. Scholars were too quick to jump to the conclusion that Rabbah was named after his grandfather. See e.g., S. Albeck, Introduction, Ch. 1. According to the universally accepted view, R. Eliezer died in approximately 1170 (Supra, footnote 3). R. Eliezer b. Joel Halevi could not have been born later than 1160 and probably was born as early as 1140. (Note Aptowitzer's careful destruction of the dating proposed by Germania Judaica, V. Aptowitzer, Mabo, p. 4). Rabbah could not possibly have been named after his deceased grandfather. It is probable that he was named after another R. Eliezer and that there was no superstition in the German community that militated against it.

<sup>68</sup>Sefer Rabbah, published in four volumes, by V. Aptowitzer 1912-1939, with an additional volume of Addenda published in Jerusalem in 1936, followed by the introductory volume noted above. Even this great work was not a complete edition of Sefer Rabbah, but contained only about 2/3 of the material.

<sup>69</sup>V. Aptowitzer, Mabo, p. 67.

of his brother Rabiah, who was to die soon afterwards.<sup>70</sup>

In the City of Cologne, if not in Mayence, R. Eliezer's successors continued to make their very significant contributions to Jewish learning. Like Rashi, whom he admired greatly, R. Eliezer was not privileged to have sons continue with his work. In both cases, however, a fortunate choice of sons-in-law established a family tradition of scholarship that was to effect Jewish life in Germany. In the relatively small Jewish community, the existence of the scholarly Jewish family with its genius for Jewish learning gave the community a continuity and unity that were extremely important ingredients for its success. An attempt was made by some authorities to link R. Eliezer's family with two very significant scholarly figures of a later period, thereby increasing its influence even more. The first of these was Rabbenu Asher, famous halachist, and father of R. Jacob baal Haturim. Many authorities accepted the possibility that R. Asher was the grandson of R. Eliezer, primarily because R. Asher referred in his work to "זקני ראב"ן". Others, with a better sense of history, rejected the possibility that R. Asher was the grandson of R. Eliezer, but held that some distant relationship did exist between them. Even this assessment, however, goes beyond that which is historically

<sup>70</sup> Note the plaintive tone of a Teshuba by Rabiah to his student, R. Isaac Or Zarua, after the incident (Or Zarua, pt. 1, par. 756) אדדה כל שנותי מרוב בכיותי וצרותי וכחו הרואות בארובותי

proveable.<sup>71</sup> A similar attempt was made in the case of Mordecai bar Hillel, another eminent halachic anthologist of the thirteenth century. In this case as well, attempts to link the two famous men are not based on significant historical evidence.<sup>72</sup>

<sup>71</sup>Sefer Halachot of R. Asher, Hullin, Ch. 3, Pars. 4, 11. Azulai (Shem HaGedolim, 13b) believed that R. Asher was literally the grandson of R. Eliezer. Michal, op. cit., p. 211, as well as Albeck, Introduction, Ch. 1, recognized that such a concept would be chronologically impossible. Both, however, held that R. Asher was removed three or four generations from R. Eliezer but the relationship still existed. It remained for Aptowitzer to point out that R. Asher often quoted material that was not original with him. In all instances, when R. Asher wrote "זקני ראב"ן," he was quoting R. Eliezer b. Joel Halevi. The other important segment of evidence linking R. Eliezer to R. Asher is the tombstone of R. Yehuda, son of R. Asher. On the tombstone, the family line of R. Asher was traced back to a R. Eliakim, identified by some as the son-in-law of R. Eliezer. If this is indeed so, it is strange, claimed Aptowitzer, that an additional reference to R. Eliakim's father-in-law was not mentioned in any of the sources, a phenomenon extremely difficult to explain in light of R. Eliezer's importance. See V. Aptowitzer, Mabo, pp. 50-52.

<sup>72</sup>H. Azulai, op. cit., p. 68b. The attempt to make of Mordecai bar Hillel the grandson of R. Eliezer was based on references made by Mordecai זקני ראב"ן (Mordecai, Yeb., par. 57). It has been pointed out by Michal, op. cit., p. 210, as well as by S. Albeck, Introduction, Ch. 1, that such references reflect not the words of Mordecai bar Hillel, but rather those of Rabiah whom he was quoting. This point was clearly made by Mordecai, himself, in a comment on B. Bathra (par. 794), where he referred to Rabiah and then stated "ויעוד כתב בשם זקני ראב"ן..." An additional element of confusion was introduced by the fact that a person named R. Hillel was mentioned by R. Eliezer and identified as a relative (Eben Haezer, 67c). Despite some attempts to link this R. Hillel with the father of Mordecai, it is clear that he belonged to the group that surrounded R. Joel in Regensburg and could not possibly have been the father of Mordecai (S. Albeck, Introduction, Ch. 5, par. 10). Albeck also was not able to relate R. Hillel to any other scholar among the many who are known to us by that name; he was known but to R. Eliezer.

R. Eliezer's family was large and influential, and was linked closely together though its members lived in widely scattered areas in Germany. R. Eliezer probably had contact with them during the course of his travels. More importantly, he was in correspondence with them, their names often appearing in Eben Haezer. They represented a significant portion of the intellectual community of the period and made contributions of no little importance to the academic tradition of German Jewry.<sup>73</sup> R. Eliezer had some measure of wealth, but at no point did he make any indication as to the manner in which he made a living. Our period was one in which we find the beginning of salaries paid to Rabbis, but R. Eliezer made no reference in his text of ever having received compensation for his work in the community.<sup>74</sup>

<sup>73</sup>R. Eliezer did not indicate in most instances the nature of the family relationship. Typically, he simply referred to a scholar as קרוב without giving us an inkling of the extent of the relationship. In many instances, it is possible that the scholar was related to R. Eliezer's wife. Further complicating proper identification is the fact that often such individuals were only mentioned in Eben Haezer and not elsewhere in the literature of the time. See S. Albeck, Introduction, passim, on R. Eliezer's far-flung family.

<sup>74</sup>For a full discussion on the problem of salaries paid to Rabbis, note infra, Chapter III. Cf. S. Assaf, "L'Korot HaRabanut," p. 44, printed in a collection of Assaf's historical essays entitled B'Oholei Ya'akov. Assaf's view is that ours was a period of transition from an unpaid largely voluntary leadership group to the professionalization of the Rabbinate. Note the interesting responsum reflecting the professionalism of a later period already to be found in Or Zarua, Part 1, Par. 113. R. Eliezer was not dependent on the community for support. The extent of his wealth is a matter of conjecture, but he did supply the dowry for R. Jacob's daughter, without hesitation. See supra, footnote 13.

He probably had interests in the many trading operations that sustained the Mayence community, and his trips to the East might well have reflected such interests.<sup>75</sup> R. Eliezer's correspondence was voluminous, for he was turned to as the foremost authority of his time, not only by those who were his close associates in Germany, but also by those who were residents elsewhere. His contacts with a wide circle of scholars were reinforced by extensive traveling during which times R. Eliezer had the opportunity to meet with his colleagues on issues of joint concern. His travels took him primarily to the cities of Germany that he visited as a young man, including the Rhine cities as well as Regensburg and Bonn. He was called upon to represent his own community in synods of Rabbis and other communal leaders that were called from time to time to deal with community problems. Although many of these meetings were held within the confines of Germany, there were also times in which R. Eliezer met

<sup>75</sup>There is not a trace in any of R. Eliezer's writing of economic difficulties that he personally experienced, if such, indeed, existed. While there is no direct evidence to prove that he was a trader, such a hypothesis is based on two factors. The first is the thorough familiarity our text possesses for trading operations. The second is with a possible link between R. Eliezer's travels to the East and the activity of traders in that area. The possibility of investing capital while making a minimum investment of time might well have provided R. Eliezer with the time he needed to pursue his studies. Such a view is consistent with the state of economic development in Germany of the times. See infra, Chapter VII.

with French Rabbis on issues of common concern.<sup>76</sup> He also traveled to the East, and reported what he had seen in his writing. Primarily, he remained in his own city and maintained communication with surrounding communities through extensive correspondence.<sup>77</sup>

Of great importance was the correspondence of R. Eliezer with the French Tosafot. Although there were times in which disagreements were expressed that were stormy in character, there was deep respect between the leaders of the French community, and R. Eliezer, the acknowledged leader of the German community. Individual differences between the two communities existed in abundance.<sup>78</sup> However, they found it possible to cooperate when necessary; the bonds between the two communities were strong. In R. Eliezer's time, both

<sup>76</sup>There were two separate synods in which R. Eliezer participated that are known to us but the synod in France, held in the wake of the second Crusade, was by far the more important. R. Eliezer utilized the synod to travel in France, and consult with his colleagues. For a description of the synods, see infra, Chapter III.

<sup>77</sup>The few references in Eben Haezer to R. Eliezer's travels to the East have been given considerably more importance by historians than they truly deserve. R. Eliezer's own purposes in going were not disclosed by our text whose emphasis is primarily halachic, although we have established the hypothesis that it was related in part to his own economic interests (Supra, footnote 75). There is considerable doubt whether R. Eliezer ever penetrated into Russia itself. For a full discussion of the problem, see infra, Chapter VII, particularly footnotes 35-37. See also B. Weinryb, The Beginnings of East European Jewry in Legend and Historiography, supra, pp. 497-499. Weinryb recognized the limitations of the material found in Eben Haezer relating to Russia.

<sup>78</sup>Eben Haezer, 155c. ואפילו איכא דסבירא לו טעם רבינו  
שלמה וחביריו במגנצא לא יעשה אלא כחורא הראשון (ים)

felt the strong influence of Rashi and his school, and that factor alone tended to unite them. R. Eliezer never knew Rashi personally.<sup>79</sup> He was, however, the spiritual disciple of Rashi and referred to him with great frequency in the course of his work.<sup>80</sup> There were times in which R. Eliezer opposed statements attributed to Rashi, when he felt them to be improperly grounded.<sup>81</sup> In most cases, R. Eliezer took the role not of critic, but disciple. When positions taken by Rashi were questioned in Germany, not long after Rashi's death, he quickly jumped to the defense of his teacher.<sup>82</sup> Rashi's own personal Minhag was of great importance for R. Eliezer, and constituted an important source for the validation of local customs practiced in Germany.<sup>83</sup> When R.

<sup>79</sup>See supra, footnote 10.

<sup>80</sup>There are thirty-seven different references to Rashi spread throughout the course of Eben Haezer, more perhaps than that of any other scholar mentioned in the course of the book. Moreover, the references exhibit a deep as well as broad understanding of Rashi's work.

<sup>81</sup>E.g., Eben Haezer, 45d. וחמיהאנו פירוש שפסק שבבנו בשלמה or 55d שלמה אני אליעזר לא נ"ל פירוש שבקונטרס. It was characteristic of R. Eliezer not to be overawed by his great teacher and instead expressed himself freely and without reservation.

<sup>82</sup>Ibid., 72d. ...ראיתי אנשים חכמים שבאו להפליג בדברי ברוך. והבאי על חסות רבינו שלמה (נ"ע) ואין משיבין את הארי לאחר מיתה...

<sup>83</sup>Ibid., 181c. ורבינו שלמה הנהיג...וכן נוהגין בקרלונא. Frequently R. Eliezer turned to Rashi and his colleagues as a source for his own Minhag. R. Eliezer did not always follow the custom set by his compatriots in France. The power of Rashi's influence was so great, however, that if he attested to a Minhag, it was readily accepted by the German community. For a discussion of Minhag in our period, see infra, Chapter VIII.

Eliezer's sons-in-law raised questions directed against Rashi, he was quick to point up deficiencies in their understanding.<sup>84</sup> He acknowledged Rashi as the unexcelled teacher of an entire generation.<sup>85</sup> R. Eliezer should be considered spiritually as one of Rashi's grandchildren, a German Tosafist, applying Rashi's insights to the German environment. R. Eliezer knew R. Meir b. Samuel, Rashi's son-in-law, although he was already quite old by the time R. Eliezer reached a place of prominence in the German community. R. Eliezer was in contact with the center of Tosafist work in Rameru, where he turned for the solutions of problems that were beyond his ken. It is through such contact that R. Eliezer had access to the work of less well known French scholars. One such scholar was R. Joseph Tob Elem, whose responsa were noted in Eben Haezer.<sup>86</sup> He also became

<sup>84</sup>Both R. Samuel and R. Joel raised such questions from time to time that R. Eliezer parried while asserting the supremacy of Rashi as interpreter of Halacha. Typical was his statement to R. Joel (Eben Haezer, 59d). אמר ויצא ונכון ונכונים הן דבריו למבין אך אתה כמעט נטיו רגליך ויצאת מן הדרך

<sup>85</sup>In many different contexts, R. Eliezer showed himself to be a great disciple of Rashi, whom he considered the most profound teacher of the age. He spoke of him in the highest possible terms. (Eben Haezer, 72d). רבינו שלמה אשר... מימיו אנו שותין ומפיו אנו חיים... ושפוחתיו שמרו דעה וחורה נחבקה ונתחדשה ונדרשה מפיו חרות אמת היתה בפיהו בשלום ובמישור הלך והעמיד לעולם רגל שלישי והגדיל חורה והאדיר.

<sup>86</sup>Eben Haezer, 70b. R. Eliezer had in front of him the responsa of R. Joseph, though the actual text of his responsa are no longer extant. One should not confuse this Joseph Bon Fils with another scholar of the same name who lived during the eleventh century and whose works were preserved for us by Rashi and the Tosafot.

acquainted with R. Shemaiah, the son of one of Rashi's daughters.<sup>87</sup> At the time that R. Eliezer directed one of his letters to R. Meir, the family had just been overcome by a terrible tragedy. One of R. Meir's sons, R. Isaac, the father of seven children, died very suddenly. Although the incident had occurred a full month before, the family was still shaken. The responsibility for answering R. Eliezer's query was turned over to Rabbenu Tam, since his elder brother, R. Samuel, was in Caen at the time.<sup>88</sup>

A still deeper relationship existed between R. Eliezer and R. Samuel ben Meir, reflected in whole pages of Eben Haezer that were set aside for the recording of the correspondence between them.<sup>89</sup> After the death of R.

<sup>87</sup>Ibid., 181b. R. Shemaiah's name is not well known. However, it occurred in the Tosafot literature. See e.g., Tosafot, Ber., 25b. Note also Or Zarua, pt. 1, par. 476, as well as Mordecai, Hullin, par. 725. וכן כתב רבינו שמעיה בן בתו שהוא עצמו שאל לרשי והחזיר

<sup>88</sup>Ibid., 297ab. R. Eliezer directed his question to obviously unaware that anything had happened to R. Isaac. The feelings of the family were perhaps best expressed in R. Tam's opening comments גם כי אזעק במר רוחי ומרוב שיחי חש כוחי. The text indicates the city of "קאס" as the place where R. Samuel had gone. In all probability the reference is to the City of Caen. See Sefer Hayyashar, pars. 40, 41 for a parallel record of the responsum. See infra, footnote 96 for a fuller discussion of the City of Caen.

<sup>89</sup>See infra, Chapter II, for a full examination of the manner in which R. Eliezer organized and edited his text. He copied the entire correspondence with R. Samuel, extending from 290a to 294c in Eben Haezer including twenty-four different replies by R. Samuel to questions posed by R. Eliezer. No other respondent received quite the same attention. The quotations by the Tosafot of R. Eliezer were taken most often from this correspondence.

Samuel, R. Eliezer turned with equal fervor to his younger brother, R. Jacob, known as Rabbenu Tam. R. Tam possessed a more flamboyant personality and the relationship was perhaps a bit more stormy. The two, nonetheless, possessed deep personal respect for one another. R. Eliezer considered R. Tam to be of greater stature than his older brother, even in R. Tam's younger years.<sup>90</sup> In his correspondence with R. Eliezer, R. Samuel reflected much more than the usual exaggerated politeness with which such letters were ordinarily written. He expressed the great respect he had for R. Eliezer as his teacher and mentor, at the same time expressing admiration for his modesty and self-effaciveness.<sup>91</sup> The correspondence with R. Eliezer also reflected the conditions under which R. Samuel was forced to work and to live. Of particular interest were the events of the Second Crusade

<sup>90</sup> Eben Haezer, 297a. הרב רבינו מאיר ומפלגי מימיו החביבים והנעימים המתפלגים מעץ החיים וארבעה ראשים, והנהר הרבועי הוא פרת The fourth "river" refers to R. Tam, the youngest and the last, but by far the greatest. Note the comment made by E. Margalioth who parried correctly other interpretations of נהר פרת (Sefer Hayyashar, par. 40, pp. 59-70, footnote 4).

<sup>91</sup> It is difficult to make a determination on the nature of salutations in medieval correspondence. They were always flowery, and exaggerated the virtues of the correspondents. In R. Eliezer's case, however, it is evident that the highly commendatory statements made by R. Samuel reflected the deep respect held for one who was an acknowledged leader of his generation. Note the following excerpts from the salutation of R. Samuel, Eben Haezer, 290b. אל מי דמית בגודלך יפה נוף משוש כל הארץ דור ודור צדיק יסוד עולם פטיש כל הארץ עמוד הימין מכנף הארץ זמרותיך שמעתין...הלא אתה מורי וגאונני אדוני ורביני לברך צדק וענוה...

commented on by R. Samuel that had an unsettling effect upon him and upon his family.<sup>92</sup> The comments of R. Samuel reinforce the view that the Rabbis of France found themselves in one universe of discourse with those of Germany. R. Gershom was quoted, as we might expect, with great frequency by R. Eliezer. His name appeared no less frequently among the authorities cited by R. Samuel.<sup>93</sup> In a similar way the words of Rashi echo through the correspondence not only as those of R. Samuel's grandfather and teacher, but also as the mentor of R. Eliezer as well.<sup>94</sup> R. Samuel had the same concern for the importance of earlier authorities as that possessed by R. Eliezer. As R. Eliezer, R. Samuel

<sup>92</sup>Eben Haezer, 194c. The epilogue of R. Samuel's letter contains a number of personal asides extremely relevant for our period. Of particular interest is the personal anguish that can be read between the lines. Note Eben Haezer, 294c....וואני הצעיר מחוך טירוד וטלטול נואשתי עד עתה... וצורינו ישקיש לכל עמו מימי רע ויט אלינו חסד לפתח לנו אורחות חיים להעמיד רגלינו במישור לדעת האמת ולאחז השלום... For a discussion of the effects of the Second Crusade as reflected in our sources, see infra, Chapter V.

<sup>93</sup>R. Samuel was familiar with the work of R. Eliezer's predecessors, particularly Rabbenu Gershom. See e.g., Eben Haezer, 294a.

<sup>94</sup>R. Samuel constitutes an excellent source for the transmission of material that came from Rashi, not only in written form but also in oral form, received by R. Samuel directly from his grandfather. Within the limited correspondence under discussion, R. Samuel referred to Rashi no less than six times. Every one of the sources cited by R. Samuel were noted by R. Eliezer as well in other contexts. Clearly, the similarity of sources reflected a similarity of world view. For a full discussion of the textual sources utilized by R. Eliezer, see infra, Chapter II.

was moved to adopt liberal positions when he found no impediment in the tradition of the earlier authorities. When he felt so inclined, he, too, was prepared to set aside interpretations suggested by impeccable authorities.<sup>95</sup> R. Samuel was honest in indicating those areas in which his knowledge was limited, and cautioned against drawing conclusions from ignorance. His disarming honesty as well as the excellence of his knowledge, made for a good relationship between the two scholars. It is no wonder that R. Eliezer sought out his colleague so avidly when he was in France and that R. Samuel spoke of R. Eliezer's work in such laudatory terms.<sup>96</sup>

R. Eliezer's relationship with R. Tam was of a different nature. R. Tam possessed a much stronger will than

<sup>95</sup>Eben Haezer, 29ld. דקיימא לן מנהג אבותינו חזרה...  
שכל דוכחא עבדינן מנהג הראשונים...

Note infra, Chapter VIII, footnote 130, for almost an exact paraphrase of R. Samuel's position. Like R. Eliezer, when not bound by an older tradition, R. Samuel was prepared to act in a most liberal fashion.

<sup>96</sup>R. Eliezer never indicated that he visited specifically with R. Samuel. However, as we have noted (Supra, footnote 88), R. Samuel spent some time in Caen (קאן), where there was a flourishing Jewish community. In another context (Eben Haezer, 172c), R. Eliezer indicated that he had seen a certain article of clothing in קיאס. In all probability, that is the קאן to which reference was made and which has been identified as Caen. It is probable that R. Eliezer was in Caen visiting R. Samuel, probably during that time in which he had come to France to participate in the French synod. Cf. V. Aptowitz, Mabo, p. 50. Also note the excellent summary on the place of Caen in the French Jewish community to be found in Gallia Judaica, pp. 541-545.

his brother and was far more assertive of his authority in the French and German communities. R. Eliezer possessed the most profound respect for R. Tam's scholarship, but the acerbity of R. Tam's comments about his opponents tended to create a wall between himself and his German colleagues. At times, R. Eliezer referred to him not by name but rather as

חבר אחד בצרפת (a colleague in France) when engaged in disputation.<sup>97</sup> Ordinarily, the name of R. Tam appeared in our sources as ר' יעקב הצרפתי (R. Jacob the Frenchman).<sup>98</sup> At issue in many disagreements was the conflict between the view of the older authorities, supported by R. Eliezer, and a newer, more independent position taken by R. Tam.<sup>99</sup> Although the conflict between the two seemed at times irreconcilable, the deep respect they had for one another prevented any open break.<sup>100</sup> At times, R. Eliezer did not deal with

<sup>97</sup> Eben Haezer, 9a. ... ושמענו עמה מחדש שחבר אחד בצרפת מורה. It is not reading too much between the lines to see hostility and disagreement in the fact that R. Eliezer did not even speak of R. Tam by his proper name. This feeling is reinforced by the statements of R. Eliezer on R. Tam's position that followed (loc. cit.) וחלילה לנו ולכל הבאים אחרינו כי ע"ז נאמר ואל תשוש תורה אמר

<sup>98</sup> The title ordinarily attached to ר' יעקב הצרפתי was מורינו or רבינו as an expression of honor. See Eben Haezer, 288b, 304c, et al.

<sup>99</sup> Eben Haezer, 9b ומנהג שוחט... והמשונים קידוש... ואמר לשנוח רמנו אברחינו One often gets the impression that R. Eliezer was defending the position of the Mayence community against attempts by R. Tam to erode it, and substitute his own authority.

<sup>100</sup> The contrast between the warmth of R. Samuel and the staid correctness of R. Tam is most striking. Still, R. Tam replied with great respect to R. Eliezer. Note e.g., Sefer Hayyashar, par. 10.

the problems of his own community without consulting at length with the acknowledged leader of the French community.<sup>101</sup> R. Tam also was consulted by R. Eliezer's colleagues. Debate between R. Eliezer and a scholar representing the views of R. Tam often erupted within the German community.<sup>102</sup> At all times in which conflict occurred, R. Eliezer stood his ground and proved to be as stubborn an adversary as R. Tam himself. Though faced with a remarkable and cantankerous adversary, R. Eliezer refused to submit to R. Tam's rulings.<sup>103</sup> The results of their frequent debates consisted of an intellectual atmosphere, both volatile and stimulating. The labors of both men contributed to the creation of a viable and creative community in which there was pooling of effort on issues of joint concern. R. Eliezer must be considered, then, not only as a leader of the

<sup>101</sup>R. Eliezer's famous questions on windows were directed to R. Tam as well as to other centers of Jewish study in France. (Eben Haezer, 309a) The extensive distribution of this responsum was a clear indication of the degree to which the communities were bound together. Before deciding on a question of great importance, R. Eliezer made certain that he consulted with R. Tam.

<sup>102</sup>Eben Haezer, 288a. Communication existed between other centers of Jewish study and R. Tam. In this instance, it was R. Moses b. Joel of Regensburg who directed a question to R. Tam. The answer that he received became known to R. Eliezer who opposed it vociferously.

<sup>103</sup>Ibid., 131d. R. Eliezer only alluded to the fact of conflict. His refusal to be cowed into submission, however, came through very clearly in his comments. דיקדק רבינו יעקב הצרפתי מכאן... ותימה לי אם פה קדוש אמר דבר זה

German community but also a leader of Jewry of Western Europe.

His contacts with French scholars extended into other areas as well. R. Eliezer corresponded with R. Joseph b. Nathan of Joigny who considered R. Eliezer as one of the great scholars of the age and who turned to him as one of his most esteemed teachers. Joigny at the time was an important Jewish community, where significant contributions to Jewish knowledge were made.<sup>104</sup> When issues of great importance arose, R. Eliezer circularized the most important centers of Torah in his time for opinions on the course to be taken. Among them was the center in Paris headed by Eliezer b. Judah and Moses b. Yehiel.<sup>105</sup> Similarly, R. Eliezer was in touch with the center at Mellun, made prominent by the presence of a number of distinguished scholars. Among them were Meshullam b. Nathan, Joseph b. Elijah, Nathan b. Meshullam, and Meir b. Moses. Meshullam had migrated from Narbonne and eventually settled in Mellun where he headed an active and influential community. Assisting him during our

<sup>104</sup>Ibid., 299a. רבינו אליעזר יהי רצון שוכני סנה... להשקיטן להאריך ימים לכלותם בטובה שיבת אבות כי כל הפורש ממך כפורש מחיינו הנני יוסף בר' נתן עבדך תלמידו

See also Gallia Judaica, p. 250.

<sup>105</sup>Ibid., 309a. Though this constituted the only references to these scholars in the entire compendium, it seems likely that R. Eliezer knew them well.

period was his son Nathan.<sup>106</sup> R. Eliezer was appealed to on one occasion by Samuel B. Eliezer, one of the members of R. Meshullam's court, to adjudicate a dispute.<sup>107</sup> From R. Eliezer's correspondence, it is evident that the centers at Mellun, Paris, Troyes, and Rameru were the dominant ones in France of the time.<sup>108</sup> R. Eliezer also maintained correspondence with the Jews of Lombardy and Narbonne as well as with the Provence as a whole.<sup>109</sup> He was aware of the existence of translations from Arabic into Hebrew. R. Eliezer's knowledge of Saadia Gaon's work was mediated in part by a Spanish scholar who translated Saadia's comments into Hebrew.<sup>110</sup> R. Eliezer established his contacts with other scholars not

<sup>106</sup>Ibid., 309d. Our century was the first in which the community of Mellun reached sizeable proportions as well as influence. See Gallia Judaica, pp. 351-355.

<sup>107</sup>Ibid., 209d. ואני זנוב האריות פחות שבכולם כמכונים תבן לעפריים ולא כעטרה להחגדל אך תלמיד אני ויושב לפני הרב ואמרתי בליבי לכתוב משוגתי על הדין... ואתה תכריעני לכף זכות ושלומך נצח

<sup>108</sup>These communities were present at the synod of Troyes held in 1160. For a full listing of the communities deemed important enough to be invited to the synod of 1160 by R. Tam and R. Samuel see L. Finkelstein, Jewish Self Government in the Middle Ages, p. 153.

<sup>109</sup>Eben Haezer, 84a, 104b. The usual term employed by R. Eliezer in referring to the community was זקני וקציני נרבונוא ופרונוצא

<sup>110</sup>The fact that R. Eliezer knew something of Saadia's commentary on the Bible could only have occurred through the mediation of Judah b. Barzillai, a Spanish scholar, for he knew no Arabic. See infra, Chapter VI, footnote 43, as well as H. Malter, Life and Works of Saadia Gaon, p. 320.

only through travel or correspondence. There were also scholars who moved their permanent residence from one country to another. One such scholar was Kalonymus b. Obadiah who moved from France to Germany. He brought with him a great many questions that were put to R. Eliezer and integrated into the text of Eben Haezer.<sup>111</sup> Young men would also come from time to time in order to pursue their studies and then return to their own native lands, to lead their own communities.<sup>112</sup> It was through contact with such young people that R. Eliezer was able to establish for himself the relationships that were necessary in order to guide the development of the new centers of Judaism. This was true of the community in Prague, an area of Europe in which R. Eliezer also had an opportunity to travel. There were other travellers who made their way to Provence and then returned to the German communities. One such person was Samuel bar Kalonymus of Speyer whose trips to Provence constituted a significant

<sup>111</sup>Eben Haezer, 136cd. Cf. S. Albeck, Introduction, Ch. 5. Not much is known of the life of Kalonymus beyond the fact that he studied under Yom Tov b. Judah, the grandson of Rashi's father-in-law. He moved from France to Mayence, where he settled. For a discussion on the influence of Kalonymus in the editing of our text, see infra, Chapter II.

<sup>112</sup>Ibid., 184d. The reference is to a student from Prague whose studies brought him to the City of Regensburg and who received bad news from home. There is every reason to believe that such students made their way to R. Eliezer's academy in Mayence as well.

source of information for R. Eliezer.<sup>113</sup> The Jewish community ignored the division of the Carolingian Empire into separate countries. It continued to function as if there were no boundaries, sending scholars and students back and forth with ease.<sup>114</sup>

Despite his travels abroad, as well as his contacts with other travelers of his period, the main thrust of R. Eliezer's influence was within the borders of Germany. Though there were questions directed at him by authorities outside of his homeland, most of the demands made upon him came from the cities of Germany who considered him to be their spiritual head. That leadership role was virtually unchallenged, though there were a good many scholars of worth at the time active in the German academies. As we have noted, it was R. Eliezer who represented the German community in the synod called by R. Tam. He was accompanied by R. Eliezer b. Samson, a scholar of prominence from the City of Cologne and by coincidence a relative of R. Eliezer.<sup>115</sup> R. Eliezer b. Samson was addressed with the greatest respect and warmth by R.

<sup>113</sup>Ibid., 84a. It is difficult to estimate the degree to which scholars traveled in the western world as well as the degree to which they communicated with one another. Samuel b. Kalonymus was identified by Albeck as being Samuel HeHasid, father of Judah HeHasid. See Introduction, Ch. 5.

<sup>114</sup>This must be the intent of Rabbeinu Tam (Sefer Hayyashar, p. 147, in using the words בערלים מכאן לשם...).

<sup>115</sup>E. Finkelstein, loc. cit.

Eliezer.<sup>116</sup> He was a friend and colleague of R. Eliezer's son-in-law, R. Samuel b. Natronai, although somewhat older than R. Samuel.<sup>117</sup> Though he accompanied R. Eliezer to the synod, he went not as his equal, but rather as his disciple and student. In his early years, R. Eliezer b. Samson studied in Mayence, and during a storm that was raised over one of R. Eliezer's rulings, R. Eliezer b. Samson sided with R. Samuel against the strong opposition of his father-in-law. Though he was the disciple of R. Eliezer, he did not hesitate to engage him in disputation, nor did R. Eliezer hesitate to castigate the two young colleagues for their errors in understanding and in judgment.<sup>118</sup> The fact that he was chosen to accompany R. Eliezer and that he was a signatory at the synod was an indication of the fact that he was considered to be superior in wisdom and ability to R. Samuel b. Natronai, an

<sup>116</sup>Eben Haezer, 9c. Typical is this salutation on the part of R. Eliezer אל משמעת קרובי אהובי חביבי ר' אליעזר ב"ר שמשון סרחי אני אליעזר ב"ר נתן והנני משיבו כפי ליבי

<sup>117</sup>Ibid., 36b. R. Samuel b. Natronai's reply to his father-in-law indicated his relationship to Eliezer bar Samson כשהייתי בקולוניה אז דיקדקנו בפירושו אני ור' אליעזר קרובן That R. Eliezer bar Samson was somewhat older than R. Samuel is implicit in a later statement of R. Eliezer (loc. cit.) Cf. S. Albeck, Introduction, Ch. 5.

<sup>118</sup>Ibid., 36abcd. This disputation revolved around the problem of שטר מתנה. Our source contains the record of correspondence between the young men and their mentor. The problem was one that was submitted not only to R. Eliezer. It was also sent to the major academic centers of the time, Regensburg (Eben Haezer, 40b), R. Tam (Or Zarua, Sanhedrin, par. 77), and Mellun (Merdeciai, Ketubot, par. 219). R. Eliezer's words were extremely strong. סחור סחור לכומא לא תקרב סביב סביב לדין הלכתם ולעיקרו לא קירבתם

assertion that R. Eliezer himself was free in admitting.<sup>119</sup>

R. Eliezer had the closest contact with the City of Cologne. It was a city in which both R. Samuel and R. Joel lived for a period of time, and where R. Eliezer b. Joel Halevi and his successors established a dynasty that was to have a far reaching effect upon Jewish life in Germany. The fact that members of his own family lived in Cologne did much to bind the fortunes of that city together with the master of Mayence. The pages of R. Eliezer's text bear mute evidence, however, to the fact that the pattern of his personal relationships was a reflection of the unity of the German community. R. Eliezer turned often to fellow members of the German community, both teachers as well as students. At times the attitudes reflected in our text were strictly proper ones, appropriate to a teacher and his disciples. At other times, the politeness of language hid a much warmer relationship. Typical of R. Eliezer's central role in the German community was his relationship to R. Isaac b. Asher Halevi, (ריב"א), considered by some authorities as the chief Tosafist in Germany.<sup>120</sup> He was a student of Rashi, although

<sup>119</sup>We shall note later the scrupulous honesty of R. Eliezer. Without hesitation, he referred to R. Eliezer b. Samson as ארי שבחבורה, (Eben Haezer, 39a) thereby admitting his superiority over his own son-in-law, R. Samuel.

<sup>120</sup>S. Albeck, Introduction, Ch. 3, Par. 4. Perhaps the most complete evaluation of his work is to be found in E. Urbach, op. cit., pp. 143-148.

possessed of sufficient independence to oppose his great teacher when he felt it proper to do so.<sup>121</sup> It is through R. Eliezer that we are able to note the independence of R. Isaac's thought. As has been noted before, R. Eliezer was a great admirer and disciple of Rashi. There were times in which he felt that the insight and opinions of Rashi were not being given proper respect by those of his own generation. He, therefore, wrote a resounding affirmation of a position taken by Rashi, demanding acceptance of the views of his mentor. Despite R. Eliezer's fervent, almost poetic appeal, R. Isaac continued to express his disagreement.<sup>122</sup> R. Isaac was a master teacher and among his many students were counted the elders of Regensburg whose influence was very great in our period.<sup>123</sup> R. Isaac sat as a judge in Speyer, much as R. Eliezer did in Mayence, in the chair of his father-in-law, R. Eliakim b. Meshullam Halevi. It is not known whether R. Isaac was born in Speyer or whether he reached the city with the new settlers in 1084.<sup>124</sup> He was the most important

<sup>121</sup>There is some confusion between R. Isaac b. Asher Halevi and R. Isaac, the teacher of Rashi. See H. Michal, op. cit., p. 501.

<sup>122</sup>Eben Haezer, 75d. Note the language of R. Eliezer's comment. והחי יתן אל לבו תשובת הגאון ודברי המשיבין עליו ויחקור. וידקדק ויתן תודה לנפשו ויודה על האמת כי דברי תשובת הגאון נכוחים למבין וישרים ליודעי מדע...

<sup>123</sup>S. Albeck, Introduction, loc. cit. Reference was made particularly to Moses b. Joel and Isaac b. Mordecai.

<sup>124</sup>E. Urbach, op. cit., p. 141.

scholar of the community, and his fame brought students from near and far to study with him. R. Eliezer found himself turning to R. Isaac very often with difficult questions and he was profoundly grateful to have R. Isaac siding with him against his opposition.<sup>125</sup> On the other hand, R. Isaac turned to R. Eliezer with an attitude of great respect for his erudition.<sup>126</sup> There is no question, however, as to who is the teacher and who is the student. In a recently published manuscript of a letter from R. Eliezer to R. Isaac, the language used by R. Eliezer to his teacher was almost obsequious in character.<sup>127</sup> Even in the responsa noted in our text, however, R. Eliezer referred to R. Isaac as מורי and asked for guidance and direction.<sup>128</sup> The influence of R. Isaac and his school was very great. Its influence manifested itself

<sup>125</sup>On the issue of שטר מתנה with which R. Samuel disagreed so sharply, R. Eliezer was able to claim the support of his own revered teacher. See Eben Haezer, 38c. In directing questions to R. Isaac he referred to him as אלופי ומיודעי

<sup>126</sup>Eben Haezer, 70c. לפני רכב ישראל ופרשיו מופת הדור ודורשיו. הנני משיבו אשר עם לבבי

<sup>127</sup>The manuscript of the letter was noted by E. Urbach (op. cit., p. 143) as transmitted to him by H. Albeck, originally by S. Albeck. It reads in part as follows: הוצרכתי לשאוב מים מבור בית לחם אשר בשער ולשחות מים קרים מן הבאר המשקה לכל העדרים והיא חתומה בטבעת המלך אהובי וחביבי איש כלבי אלופי ומיודעי הרב ר' יצחק ב"ר אשר הלוי שיהא רצון שוכני סנה להאריך ימיו ושנותיו הנעימים כאוותי קטן משרתיו אליעזר ב"ר נתן הבא להתאבק בעפר רגליו שישיקני משיקות פיהו להבינני אמיתת דין כי נזדקק. Even allowing for the hyperbole of the letter writer it is evident that R. Eliezer considered himself as one who sat at the feet of his teacher, R. Isaac.

<sup>128</sup>Eben Haezer, 77d. ועתה מורי אם שגיתי אתה הורוני ומה שלא ידעתי הבינני למען אמצא חן בעיניך.

not only in academic discussions on the nature of law but also in the practical world of political life within the Jewish community.<sup>129</sup> R. Isaac contributed greatly to the halachic literature of the time, writing what were perhaps the earliest Tosafot. His writings were known as Tosafot Riba, and included most of the tractates of the Talmud. In some cases, his Tosafot were quoted directly in our sources; in others only stray references were left.<sup>130</sup> In addition, R. Isaac's many students also wrote Tosafot of their own under the direction of their teacher.<sup>131</sup> R. Isaac had a reputation as an extremely pious, saintly man who insisted on observing the law in its totality even on his death bed. He was known to his students in Regensburg as רבינו הקדוש הלוי<sup>132</sup> Rabbi Isaac died in 1133, but his influence on R. Eliezer remained a dominant one long after his passing.<sup>133</sup> While we do not know very much of his family, R. Isaac had a son, R. Abraham

<sup>129</sup>Ibid., 283a. This is the famous case of a disputed kiddushin in which the parties to the dispute were close to the government. For a fuller discussion of that incident, see infra, footnote 190.

<sup>130</sup>His work was mentioned in the Tosafot on Sotah, 17b. Similarly, it was noted in Or Zarua (Part II, par. 32). For a full description of the places where R. Isaac's Tosafot are found, note E. Urbach, op. cit., p. 145.

<sup>131</sup>R. Tam, Sefer Hayyashar, p. 196, par. 95.

<sup>132</sup>Eben Haezer, 298b. The statement was made by חכמי רגנסבורג and referred to R. Isaac.

<sup>133</sup>Ibid., 131c. ...ואני שמעתי שעשה רבינו ר' יצחק הלוי בר' אשר  
נ"ע כלישנא דמיקל...

Halevi, who carried on the tradition of his father's scholarship.<sup>134</sup>

Associated with R. Isaac in Speyer were a number of scholars of prominence. Among them was his younger contemporary, R. Abraham b. Samuel, who was referred to with great deference and courtesy by R. Eliezer.<sup>135</sup> R. Abraham was the son of R. Samuel HeHasid and the brother of R. Judah HeHasid.<sup>136</sup> His grandfather was R. Kalonymus b. Isaac the elder (הזקן). Kalonymus had originally been a Rabbi in Mayence and later moved to Speyer. He was killed in Speyer in 1127, ten years after the birth of his son Samuel, during a siege of the city that prevented his immediate burial. He was later taken back to his native city of Mayence for burial.<sup>137</sup>

<sup>134</sup>Ibid., 2c. It is impossible to identify him with finality since he is not noted in our sources as being R. Isaac's son. Such identification is provided by Albeck through a process of elimination. Note S. Albeck, Introduction, Ch. 5.

<sup>135</sup>Ibid., 20cd. The opening lines of R. Eliezer's address to R. Abraham read as follows: יפיפית מבני אדם כרב ממשה הסוכך הוצק חן בשפתותיו שושנים נוספות מר עובר שואל ומשיב בהלכה רבי אברהם ב"ר שמואל בור ומימיו חביבין על כי הראית לי חזותך שמחתי ונחתתי הודייה לצורי אני אליעזר ב"ר נתן שהזריח שמשך בדור יתום כזה ובטוח אני כי לא ישבח עדות ישראל... ולא הוצרכתי לפרש הכל כי אין מפרשין לחכם ואחה דורש ומסכים להלכה וכל הפורש ממך כפורש מחייך.

<sup>136</sup>S. Albeck, Introduction, Ch. 5, par. 2.

<sup>137</sup>The actual account of the death of R. Kalonymus and his subsequent burial in Mayence was noted in Eben Haezer, 79d. The original text indicated that burial was in Speyer, an obvious impossibility in light of the context in which transfer of bodies is most crucial. The text was properly emended by Ehrenreich to read Mayence instead of Speyer in part because of a reading contained in the Responsa of R. Meir of Rothenburg, par. 450. There is some question as to the exact date at which

Samuel ben Kalonymus, his son, was a scholar known to R. Eliezer.<sup>138</sup> R. Eliezer never mentioned the name of R. Judah HeHasid, R. Abraham's younger, more illustrious, brother.<sup>139</sup> R. Abraham, together with R. Shemariah b. Mordecai, were known as חכמי שפירא in our sources and were referred to in that fashion by R. Eliezer.<sup>140</sup> R. Shemariah was a distant relative of R. Eliezer. He wrote to R. Eliezer often, referring to him as מורי וקייני. R. Eliezer, in turn, spoke of R. Shemariah as an individual of great learning.<sup>141</sup> At times, he appealed to R. Eliezer as a court of last resort, when members of the rabbinic court in Speyer disagreed with his own position. He believed that R. Eliezer's word as an authority would be given more weight than his own. In replying to the inquiries sent on to him, R. Eliezer answered with

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the death took place. According to H. Michal, (*op. cit.*, p. 572), the death of Kalonymus took place during the period of the First Crusade. That judgment was, however, based on faulty historical evidence. The unfortunate death of R. Kalonymus came during the seige of the city by Lothar in December, 1127. Cf. *Jewish Encyclopedia*, Vol. III, p. 425.

<sup>138</sup>Supra, footnote 113.

<sup>139</sup>R. Judah HeHasid was considerably younger than his brother Abraham. He was born in 1150, and there was nothing in his early life of academic eminence that would have brought him to the attention of an elderly R. Eliezer. Note the biographical comments by R. Margaliot on the family. Sefer Hasidim, p. 1, footnotes 1-8.

<sup>140</sup>Eben Haezer, 79d. Note also the comments made by Albeck in his introduction (Ch. 5, par. 22). Cf. Or Zarua, pt. 1, par. 183.

<sup>141</sup>Eben Haezer, 294d.

אע"פ שאיני כדאי להיות מכריע כי  
קטנך עבה ממחני

great respect for the scholarship and integrity of R. Shemariah, whom he considered to be a prophet without honor in his own city. R. Eliezer's reputation was such that he was accepted by the protagonists in the community of Speyer as an objective outsider who possessed sufficient wisdom to help decide their disputes.<sup>142</sup> R. Shemariah was a student of R. Isaac b. Asher Halevi, and participated with him in a Beth Din as a junior colleague.<sup>143</sup> He spent some time studying at the feet of R. Tam, and was a good enough student to be asked for his opinions by R. Tam on matters of a complex and delicate character.<sup>144</sup> R. Shemariah, then, was one of the most illustrious disciples of R. Eliezer.

Of great importance was the relationship between R. Eliezer and the scholars of Regensburg. Often he referred to them as חכמי רגנסבורק since it was together that they submitted their questions to him and received their

<sup>142</sup>Ibid., 296b. R. Shemariah did not admit of any deficiency in his knowledge. His problem was how to convince his colleagues of the correctness of his view. We possess no information on the results of R. Eliezer's intercession, other than the fact R. Eliezer was consulted in such fashion with some frequency. Note the clarity of R. Shemariah's statements: ...ואני (לא) הייתי צריך לשאול אבל הבית דין אין סומכין עלי לפיכך שאלתי שישמעו לך ולידע דעתך הנקייה

<sup>143</sup>Responsa of R. Meir of Rothenburg, par. 742. מעשה היה שישב רבי שמריה לפני ריב"א הלוי וחבל אדם בחבירו...ובאו לדין לפני ריב"א

<sup>144</sup>Or Zarua, par. 199. שמעתי שבא מעשה לפני רבינו תם זצ"ל...ונסתכן רבינו תם...ונמלך ברבינו שמריה זצ"ל

replies.<sup>145</sup> Perhaps because his son-in-law, R. Joel, was among them, R. Eliezer maintained intensive and frequent contact with the city. The most important of the scholars in Regensburg was Isaac b. Mordecai. He was a student of R. Isaac b. Asher Halevi, whose influence on the Regensburg community was great.<sup>146</sup> He also considered himself a student of R. Tam and was in frequent contact with the great master.<sup>147</sup> R. Isaac was the author of a number of Tosafot probably written under the direction and tutelage of R. Tam.<sup>148</sup> R. Tam treated his disciple with the greatest of respect.<sup>149</sup> R. Isaac was the head of the Yeshivah and was turned to first in case of an emergency in the community.<sup>150</sup> The perplexing Halachic problem of windows that look out on a common court-

<sup>145</sup>Eben Haezer, 32a. Such is the case here when R. Eliezer indicated שאלוני חכמי רנשבורק without ever referring to any by name. See also 40b.

<sup>146</sup>Ibid., 298b. See also S. Albeck, Introduction, Ch. 3, Par. 4.

<sup>147</sup>Note the fashion in which R. Isaac contrasted the comments of his two great teachers. Or Zarua, B. Bathra, par. 54... שכן פירש ר"ת זצ"ל דוקא בשטר וזה לשון רבינו יצחק ב"ר מרדכי זצ"ל מורי מפרש דוקא בשטר מחנה איירי... אבל מורי רבינו יב"א זצ"ל היה מפרש בשטר מכר דוקא

<sup>148</sup>Sefer Hayyashar, par. 81. R. Isaac began his communication to R. Tam with the words רבי אלופי האיר עיני and ended with the words יצחק תלמידך. See also Or Zarua, B.B., par. 161 as well as R. Haim Or Zarua, par. 121.

<sup>149</sup>Sefer Hayyashar, par. 85. כמוהו ירבו מורי הוראות בישראל, הוא הרב ר' יצחק בר מרדכי

<sup>150</sup>Eben Haezer, 184d. It is evident in this case of the young student from Prague who died suddenly that the major decisions that had to be made were made by R. Isaac as the head of the community.

yard which R. Eliezer sent to a number of communities was addressed in Regensburg to the attention of R. Isaac.<sup>151</sup> R. Eliezer acknowledged R. Isaac to be the spiritual head of the community and the most important of its numerous important personages.<sup>152</sup> As we have noted, R. Eliezer sent a copy of his text to R. Joel in Regensburg who showed it to his mentor, R. Isaac. R. Isaac found much within it that met with his approval although other members of the Regensburg scholarly group were critical of it.<sup>153</sup> R. Isaac was in frequent contact with R. Eliezer, directing queries of many kinds to an individual he considered to be his superior in knowledge.<sup>154</sup> At all times, R. Eliezer responded with great respect, and considered him a worthy teacher of his son-in-law. In Regensburg, as in Speyer, R. Eliezer found himself cast in the role of arbitrator and final judge, a role that he did not appear to relish particularly. R. Baruch b. Isaac turned to R. Eliezer for aid in such a case when there was a split within the Regensburg court and he thought that R. Eliezer would perhaps side with him. In responding, R. Eliezer displayed

<sup>151</sup>Ibid., 295b. See infra, Chapter IV, footnotes 66-69.

<sup>152</sup>Ibid., 297d. הראשון שבראשון למנורה הוא הרב ר' יצחק ברב מרדכי

<sup>153</sup>Ibid., 237d. כשהגיע פירושי ליד חתני ר' יואל בריגשבורק הורה...  
 הרב רב יצחק והראה לו שכן היה פירושו כחובה.  
 See supra, footnotes 57-58. בידו

<sup>154</sup>Ibid., 288b, 289a, et. al.

both tact and forbearance. While according respect to the academic credentials of R. Baruch b. Isaac, he was able to put his own imprint on the discussion as well as on the final decision. The entire episode underlines the central role played by R. Eliezer in the affairs of communities other than his own, despite the excellence of the men heading the Regensburg community.<sup>155</sup> R. Baruch was a person of great reputation in his own right. He was considered among the great of Regensburg, and was in correspondence with the elder R. Isaac.<sup>156</sup> Even R. Eliezer, in replying to his question, referred to above, reacted to him with great respect. Moreover, these very members of the Regensburg community accorded him a place of honor in their midst.<sup>157</sup> There is some confusion among the authorities between Baruch b. Isaac and a much younger contemporary from the City of Worms, the author of Sefer Terumah. The two scholars are not to be identified with

<sup>155</sup> Ibid., 306d, 308b. R. Baruch's case dealt with a matter of real estate about which there was significant difference of opinion. In addition to the usual formalities of address (אחר חכמים לישיבה ארוצה עד איש ה' וקדוש הוא המשוביר לכל עם עם עץ חיים ועץ הדעת)

R. Baruch displayed considerable faith in R. Eliezer's ability to bridge the gap that lay between the major figures in the community. Note, e.g., the comment (ובבלעדי אדני לא ירום איש את ידו וחרוק נלמד מפי קדוש) On the other hand, R. Eliezer was highly circumspect in taking upon himself the responsibility of being the final judge. לא שאני אליעזר ב"ר נתן כדי להכריע ולהכניס ראשי בין הריס גזלם שלא ירוצו גלגולתי כי עמכם ברכה ועמכם (משפט) ועמכם חכמה ודעת וקטנך עבה ממחני

<sup>156</sup> SeMaG, Vol. I, par. 111, p. 39b. ועוד האריך ר"י בתשובתו להרב רבינו ברוך מריגנשפורק

<sup>157</sup> Sefer Rabiah, Vol. II, p. 263.

one another.<sup>158</sup> It is possible that R. Baruch did compose a commentary on the tractate of Tamid, but he cannot be credited with any major work.<sup>159</sup>

In ranking the members of the Regensburg community, R. Eliezer named as the second most important member, R. Ephraim b. Isaac.<sup>160</sup> R. Ephraim functioned as the assistant to the head of the community, R. Isaac. As we have noted above, he was particularly close to R. Joel. R. Joel considered R. Ephraim to be his mentor, and R. Ephraim became to some degree his confidant.<sup>161</sup> R. Ephraim was not adverse to rebuking his

חשובה דרבינו מורי אבי זצ"ל וזכור אני שהייתי בריגינשבורג מציק מים על ידיך ראיתי בראש השנה שבירך רבי ברוך ב"ר יצחק לפני הקיעות השופר מיושב והתחיל לתקוע ולא יכול לסיים מפני עייפות ושלח השופר לאחיו רבי מתתיהו וסיים כל הסדר בלא ברכה ולא ראיתי אותך ושאר רבותי הר"ר יצחק והר"ר משה זצ"ל שהייתם מוחים בידו

This letter was sent by R. Joel to R. Ephraim of Regensburg. It is evident that R. Baruch occupied a prominent place within the Regensburg group.

<sup>158</sup>The error of confusing the two scholars was made by a number of authorities, including S. Albeck, the author of the introduction to our text. (S. Albeck, Introduction, Ch. 5, par. 8). Similarly, Freimann in Germania Judaica, pp. 291 ff. made the same error. The most telling criticism of the identification of the two scholars is provided by V. Aptowitzer, Mabo, pp. 326-329. See also Or Zarua, Aboda Zara, par. 271, where it is evident that a sharp distinction exists between R. Baruch and the author of Sefer Terumah.

<sup>159</sup>That hypothesis was suggested by Aptowitzer, but without bringing sufficient proof to substantiate it. See V. Aptowitzer, loc. cit. All evidence points to the younger Baruch of Worms being a much more profound scholar than Baruch b. Isaac.

<sup>160</sup>Eben Haezer, 297d. ...ואחריו יאיר נחיה הרב ר' אפרים

<sup>161</sup>Sefer Rabiah, pt. I, p. 221, par. 193. שאלוני מורי הרב ר' אפרים בר' יצחק אשאלך והודיעוני... as well as pt. I, p. 168, par. 164.

student severely when he felt R. Joel to be in error.<sup>162</sup> Often, R. Ephraim was in opposition to views of R. Eliezer. He reacted negatively to some aspects of R. Eliezer's text, shared with him by R. Joel when it arrived from his father-in-law. It was to a large extent the statements made by R. Ephraim that induced R. Eliezer to make additions to his original text.<sup>163</sup> Though R. Ephraim was capable of rather caustic references to other scholars, in the case of R. Eliezer he was polite, even obsequious in the fashion in which questions were phrased.<sup>164</sup> R. Eliezer displayed his characteristic humility in dealing with a fellow scholar whose reputation for irascibility was well established. While his comments to R. Ephraim were rather pointed, he spoke to him in the manner in which one gently prods a student.<sup>165</sup> Despite comments made by some authorities, R.

<sup>162</sup>Ibid., p. 171. כן (אם) בדעתך עומד אהה עומד בדעתך (אם) כן... דעתך עתה דעתך בטל(ה) ברוב דעות במשניות, ובגמרא, ואין בדברי פין לשנות הידוע...

<sup>163</sup>Eben Haezer, 297d. It was not only R. Ephraim who raised questions about R. Eliezer's text, but he was the prime critic. Note the discussion by S. Albeck of the process by which the editing of the text took place (S. Albeck, Introduction, Ch. 4, par. 1). A fuller discussion of the manner in which our text finally took form is to be found in Chapter II.

<sup>164</sup>Ibid., 301c. מני אפרים יהיו דבריי אלה קרובים אל אדוני ומרוב חכמתו יאמנו דבריי האמת אתי וידיעני

<sup>165</sup>Ibid., 304a. ומה אשיב לך הרב ר' אפרים ומה אענה לך אשר חריפותך שגיא אותך

E. Urbach made perhaps too much of this quotation by characterizing it as a reaction by R. Eliezer to the manner as well as the techniques used by R. Ephraim. Cf. E. Urbach, op. cit., p. 172.

Eliezer was not related to R. Ephraim.<sup>166</sup> His attitude to R. Ephraim was one of respect for his learning and perhaps even gratitude for the interest taken in his son-in-law. He was a student of Rabbenu Tam and spent time in the Academy at Rameru.<sup>167</sup> There were a series of exchanges between the two scholars that belied the respectful attitude ordinarily assumed between student and teacher.<sup>168</sup> Both R. Tam and R.

<sup>166</sup>Here again, Urbach erred. (E. Urbach, loc. cit.). He identified R. Ephraim of Regensburg with an individual known as רבינו אפרים הבחור cited in Eben Haezer, 264b. The text there reads as follows: פירשתי כבר בשאלות ששאלני קרובי רבינו אפרים הבחור His reference was to a series of nine questions posed by a scholar also called by R. Eliezer קרובי ר' שלום (Eben Haezer, 67c.). According to Albeck (S. Albeck, Introduction, Ch. 5, par. 6), our text reflects the labors of two men, both called R. Ephraim. The first is R. Ephraim of Regensburg. The second is the younger R. Ephraim of Bonn designated as הבחור to distinguish between him and R. Ephraim of Regensburg. His full name was R. Ephraim b. Jacob b. Kalonymus. Cf. L. Zunz, Literaturgeschichte der Synagogalen Poesie, p. 288 and H. Michal, op. cit., p. 244. See also infra, footnotes 196-197.

<sup>167</sup>Or Zarua, pt. 2, par. 42.

<sup>168</sup>Rabbenu Tam was on occasion rather extreme in the statements he made to R. Ephraim. See, e.g., Sefer Hayyashar, p. 146, par. 64, ... על כחוב בכתבך יודעים לבי ולבך ילדות היתה בך. On the other hand, R. Ephraim was not averse either to making strong statements. See Sefer Hayyashar, p. 152, par. 66 R. Ephraim did have other correspondence with R. Tam, of a much friendlier nature. R. Tam was capable of writing to his student and describing him in the most complimentary terms. See, e.g., Sefer Hayyashar, p. 177, par. 80. עיירים פראים אדם נבראים ויהיו נקראין ראשים לאוריים למורי ר' אפרים... וגם אני אודך וכן אברכך בחיי

The contradiction between the two approaches led S. Albeck to the conclusion that there were two men named Ephraim in the Regensburg community (S. Albeck, Introduction, Ch. 4, Par. 3). The first of these was the head of the Regensburg community, widely respected by all and particularly by R. Tam.

Ephraim possessed volatile tempers, and did not hesitate to give vent to their hostility against one another. In part, the altercations between them were due to disagreements between R. Ephraim and the other scholars of the Speyer community. R. Tam was appealed to by the Speyer community as an objective outsider who was coincidentally also R. Ephraim's teacher.<sup>169</sup> R. Ephraim was little disposed to accept the strictures of his teacher. In part, the furor arose over the question of the authority of custom. R. Ephraim objected strongly to the utilization of local custom that did not have sufficient basis in the traditional texts. He found himself in conflict with the majority of his colleagues in the German community for whom ancient custom had the force of law. The disagreement extended even to his close younger colleague, R. Joel, who accepted his father-in-law's stress on the importance of custom.<sup>170</sup> It is strange that R. Eliezer himself

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The second Ephraim was the one with whom R. Eliezer corresponded and who was both the colleague of R. Joel and the sufferer at the hands of R. Tam. Such a hypothesis is rather far-fetched. The differences between the two men are much more adequately explained by the erraticism and the obstinacy of the two than in any other factor. See E. Urbach, *op. cit.*, pp. 72, 73.

<sup>169</sup> Or Zarua, *Aboda Zara*, par. 182. See also R. Tam's reaction in the *Tosafot* to *Aboda Zara*, 34a. וכתב ר"ת...

והמורה יורה כבן סורר ומורה ועלי יורה כבן סורר  
Cf. V. Aptowitzer, *Mabo*, p. 166, par. 1048.

<sup>170</sup> *Sefer Rabiah*, pt. 1, p. 219. Much of the discussion between R. Joel and R. Ephraim surrounded the issue of local custom. This responsum is but one example.

...זו אחד מן הדרכים שהנהיגו אבותינו שלא כחורה להקל...

did not enter the disputation, nor was he called upon by the contending parties. In all probability, R. Tam was called in because of his closer relationship with R. Ephraim. One other example of R. Ephraim's involvement in the communal problems of his time is best illustrated by his conflict with R. Eliakim b. Joseph. As we have noted, R. Eliakim was irate at the proposal for using pictures of lions and snakes in decorating stained glass windows in the Cologne Synagogue. That position was attacked energetically by R. Ephraim.<sup>171</sup> R. Ephraim's influence was very great during his lifetime. Though he was not the author of any great works, his opinions can be found in many different sources.<sup>172</sup> His piyyutim were of the highest quality surpassing in many ways those of his contemporaries.<sup>173</sup> He was a teacher of great repute, who counted many among his students, including R. Eliezer of Metz.<sup>174</sup> He must be considered one of the great individualists

<sup>171</sup>Responsa of R. Meir of Rothenburg, par. 510. See also Or Zarua, par. 203. Cf. E. Urbach, op. cit., par. 176.

<sup>172</sup>Urbach suggests the possibility that much of R. Ephraim's work was lost. Whether that was true or not, reference to R. Ephraim occurs in a great many places. For a full listing of R. Ephraim's academic contributions, see E. Urbach, op. cit., p. 195.

<sup>173</sup>Zunz speaks of his work with the highest praise, extolling him as the greatest paytan of his time. He also lists in detail the piyyutim for which he is to be credited. See Zunz, Literatursgeschichte, p. 276.

<sup>174</sup>R. Eliezer of Metz, Sefer Yereiim, par. 114.

of the time for whom no rabbinic authority was immune from question. He died shortly after R. Eliezer.<sup>175</sup>

The third member of the Rabbinic court of Regensburg, R. Moses b. Joel, was noted by R. Eliezer as being the least important of the three. His role, however, was far from unimportant, and R. Eliezer always acted toward him with the greatest respect.<sup>176</sup> R. Moses often plied R. Eliezer with questions, and R. Eliezer, on numerous occasions, singled out R. Moses in the problems he directed to the Regensburg community.<sup>177</sup> R. Moses, like his Regensburg colleagues, was a student of R. Isaac b. Asher Halevi.<sup>178</sup> Like them, too, he was in contact with R. Tam, although there were times in which he disagreed with the rulings of his French master and turned instead to the sage of Mayence.<sup>179</sup> Though R. Moses was not a prolific writer, we do have specimens of

<sup>175</sup>Supra, footnote 3.

<sup>176</sup>Eben Haezer, 297d. While R. Moses was mentioned last among the triumvirate of great men, it is abundantly clear that he is a person of importance. ... והחוט המשולש לא במהרה ינתק הרב רב משה

<sup>177</sup>Ibid., 252b. R. Moses' signature also appeared on the responsum R. Eliezer received from Regensburg with regard to his famous window question alongside of R. Isaac b. Mordecai. For some reason, R. Ephraim's signature did not appear. Eben Haezer, 210c.

<sup>178</sup>V. Aptowitzer, Mabo, p. 2881.

<sup>179</sup>R. Moses was not disappointed when he appealed the ruling of R. Tam to the scholar of Mayence for R. Eliezer expressed himself in opposition to the interpretation offered by R. Tam. Eben Haezer, 228b.

Tosafot he wrote on various tractates of the Talmud. It is clear, then, that the community of Regensburg was enormously influenced by the work of R. Isaac b. Asher Halevi whose disciples had a great deal to do with the flowering of that city into a center of Torah and Jewish learning. As a result of R. Eliezer's frequent contact with the city, he, too, added to the stature and prominence of Regensburg as a center of Jewish life.

R. Eliezer's relationship was perhaps even closer to the City of Worms, in part because of its trade with Mayence. Of greater importance was the fact that members of R. Eliezer's family were the central figures in the intellectual life of the city. R. Isaac Halevi was dean of the Worms' community in his time. His three sons, Jacob, Samuel, and Eliezer inherited the mantle of leadership from their father.<sup>180</sup> R. Isaac Halevi was a scholar of considerable note. Originally from Vitry, R. Isaac moved to Worms where he taught and functioned as head of the Academy.

<sup>180</sup> Sefer HaPardes, par. 189. רבנו יעקב בן רבינו... יצחק הלוי נ"ע אחיו רבינו אליעזר ורבינו שמואל הלוי... R. Eliezer wrote only about two of the brothers, Jacob and Samuel. It is possible that there was another brother, R. Asher. A hint of that is to be found in a passage in Sefer HaOrah, par. 113, p. 150, written by the students of Rashi. ...אחד מחלמידי רבי יצחק הלוי העיד עליו שהחיר לרבי אשר בנו ביוצא ונכנס יותר מפרסה The passage is also to be found in Sefer HaPardes (par. 268) but in garbled form. The contention of a fourth son is strengthened by the fact that R. Eliezer knew of a R. Asher, son of R. Jacob Halevi, possibly named after his uncle, Eben Haezer, 42c.

During the period in which Rashi spent in Germany, he was the second of Rashi's teachers.<sup>181</sup> R. Isaac had great influence over the customs that were practiced in Worms and was the great spiritual and intellectual leader of the city.<sup>182</sup> R. Eliezer was extremely close to the family. This was so, particularly in the case of R. Jacob, popularly known in Rabbinic sources as יעב"ץ. On numerous occasions, he was called חב"י הלוי, a term not readily used by R. Eliezer.<sup>183</sup> We know, too, that R. Eliezer made himself financially responsible for the dowry of R. Jacob's daughter, perhaps after R. Jacob's death.<sup>184</sup> R. Jacob, the youngest of the brothers, studied primarily with his father whom he succeeded

ולאחר פטירתו של רבי (יעקב בן יקר) שמעתי את רבי יצחק הלוי... ודנתי לפניו.<sup>181</sup> Rashi, Betsa, 24b. In the same comment, telling of his experiences while a student in Germany, Rashi told of the coming to Worms of Kalonymus b. Shabbetai of Rome. See also Eben Haezer, 81a. וגם רבינו שלמה מפי הרב ר' יצחק הלוי (כתב)

<sup>182</sup> Eben Haezer, 111a.

<sup>183</sup> Ibid., 59c, 232d. Historians have debated the question of whether יעב"ץ and R. Jacob b. Isaac Halevi were one and the same person. The issue is discussed in great detail by V. Aptowitzer (Mabo, pp. 354-356) who came to the conclusion that there were two men of the same name, one of whom died in the First Crusade. Germania Judaica (p. 339) took the anomalous position that there were three separate men that the sources confused. Despite the complex debate, however, there is no reason to doubt the view of Albeck that they refer to the same person (S. Albeck, Introduction, Ch. 3, par. 3.). Note Urbach's excellent summary, bringing the debate up to date (E. Urbach, op. cit., p. 162).

<sup>184</sup> Mordecai, B. E., par. 751, quoting R. Eliezer b. Joel Halevi. See supra, footnote 13. From Eben Haezer (233a) we learn that R. Jacob died before R. Eliezer. It is, therefore, quite possible that the offer to guarantee the dowry was made after R. Jacob's death.

as chief judge of Worms. His most important teacher after his father was Kalonymus b. Shabbetai of Rome, a fact attested to by R. Eliezer.<sup>185</sup> R. Kalonymus was well respected in the community, and was spoken of respectfully by no less a personage than Rashi himself.<sup>186</sup> The influence of R. Kalonymus was recognized by R. Eliezer, although he was long dead at the time R. Eliezer reached maturity.<sup>187</sup> R. Jacob was in contact frequently with R. Eliezer and they exchanged both questions and answers with a minimum of rancor, even in situations where they disagreed with one another.<sup>188</sup> There were times, indeed, when R. Eliezer turned to R. Jacob as an important authority to validate positions he had taken.<sup>189</sup>

<sup>185</sup>Eben Haezer, 21b. קלוננימוס היה ר' קלוננימוס... וידוע לי כי רבו המובהק היה ר' קלוננימוס.

<sup>186</sup>Rashi, Betza, 24b. גם עתה בא אלי מכתב מגרמיש שבא לשם אדם... גדול זקן ויושב בישיבה מן רומא ר' קלוננימוס ובקי בכל הש"ס

<sup>187</sup>R. Kalonymus was cited on a number of occasions by R. Eliezer as an important authority possessed of great influence within the community. Eben Haezer, 111a. וכן פירש הרב משום אביו הרב ר' שבתי וכן קיבלנו עלינו לשמר ולעשות R. Kalonymus was referred to always by R. Eliezer as already deceased. He came to Worms shortly after the death of R. Jacob b. Yakar in the year 1065, already an old man. It is highly unlikely that R. Kalonymus was one of the victims of the First Crusade as alleged by some authorities. See V. Aptowitzer, Mabo, p. 393.

<sup>188</sup>Eben Haezer, 59c. Respect for R. Jacob's views remained even after his death. Eben Haezer, 160a. ואלמלא שאין משיבין את הארי לאחר מיתה הייתי חמיה על דבריו...

<sup>189</sup>Ibid., 81a. It is true that in this particular responsum, R. Jacob was transmitting traditions he had received from his father. Nevertheless, R. Eliezer was prepared to depend upon R. Jacob's authority.

R. Jacob was also under the influence of R. Isaac b. Asher Halevi, and there were times when he found himself siding with the scholar from Speyer instead of with R. Eliezer. The most dramatic of such confrontations was one in which an annulment of a marriage was at stake. The annulment was suggested by R. Jacob as well as by R. Isaac b. Asher, but opposed by R. Eliezer. The case, which attracted the attention of scholars from all over the country, was an extremely sensitive one because of the governmental connections of some of the litigants. Eventually, R. Eliezer's position was the one that was taken by the assembled scholars.<sup>190</sup> R. Jacob was the author of a number of Tosafot, some of which were edited and prepared for publication by his many students.<sup>191</sup> In

<sup>190</sup> Ibid., 283ab. This entire episode is dealt with more fully in Chapter III. See also supra, footnote 129. It was a complex problem involving political considerations that one can only surmise. Of some curiosity is the fact that there is a contradiction in the description of the incident as given in our text. On the one side opposing R. Eliezer was the school of R. Isaac b. Asher Halevi of Speyer in association with the school of R. Jacob Halevi of Worms. This last reference is, without question, to the R. Jacob b. Isaac of our source. Supporting R. Eliezer, together with his father-in-law, was an individual known in our source as חב"י הלוי רבינו יעקב. They cannot both be our R. Jacob b. Isaac. The problem cannot be completely solved. However, as suggested by E. Urbach (op. cit., p. 162), it is possible that the words חב"י הלוי were written in the margin and through an error were inserted in this particular place. The only other possibility is that R. Jacob was an entirely different scholar, coincidentally with the same name. This latter explanation seems unlikely, but no explanation is entirely satisfactory.

<sup>191</sup> Eben Haezer, 232d, 233a. R. Eliezer did not stipulate the exact nature of R. Jacob's writings. We know, however, from other sources that R. Jacob did write Tosafot for B. Kamma, B. Metzia, and Sanhedrin. See e.g., Or Zarua, B. Metzia, par. 197, as well as V. Aptowitz, Mabo, p. 287.

addition, he was also the author of a halachic work that has been lost.<sup>192</sup> R. Jacob had one son, R. Asher, who also appeared in our text as a respected respondent of R. Eliezer.<sup>193</sup>

R. Eliezer's contacts with scholarly circles extended to the City of Bonn. It was in that city that both of his sons-in-law, Samuel b. Natronai and Joel b. Isaac, studied and taught. Around them clustered a number of scholars who were to make significant contributions to the world of Jewish scholarship. One of the more important of Bonn's scholars was R. Ephraim b. Jacob of Bonn, known for his narrative on the events of the second Crusade at the City of Speyer.<sup>194</sup> He was born in 1132, and turned to R. Eliezer as his teacher.<sup>195</sup> R. Ephraim b. Jacob was often confused in the literature, as we have noted, with R. Ephraim of Regensburg. The name often given to R. Ephraim b. Jacob is R. Ephraim HaBachur in order to distinguish him from R. Ephraim of Regensburg.<sup>196</sup>

<sup>192</sup> An Halachic work of R. Jacob was mentioned twice in sources known to us. The work, referred to simply as פסקי יעב"ץ was mentioned by Mordecai, (Hullin, par. 700) as well as by R. Eliezer b. Joel Halevi. (V. Aptowitzer, Mabo, p. 281).

<sup>193</sup> Eben Haezer, 42c. R. Eliezer answered the question directed to him by R. Asher in a respectful fashion, after R. Asher had sought his guidance.

<sup>194</sup> A. Habermann, Sefer Gezerot Ashkenaz V'Tsorfat, pp. 131-132.

<sup>195</sup> A. Freimann, Germania Judaica, p. 49. Both Zunz (Literaturgeschichte der Synagogalen Poesie, p. 188), as well as Landshut (Amude HaAvoda, p. 47) put his birth date at 1133.

<sup>196</sup> Supra, footnote 166.

R. Ephraim was known by another name in our sources, that of R. Shalom. There were times when R. Ephraim signed himself in that fashion to the religious poetry attributed to him, and from the comments made by R. Eliezer it is evident that both names were attributed to the same person.<sup>197</sup> R. Ephraim b. Jacob was a relative of R. Eliezer, but his exact relationship was not spelled out.<sup>198</sup> The questions posed by R. Ephraim to R. Eliezer were grouped together in one collection of nine questions to which R. Eliezer responded in a matter-of-fact fashion without the honorific titles he often applied to scholars of excellent reputation in the community.<sup>199</sup> His name appeared along with those of the highest rank on the membership of the Rabbinic court in Mayence during the generation following that of R. Eliezer.<sup>200</sup> Periodically, R. Ephraim was in close contact with R. Eliezer b. Joel Halevi, and their names were linked to the publication of important opinions on

<sup>197</sup> L. Zunz, Literaturgeschichte der Synagogalen Poesie, p. 288. See also Eben Haezer, 164b.

<sup>198</sup> Eben Haezer, 264b. בשאלות ששאלני קרובי ר' אפרים הבחור...

<sup>199</sup> Eben Haezer, 67c-68c. Though it is impossible to determine exactly how old R. Ephraim was at the time, he was considerably younger than R. Eliezer. The ordinary salutations used most often by R. Eliezer with a scholar of standing in the community were noticeably missing. Since R. Ephraim later became a scholar of great prominence, the most likely explanation is that his correspondence took place when R. Ephraim was quite young, much before he attained significant standing in the scholarly world.

<sup>200</sup> Mordecai, B. Bathra, par. 574.

the legal issues of the day.<sup>201</sup> Though born in Bonn, R. Ephraim did not remain there during the course of his lifetime. For a period of time he lived in Neuss and Cologne as well as in Worms.<sup>202</sup> His work as a Talmudic commentator was well known, and he wrote commentaries to Erubin, Ketubot, and Abot.<sup>203</sup> His most significant contribution ~~was~~ in the area of the liturgy. R. Ephraim was a prolific author of religious poetry as well as a number of dirges on the tragedies of his time.<sup>204</sup> R. Ephraim lived a long and productive life, outliving his three brothers, Gershom, Kalonymus, and Hillel.<sup>205</sup> Of the three only one, Hillel, was mentioned by R. Eliezer and entered into correspondence with him.<sup>206</sup> R. Hillel b. Jacob ~~was~~ a close colleague of R. Joel, and it is probably because of that reason that he was in contact with R. Eliezer. It was R. Hillel who came to R. Joel's aid in a Halachic disputation noted by R. Eliezer.<sup>207</sup> While R. Hillel did not distinguish himself in the area of the Halacha, he was of

<sup>201</sup>Mordecai, Ketubot, par. 152.

<sup>202</sup>L. Zunz, Literaturgeschichte, p. 289.

<sup>203</sup>Germania Judaica, p. 50.

<sup>204</sup>L. Landshut, op. cit., pp. 47-48.

<sup>205</sup>Germania Judaica, p. 49. There were probably two other brothers, Abraham and Uriel, of lesser importance. See Mordecai, Yebamot, par. 31.

<sup>206</sup>Eben Haezer, 67c.

<sup>207</sup>Ibid., 78a. רבני הילל מסייע את ר' יואל

considerable importance as a religious poet and contributed to the liturgy of his period.<sup>208</sup>

Perhaps the most significant relationships of R. Eliezer were those that he established with the scholars and the leaders of the Mayence Jewish community. The burden of R. Eliezer's leadership of the Mayence community after his father-in-law's death was one that was possible for him to bear only with the help of many colleagues who aided him in the process of directing the affairs of the community. Over the course of the years, the Jewish community of Mayence had, as we have noted, a rich intellectual and spiritual heritage even before the leadership of the community passed into the hands of R. Eliezer. The influence of men who had long since died lived on in the works of their students. One such person was R. Eliezer (Hagadol) b. Isaac. He was one of the great intellectual leaders in Mayence's history who taught many of the scholars of Provence as well as Germany.<sup>209</sup> Even closer to R. Eliezer's time and more significant for our consideration was R. Isaac b. Judah, perhaps the most important student of R. Eliezer Hagadol. R. Isaac was Rashi's teacher and was referred to frequently by his famous

<sup>208</sup>L. Zunz, Literaturgeschichte, p. 293.

<sup>209</sup>Eben Haezer, 156a. ... ורבינו יצחק ב"ר יהודה הנהיג במגנצא בשם רבו ר' אליעזר ... רבינו יצחק ב"ר יהודה ז"ל

student as מורי צדק.<sup>210</sup> R. Isaac was cited often by R. Eliezer, in most instances as a source for the variant customs in existence in the City of Mayence. There were times in which these citations were based on patterns of behavior noted in R. Isaac's household.<sup>211</sup> R. Eliezer noted also customs reflecting great piety that R. Isaac enforced on members of his family.<sup>212</sup> Even after his death, R. Isaac was long an important influence on the spiritual and intellectual state of the Jewish community.<sup>213</sup> R. Isaac was probably born in France and only emigrated to Germany at a later time. He traveled a good deal and had an opportunity at one point to visit the City of Rome, where it is said that he consulted with Hai Gaon.<sup>214</sup> R. Isaac was more a teacher than an author. Though he had many excellent students, his own halachic comments are to be found in a number of sources; he

<sup>210</sup> Rashi, Yoma, 16b. פירש לי מורי צדק רבינו יצחק ב"ר יהודה ז"ל. The text was written after 1070, the probable date of R. Isaac's death.

<sup>211</sup> Eben Haezer, 164a. ומיהו (שמעתי) שבביתו של רבינו יצחק... ב"ר יהודה לא היו אומין כלל עם הפת...

<sup>212</sup> Ibid., 184c. ושמעתי שכשמתה אשתו של רבינו יצחק ברבי יהודה צוה... לבנו ר' יהודה לילך יחף אחריה לבית הקברות. From the context it is clear that this was not normative behavior for the time. Note infra, Chapter VIII, footnote 104.

<sup>213</sup> Ibid., 161b. R. Isaac's views were not, however, so firmly entrenched that they could not be dislodged. ...וכן הורה רבינו רבי יצחק ב"ר יהודה... ראוה לי. See also 156a for an indication of the extent of R. Isaac's influence and his ability to establish a custom in Mayence in keeping with his own particular traditions.

<sup>214</sup> Mordecai, Shabbat, par. 398. ...וטעם זה שמע ר"י ב"ר יהודה בעיר רומא מפי רבי האי גאון

never produced a single halachic work of significance.<sup>215</sup>

R. Isaac had a son, R. Judah, who had great promise. Unfortunately, he became, along with his wife and child, a victim of the first Crusade.<sup>216</sup> Closely associated with R. Isaac was R. Meshullam b. Moses of Mayence. Although R. Meshullam was not mentioned with any frequency by R. Eliezer, he noted the fact that R. Meshullam had submitted a liturgical question to the authorities in Jerusalem. The Jerusalem authorities responded by validating a local liturgical custom prevailing in Mayence.<sup>217</sup> R. Meshullam had been an important link in his time between the traditions of the East and that of the West. It is entirely possible that this position grew out of the fact that he was of the family of R. Kalonymus of

<sup>215</sup>See e.g., Or Zarua, pt. 2, par. 109.

<sup>216</sup>V. Aptowitzer, Mabo, p. 371. Note supra, footnote 212. Without sufficient evidence, it is impossible to evaluate R. Judah's abilities especially since he was killed while still a young man. Judah's son, also lost in the holocaust of 1096, was named Isaac.

<sup>217</sup>Eben Haezer, 156a. (ר' משה שאל את פי ישיבה שבירושלם) ... The emendation to the text of the 1610 edition was supplied by Ehrenreich, based on the parallel texts. There are some minor differences between our text and that of both Sefer HaPardes (par. 168) and Mahzor Vitry, p. 360). Both of these texts have the phrase "ר' משה שאל את פי האריות יושבי ירושלים" instead of the text cited above. See also Sefer Rabiah, Vol. II, p. 230, who has essentially the same text as R. Eliezer and who might have taken it from Eben Haezer. A portion of the Teshuba was discovered in the Cairo Geniza (Sefer Rabiah, loc. cit., footnote 5 of Aptowitzer). For a fuller statement on the response made by the Jerusalem Yeshibot, see A. Epstein, Maase HaGeonim, pp. 36-37.

Lucca, a prime participant in the task of linking Eastern and Western tradition. His primary contact in the East was with R. Elijah HaCohen and his son Abiathar, Palestinian Gaonim.<sup>218</sup> Reference to R. Meshullam was to be noted in other texts, although he never published anything of consequence.<sup>219</sup>

Of some importance to the functioning of R. Eliezer in Mayence was his relationship to the generation immediately preceding him. We have already noted the ties that bound R. Eliezer to his father-in-law, R. Eliakim. R. Eliezer was pushed into a position of leadership, passing over R. Eliakim's colleague and friend, R. Kalonymus b. Judah. R. Kalonymus was R. Eliezer's teacher, and R. Eliezer displayed great respect for him, though Kalonymus in no sense approached greatness.<sup>220</sup> He was a member of one of the more important families in the City of Mayence, and is identified by some as the uncle of Eliezer Rokeach of Worms.<sup>221</sup> R. Kalonymus was looked to as

<sup>218</sup>V. Aptowitzer, Mabo, p. 386.

<sup>219</sup>See e.g., A. Epstein, op. cit., p. 26, p. 39.

<sup>220</sup>Eben Haezer, 16d. It is apparent from the phrase ואני אחריהם that R. Eliezer considered himself to be a student, seated at the feet of his master. What is by no means clear is the degree to which R. Kalonymus approached a high level of scholarship and scholarly attainment. There is no evidence to support the view that R. Kalonymus ever achieved significant standing in the academic community. On the contrary, R. Kalonymus did not approach R. Eliezer either in the depth or the scope of his scholarship.

<sup>221</sup>S. Albeck, Introduction, Ch. 3.

halachic authority by some and helped in the establishment of various customs that were in dispute.<sup>222</sup> Apart from that fact, R. Kalonymus was known primarily as a liturgical poet. Zunz listed eighteen different poems written by R. Kalonymus that were added to the liturgy.<sup>223</sup> In order to distinguish between R. Kalonymus and Kalonymus b. Isaac the Elder, Kalonymus b. Judah was often called by our sources the younger (HaBahur).<sup>224</sup>

One of the close colleagues of R. Eliezer in Mayence was R. Solomon, in all likelihood, R. Solomon Hakohen, the father of R. Moses, also mentioned in our text.<sup>225</sup> R. Solomon was the brother-in-law of R. Judah b. Kalonymus, and was recognized as an important authority.<sup>226</sup> R. Solomon's son, R. Moses, was of even greater importance in the generation that followed. R. Moses was considered to be one of the

<sup>222</sup>L. Zunz, Literaturgeschichte, p. 164, footnote 11. פעם אחת נפטר אדם כי"א באדר השני ונקבר ביום ר' ובמוצאי שבת צוה דרבנא קלונימוס בן רבנא ר' יהודה לאבל לשמוע המגלה בבית הכנסת ולמחר שמע המגלה בביתו

<sup>223</sup>Ibid., pp. 164-166.

<sup>224</sup>S. Albeck, Introduction, Ch. 3.

<sup>225</sup>Eben Haezer, 77d. This particular responsum was in all likelihood addressed to R. Eliezer as the head of the Mayence community. See S. Albeck, Introduction, Ch. 5, par. 19. R. Solomon was referred to as "חבירו", a term that suggested his status as equal participant in the academic community. Note also H. Michal, op. cit., p. 584.

<sup>226</sup>Mordecai, B. Bathra, par. 501.

רבינו יהודה ברבי קלונימוס... וגיסו ה"ר שלמה הכהן  
It is probable that R. Solomon is identical with ר' שלמה הכהן;  
הכהן הגרסן in a passage to be found in Or Zarua, pt. 1,  
Hilchot Tzedekah, par. 15.

three ranking authorities in the community of his time, the others being R. Judah b. Kalonymus and Moses b. Mordecai.<sup>227</sup>

In the view of R. Eliezer b. Joel Halevi, R. Moses b.

Solomon was the most important of them all.<sup>228</sup> R. Moses was

born in Mayence but went to France where he studied for a long period of time with R. Tam.<sup>229</sup> Upon his return he as-

sumed his important position in the Mayence community. He was one of the men who exchanged Halachic views with R.

Eliezer.<sup>230</sup> Although R. Moses belonged to the generation after R. Eliezer, he achieved distinction at an early age,

sufficient to draw R. Eliezer's attention. R. Eliezer

probably functioned as his teacher, and he later took over

the responsibilities of R. Eliezer's office.<sup>231</sup> Even during

<sup>227</sup>Mordecai, B. Kamma, par. 186. לדברי גאוני מגנצא... הבינו יהודה ב"ר קלונימוס ורבינו משה ב"ר מרדכי ורבינו משה הכהן

<sup>228</sup>Sefer Rabiah, p. 171, par. 164, והלא ארי שבחבורה... הרב ר' משה בן ר' שלמה הכהן

<sup>229</sup>Mordecai, Yebamot, par. 79.

<sup>230</sup>Eben Haezer, 255c.

<sup>231</sup>E. Urbach, op. cit., p. 159. See also S. Albeck, Introduction, Ch. 5, par. 16. In all of R. Eliezer's compendious work, there is only one reference to R. Moses. Neither in that reference nor in the work of R. Moses do we find recognition of a scholarly debt owed by R. Moses to R. Eliezer. It is probable that R. Moses studied most of the time under R. Tam and other French scholars where he established his reputation. He came back to Mayence as a scholar of standing towards the latter part of R. Eliezer's life. Though R. Moses probably studied with R. Eliezer for a short period of time, it was not sufficient for him to designate R. Eliezer as his teacher.

a period when the City of Mayence was a great center for Torah study, the mantle of its leadership was passed to R. Moses who was trained in France but who brought new insights back with him. The community of Mayence was prepared to receive him as its head as long as his scholarship was adequate to the task. R. Moses was also a great teacher. He counted among his disciples R. Eliezer b. Joel Halevi,<sup>232</sup> as well as Baruch b. Samuel of Mayence.<sup>233</sup> The name of R. Moses was mentioned numerous times in the Tosafot literature and it is probable that he was the author of a commentary on Yebamot.<sup>234</sup> In addition, he was credited with a book of codes noted by R. Asher.<sup>235</sup> Among the others associated with R. Eliezer who plied him with questions was R. Judah b. Joseph, referred to as a member of R. Eliezer's family.<sup>236</sup> Though not much is known of R. Judah,<sup>237</sup> it is probable that he was the son of

<sup>232</sup>Responsa of R. Meir of Rothenburg, par. 500.

<sup>233</sup>Mordecai, Ketubot, par. 162. וכן (כתב רבינו ברוך בספר החכמה  
שלו קבלתי ממורי הכהן ז"ל

<sup>234</sup>Such a commentary is not extant at the present time. Whether such a commentary actually existed, as is suggested by Urbach, has been open to question. Cf. E. Urbach, loc. cit.

<sup>235</sup>H. Michal, op. cit., p. 559.

<sup>236</sup>Eben Haezer, 5b. Again the nature of the family relationship is not specified.

<sup>237</sup>There is no trace of this particular scholar in the literature. The most that could be said about him is suggested by S. Albeck (Introduction, Ch. 5, par. 12) in identifying him as the son of a famous father. It is true that R. Eliezer would not have included R. Judah's responsum among his responsa if he had not been a person of some prominence in the scholarly community. R. Judah is not mentioned again by R. Eliezer nor does his name occur among any of the contemporary sources.

R. Joseph b. Judah, a student of R. Isaac b. Judah,<sup>238</sup> and a correspondent of R. Isaac b. Asher.<sup>239</sup>

It is clear, then, that R. Eliezer was in contact with all the major Jewish communities of his time. As the acknowledged leader of the Mayence community, one of the largest and most influential, he had a special responsibility. Beyond that responsibility, there lay R. Eliezer's unique qualities as a scholar of brilliance and courage. It was this uniqueness that propelled him to a position of prominence to begin with and that first attracted the attention of his future father-in-law. It was due to his personal brilliance that he was looked upon with universal respect by all who turned to him for aid, and even by those who engaged him in debate over questions of a religious or political nature. Even allowing for the exaggerations of style and the hyperbole of the time, the elaborate salutations and postscripts of letters written to R. Eliezer speak well for the exalted position he held in the eyes of his contemporaries.<sup>240</sup> Some measure of

<sup>238</sup>Mahzor Vitry, par. 81.

<sup>239</sup>Or Zarua, Sanhedrin, par. 77.

<sup>240</sup>In all of the correspondence to R. Eliezer reported in Eben Haezer and in all the correspondence recorded elsewhere but directed to him the attitude to R. Eliezer was one of universal respect. Not even R. Eliezer's most far-reaching opponents ever spoke of him with disdain or disrespect. At time it is difficult to say how many of such expressions were due to the mores of the time, by which such language was mere form, not to be taken seriously. On the other hand, we possess many responsa of the period in which honestly negative attitudes were expressed, both by R. Eliezer and others.

his standing was related not only to academic brilliance but to R. Eliezer's personality. Though far from being pietistically self-demeaning, R. Eliezer was a modest, self-effacing person who sought to avoid quarrels rather than search them out, as was the tendency of a good many of his illustrious contemporaries. This is not to say that R. Eliezer had a low opinion of his abilities, or even that he was afraid to express his own view of that ability. He did not hesitate to express his belief in the truth of his own interpretations.<sup>241</sup> Even in the face of as great an authority as Rashi, R. Eliezer did not hesitate to express his own independence as well as his ability to plumb to the depths of a problem beyond that of his master.<sup>242</sup> Often R. Eliezer referred to his own interpretations with great pride of authorship.<sup>243</sup> In no situation, however, did he seek to humiliate those whose opinions differed with his own, or even those whose scholarship was decidedly inferior to his own.<sup>244</sup> His tone with his disciples,

<sup>241</sup>Again and again R. Eliezer made reference to his own explanation as "פירוש יפה," at times in contrast to explanations or commentaries offered by others. See e.g., Eben Haezer, 226c, 231a, 239c, et. al.

<sup>242</sup>Ibid., 196b. ושניהם מפי ר' שלמה והוא לא אמר אלא תחילת הדברים ואני פירשתי על מכונם

<sup>243</sup>Ibid., 251b. Typical was the following expression: אני אליעזר שפירשו רבותי...הוצרכתי לחזור ולפרשה ולהעמיד על בורייה לפני שראיתי אנשים חכמים מחקשים בפתרון משנה זו נחתי לבי לפרשה... Similarly, see Eben Haezer, 63a where R. Eliezer spoke unashamedly of his own abilities in contrast to the failure of others

<sup>244</sup>Ibid., 296b. In this particular case, R. Eliezer was approached by Shemaria b. Mordecai under the assumption that

and students was never strident. Although he chided them often for misinterpretations and gross ignorance, the basic gentleness of his character was always manifest. R. Eliezer was not prepared to abandon the field in the face of positions contrary to his own. In the face of opinions expressed by the foremost authorities of the time, R. Eliezer maintained his own position with integrity and courage.

Part of R. Eliezer's character was moulded by the attitudes engendered in his community to the precedents and customs of the past that were transmitted to him in his own time. The Mayence community venerated the past, with its traditions and institutions, sanctioned by the great scholars and authorities of an earlier time. It was part of R. Eliezer's orientation to the task he saw for himself to denigrate his own competence and ability in face of the momentous contributions of prior generations.<sup>245</sup> He saw his entire task as uncovering the motivation and reasoning of the scholars of an earlier generation. It was not that of breaking new ground.<sup>246</sup> R. Eliezer went to great lengths to be sure

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the members of his court might be more receptive to R. Eliezer's views than to his own. R. Eliezer was very gentle and self-effacing with R. Shemaria.

לא שאני כדאי ששלח אלי אלופי ומיודעי כי קטנן עבה ממחניי אלא שבאח לחהרוח על קנקני ריקם ולא אסור ממשמעתין ואחא דעי גם אני...  
He wrote in a similar vein to R. Baruch b. Isaac (308d)  
וידעת כי לא חז ארכה לי ולא באח אלא לחדוני

<sup>245</sup>Ibid., 148a. נ"ל דסמכו הראשונים שלפנינו אנשים חכמים ונבונים ממנו...

<sup>246</sup>Ibid., 255d. ...ואבוא לבאר ולברר דברי רבותינו כי כנייתם... הם ואגלה השרשים ובה יתבררו דבריהם

that his own opinion would not be used to overturn the cherished views of prior generations. Although an acknowledged authority, his self-effacement prompted him to deny to others the utilization of his statements to challenge the position of earlier authorities.<sup>247</sup> Yet R. Eliezer did not see himself paralyzed by the views of prior generations. He possessed both a measure of daring and a readiness to explore new paths for the Halacha when that became necessary. As a result, R. Eliezer focused on two separate areas. The first was the area where gaonic insights did not apply. The second was where gaonic insights could be applied but emerging new conditions were deemed adequate to overturn earlier well-established precedent.<sup>248</sup> In R. Eliezer, one finds an interesting combination of a pietistic self-effacing person, of an extremely conservative bent, who rises at the same time to the challenge of the period in which he lived, by issuing highly liberal rulings when they met the needs of the people. R. Eliezer was not a narrow-minded person cloistered in his study and away from people. If nothing else, his travels must have broadened his view of the world in which the community had to live and the halachic problems they had to face

<sup>247</sup>Ibid., 15b. ...ואשר יקל ויפרוץ גדר הראשונים ויסמוך על דברי מה שפירשתי יהא באלה ובנידוי

<sup>248</sup>Note, e.g., the daring way in which R. Eliezer dealt with the status of women who worked in the marketplace. See infra, Chapter VI.

in order to make a living and sustain their families. The comparative breadth of his education also allowed him to view the problems of the community in a more liberal light. R. Eliezer was not solely a talmudic scholar. He had more than a passing knowledge of Bible, some general interest in theology and philosophy, and of course, knowledge of the vernacular.<sup>249</sup> In addition, he displayed knowledge of the practical world of trade and commerce. The greatness of R. Eliezer lay in the combination of his abilities as profound scholar and community leader. His insights could be accepted by the people primarily because of the excellence of his scholarship, and he possessed at the same time the tact and persuasiveness to gain the widest possible acceptance of his leadership. Perhaps most impressive of all was his modesty. Though he was appealed to by a great many scholars, R. Eliezer was loathe to intervene in a dispute. He was extremely careful not to take on an omniscient pose, allowing himself the privilege of intervening in the affairs of other courts.<sup>250</sup>

<sup>249</sup>See infra, Chapter VI for a description of education within the Jewish community.

<sup>250</sup>It is often difficult to determine how much a scholar's expressed modesty is a true reflection of his personality. In R. Eliezer's case, it was undoubtedly sincere. See e.g., Eben Haezer, 82d (also found in Responsa of R. Meir of Rothenburg, par. 409) אני אליעזר בא אלי קרובי מר יהואל וביקשני לעיין בפסק דין שלו שנחנו לו ב"ד ולא רציתי לו כי מה לי להדרש ללא שאלוני עד כי הפציר בי...  
The last portion of the same responsum is even more instructive. ואם לא יכוננו אמרי בעיניכם חשיבוני וחמידוני על האמת והמשפט ולא אבוש...

There was no falseness in R. Eliezer's readiness to admit an error of judgment or fact.<sup>251</sup> There was no falseness either in his readiness to share the difficulties he faced in finding an adequate explanation for serious halachic problems. Although he rarely made comments that could be deemed autobiographical, he was prepared to share the disappointments and frustrations of his work.<sup>252</sup> As a result, he presented a position to his students not of unattainable omniscience but of the scholar in perennial search for wisdom that was often elusive even to the greatest minds. In all of this R. Eliezer displayed not the slightest conceit. Rather he expressed an oft repeated faith in the Almighty who would aid him in plumbing the depths of knowledge as well as in the transmission of such knowledge to others.<sup>253</sup>

In addition to Eben Haezer, R. Eliezer was the author of numerous other works, of lesser importance. Perhaps the most interesting was his Chronicle of the events of the First Crusade.<sup>254</sup> He was but a young boy of six years old at the time of the First Crusade. The text, therefore, is not one

ועתה מורי אם שגיח  
 251 Eben Haezer, 77d. ... אהה הורוני ומה שלא ידעתי הבינני.  
 as well as 68d. ולפי שלא יטעה אדם אחר פסקי אבוא היום לשוב מטעוהי

252 Ibid., 58c. כל ימי גמגמתי בפירוש דהא שמעתא

253 Ibid., 23c. ...כי אח כל לבי גיליתי לך עתה ואם שגיח  
 אל חתמה וצורי יאיר עינינו במאור תורתו

Such phrases repeat themselves throughout the entire course of the text. R. Eliezer combined acceptance of his own limitations with an appeal to the Almighty as the consummate source of wisdom.

254 The text was published originally by Jellinek (zur

that is based on R. Eliezer's experience. Rather, it reflected R. Eliezer's conversations with survivors of the Crusade. As a result, R. Eliezer's account was limited in the information it could provide. The statistics in it are entirely untrustworthy, and represent an exaggeration of the actual effects of the Crusade far beyond the actual historical situation. There were some early authorities who raised serious questions as to whether R. Eliezer, the author of the Chronicle, was, in fact, our R. Eliezer. Despite numerous arguments that were advanced against its authorship by R. Eliezer, it is clear that his authorship cannot be denied.<sup>255</sup> Why R. Eliezer, the great halachist, chose to write an historical chronicle is outwardly rather puzzling. During the course of Eben Haezer, he did take note in passing of historical incidents that came to his attention. Such comments were always made, however, coincidental with R. Eliezer's main purpose, viz., the elucidation of points of

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Geschichte der Kruzzüge) and later republished by A. M. Habermann, Sefer Gezerot Ashkenaz V'Tsorfat, pp. 72-82.

<sup>255</sup> According to S. Albeck (Introduction, Ch. 9, par. 2), who based himself on Joseph Hachohen (Emek HaBacha, p. 30), the true author of the chronicle was Eliezer Halevi, in no way related to R. Eliezer b. Nathan. Similarly see L. Landshuth, op. cit., p. 22. That position, however, was refuted convincingly by V. Aptowitzer in Mabo, p. 56. Note the parallel between a piyyut composed to commemorate the Crusade that was definitely attributable to R. Eliezer and the chronicle itself. The poem was printed in Habermann, Sefer Gezerot, pp. 82-83, as well as included in the list of piyyutim prepared by L. Zunz, Literatursgeschichte, p. 259.

halachic difficulty. R. Eliezer did not display any preoccupation with the events of the First Crusade in the pages of Eben Haezer. The few references he made that could be interpreted as applying to the Crusade were not dwelt upon at any length.<sup>256</sup> He displayed the interest and the style of a halachist, not a historian. What inspired R. Eliezer was not the desire to set down in scrupulous detail the events of the period, but rather the desire to glorify and extol the heroism of his immediate forebears who gave their lives for the sanctification of the Divine Name. In all probability, R. Eliezer was led to the writing of the chronicle through his liturgical works. Many liturgical pieces that he wrote, including dirges specifically written to commemorate the First Crusade extolled the virtues of martyrdom. His liturgical poetry led naturally to a fuller description of the martyrdom of his generation. The chronicle was, after all, part of a specific genre of literature, typical of the period. R. Eliezer's chronicle, as all others in the period, was dominated by a lack of objectivity as well as a lack of critical acumen in weighing and assessing the sources that were at his disposal.

Another major area of R. Eliezer's literary activity was that of liturgical poetry. It has already been indicated

<sup>256</sup>See infra, Chapter V, for a fuller description of the events of the Crusades as reflected in Eben Haezer.

that R. Eliezer was the author of a piyyut commemorating the First Crusade. A great many other poems attributed to R. Eliezer are known to us; a good many of them found their way into the liturgy. It is possible that many of R. Eliezer's piyyutim were lost. However, the extant material is substantial and testified to the breadth of R. Eliezer's work. The following piyyutim are known to have been composed by R.

Eliezer: אודה עלי ; אודך ה' ; אוי לי ; אור לשביעי אור  
 עולם ; אור עטה ; אור בריה ; אזורי אימה ; אך טוב ; אכפרה  
 פני ; אל אלהי ; אל אלהים ; אל אלהינו ; אל אשר ; אלה עדה ;  
 אלהים באזנו ; אלי עדה ; אפרני אימיו ; אקונן ואספדה ;  
 אריאל בהיוורו ; אשא נהי ; אור חבריה ; אח מי ; כי אם ;  
 מרשח אלי ; תבא אנקה ; תודיעני ארה ; אלהים זרים .

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The piyyutim of R. Eliezer reflected a high degree of poetic skill in the tradition of his time. They were designed for utilization on many different liturgical occasions during the

<sup>257</sup>The list enumerated here of R. Eliezer's piyyutim is based on I. Davidson's work, Otsar HaShira V'HaPiyyut, Vol. IV, p. 364. Elsewhere in this definitive work, Davidson made a literary analysis of each of the piyyutim. A review of such an analysis might prove of significance in assessing R. Eliezer's worth as a paytan, but it would be beyond the scope of this work. His piyyutim were deemed sufficiently worthy to be included in the liturgy. Other listings of R. Eliezer's piyyutim are to be found in a number of sources, none of which is as complete as the listing provided by Davidson. These include L. Zunz, Literatursgeschichte, p. 259; L. Landshut, op. cit., p. 22; S. Albeck, Introduction, Ch. 9, par. 5. Most of R. Eliezer's piyyutim are readily identifiable since he utilized one means or another to sign the text. It is highly doubtful whether the piyyutim we have in our possession constitute the total produced by R. Eliezer. At no point did he refer to any of his piyyutim during the course of his halachic work.

course of the year and some of them were included in the Minhag of some congregations.<sup>258</sup> Though R. Eliezer did not reach a level of perfection as a religious poet equal to that of his more renowned contemporaries, he remained deeply interested in the liturgy throughout the course of his life. This was reflected not only in the poems themselves but also in the frequent references to liturgical material in Eben Haezer.

R. Eliezer's period was one in which there was deep interest in the prayer book. As illustrated by his career as a paytan there was concern for liturgical creativity.<sup>259</sup> It was also a period in which the liturgy was becoming standardized. From the gaonic period through our own, we witness the publication of a number of prayer books, essentially books of Halacha on prayer that gave expression to such standardization. R. Eliezer's commentary on the prayer book fell into this genre of literature. Unfortunately, his text is no longer extant. On the basis of R. Eliezer's own testimony, the book was once in existence; its format was roughly similar to that of Mahzor Vitry.<sup>260</sup> A good part of

<sup>258</sup>L. Landshuth, loc. cit.

<sup>259</sup>Note the discussion in Chapter VIII on the problem of innovation in the liturgy. As one of the larger group of paytanim in Western Europe R. Eliezer clearly aligned himself with the innovators in a period in which halachic scholarship and poetic creativity went hand in hand.

<sup>260</sup>Eben Haezer, 175b. ...שערן הפקולי הסדיר שמרנה עשרה  
ברכות על הסדר לפני רבן במליאל ביבנה וכולם מקרא אחד נפקי  
וכתבתים בסדר התפילות

his commentary on the prayer book was incorporated into Eben Haezer.<sup>261</sup> Some portions of R. Eliezer's manuscript found their way into other texts that compared his comments to those of other authorities. These are two printed prayer books extant dating back to the first quarter of the nineteenth century that contain elements of R. Eliezer's commentary. Though one of them claims authorship by R. Eliezer b. Nathan, and was printed in 1817, only a part of the text can actually be ascribed to R. Eliezer.<sup>262</sup> In addition, a

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There is extant a manuscript of R. Eliezer's text. The manuscript (Hamburg Ms 153) was not completely loyal to R. Eliezer's original text, but was reworked during the process of copying. Cf. E. Urbach, op. cit., p. 156, who utilized the manuscript at the Shocken Library. It is, in all probability, that particular manuscript which was seen by S. Ehrenreich. (Commenting on Eben Haezer Megillah, 175c, par. 6). According to Ehrenreich, the manuscript contained a commentary on the liturgy for the entire year. A copy was also in the hands of Ephraim Zalman Margaliot as attested to by him in his own text Bet Ephraim, Orah Haim, par. 46. See also L. Zunz, Dir Ritus des synagogalen Gottesdienstes, p. 196.

<sup>261</sup>Comments by R. Eliezer on liturgical problems were scattered throughout the whole of Eben Haezer. Though it is difficult to determine which of the two texts came first, it is clear that there were influences of one upon the other. From the comment of R. Eliezer quoted in footnote 260, it is clear that his prayer book was in existence at the time he was completing the editing of Eben Haezer. According to Urbach, some of the comments on the liturgy to be found in Eben Haezer were actually the work of later copyists. Cf. E. Urbach, op. cit., p. 157.

<sup>262</sup>The text was edited by E. Margaliot and was entitled סדר תפילות נהורא רבא עם פירוש ישן נושן אשר חיבר אדונינו מורינו ורבינו הנשר הגדול אחד מבעלי התוספות ה"ה רבי אליעזר ברבי נתן ז"ל ונתחבר הפירוש הנ"ל בסוף אלף החמש ונקרא שמו סדר ראב"ן. Though portions of the text were written by R. Eliezer, such as a commentary on Hallel and the Hagaddah, the text was actually a compilation from many different sources. Cf. L. Ehrenreich, loc. cit.

Mahzor entitled Korban Aharon was published in 1823, with numerous comments on piyyutim originating with R. Eliezer, with particular emphasis on the piyyut literature for Rosh Hashonah, Yom Kippur and Succot. It is probable that in this case, too, the material was taken from an original Seder Tefillot.<sup>263</sup> Though his prayer material did not survive the passage of time well, R. Eliezer did leave us information on his motivation for writing his commentary as contained in the introduction to the printed Seder Tefillot that has the ring of authenticity. He attested to the fact that in his time a great many of those who worshipped with great devotion were unaware of the meaning of what they were uttering. In his words,

ואני אב"ן המפרש לא לכבודי עשיית זאת ולא מזהירות לבי אלא ראיתי  
שנחמטו בעלי הדעה והשכל ורבו שאינם יודעים אפילו פירוש סדר תפלה  
וכתבתיו למען ילמדו בו ולידע לאדם מהו מוציא מפיו ומחוך כן  
התבונן דעתו ואם שגיתי ימחול לי צורי...

I, R. Eliezer b. Nathan, did not write this commentary out of a desire for self-glorification. I have noticed around me few men of intelligence and understanding; more and more people cannot even understand the meaning of the prayer book. And so, I wrote my commentary so that they might at least understand the words that came from their mouths and so gain greater understanding. If I have erred, may the Almighty forgive me . . .<sup>264</sup>

<sup>263</sup>Mahzor Korban Aharon, published in 1823. In the introduction to the text, while listing the sources that he used, the editor commented: המחזור שהיה כהוב בכ"י מכמה מאות שנה והוא פ' הראב"ן זקנו של הראש ז"ל...ובעז"ה לקטתי מבוחר פנינים

Cf. H. Michal, op. cit., p. 215 as well as a long discussion by S. Albeck (Introduction, Ch. 9, par. 2).

<sup>264</sup>Seder Raban. Cf. S. Albeck, loc. cit.

There were other texts that various historical traditions ascribed to R. Eliezer. As we have noted, many of R. Eliezer's contemporaries wrote Tosafot to the Talmud, considered a popular genre of literature at the time. In only one of the many sources that date from our period, reference was made to a Tosafot of R. Eliezer on the tractate of Pesahim. The material noted was not included in Eben Haezer. Even if the text was once in existence, it is no longer extant and there are no further references to it in the literature. It is possible that R. Eliezer began his halachic work by writing a series of Tosafot, only to integrate most of the material later on into his larger compendium.<sup>265</sup>

An even greater problem is posed by the allegation that R. Eliezer wrote a commentary to Pirke Abot. The only substantiation for such a claim was a note by Yehiel Michal b. Yedidiah in the introduction to his book Minha Hadashah on Pirke Abot. In that introduction, R. Yehiel indicated that he had in his possession a manuscript of R. Eliezer's commentary that dated from 1145. While most authorities accepted the statement as valid, there were others who raised

<sup>265</sup> Mordecai, Aboda Zara, par. 859. Though the explanation offered here is purely conjectural, the fact that R. Eliezer edited and re-edited his text might well be an indication of substantial truth to the assertion. Neither Michal (op. cit., p. 215), nor Albeck (Introduction, Ch. 9, par. 4) raised any serious issues with regard to the reference in Mordecai. Urbach erred in noting the reference in Mordecai as being par. 858 when it was actually 859. See E. Urbach, op. cit., p. 155.

questions with regard to its authenticity. The commentary has not survived to our own day and a thoroughgoing disavowal of its authenticity is, therefore, impossible. However, as pointed out by Aptowitzer, it is somewhat strange that a profound talmudic scholar would complete his work on the tractate of Abot well before he concluded Eben Haezer. Whether such a contention is correct or not, it is obviously far from proven that R. Eliezer ever wrote such a commentary.<sup>266</sup> An attempt was made to assign a text called Maamar Haskel to R. Eliezer. The text was devoted to an analysis of the 613 commandments, divided in accord with the categories of the ten commandments. The error of assigning it to R. Eliezer was made by the editor of the 1804 edition. He based his theory in part on the fact that R. Eliezer was the author of the piyyut אלהים ה' ידבר ordinarily recited in the synagogue on the eve of the second day of Shavuot. The text was seen as a commentary on that piyyut. For a time, even as worthy an authority as Leopold Zunz accepted

<sup>266</sup>The existence of such a commentary is mentioned by S. Albeck, Introduction, Ch. 9, par. 5), as well as by Michal (op. cit., p. 215). In neither case is their much discussion of the problems involved in a proper identification of the text. Both seem to assume the existence of the text as self-evident. In contrast, Aptowitzer (Mabo, p. 56) raised the issues noted above. What occurred to the manuscript over the course of time remains a puzzle, as is the exact nature of the text itself. All that we possess is the text left to us by R. Yechiel in his introduction that reads as follows: רוא לידי פירוש ישן נושן של קלף כתב ידו של ראב"ן שכתב בשם חתק"ה לפ"ק

The text was quoted by Urbach, (op. cit., p. 158).

the fact of R. Eliezer's authorship; later~~he~~ retracted it.<sup>267</sup>

A far more complicated question of authorship is encountered in the halachic text, Eben Harasha. The title for the text is derived in all probability from Zechariah 4,7. Azulai insisted that he had seen a manuscript of the book that he took to be a separate volume of R. Eliezer's discussions on halachic matters.<sup>268</sup> A later consideration by Albeck of the text led him to the belief that it was but a shortened version of our Eben Haezer including material primarily from B. Metzia and B. Bathra. Albeck saw in it a parallel to the condensations made by other halachic scholars of their great works, among them R. Baruch and his Sefer Terumah. He unfortunately did not have an opportunity to peruse the proper manuscript and indicated as much in his comments. Later authorities were somewhat more skeptical

<sup>267</sup> Maamar Haskel, 1804 edition, published in Redelheim by Benjamin b. Samson Heidenheim. It was this editor that claimed authorship for R. Eliezer, based upon his authorship of the piyyut noted above. However, even he noticed some startling contradictions. Maamar Haskel utilized R. Moses of Coucy as one of its sources, a fact that is a curious anomaly. The editor overcame the contradiction by uncritically quoting Azulai who claimed that R. Eliezer had an extraordinarily long life. S. Albeck (op. cit., Ch. 9) devoted a great deal of space to a consideration of the authorship of the text. He identified the real author as Samuel b. Judah. Zunz corrected his own error in Literatursgeschichte, p. 269.

<sup>268</sup> H. Azulai, Shem HaGedolim, pt. 2, par. 8. Cf. H. Michal, op. cit., p. 218, who went along with the statements made by Azulai. Michal also indicated that the statements attributed to R. Eliezer in Kol Bo (par. 126) were taken from Eben Harasha. The text reads there as follows:

דינין מהר"ר אליעזר בר נחן ז"ל

about the authorship of the text.<sup>269</sup> Although the material came without question from Eben Haezer, it is possible that the compilation was done, not by R. Eliezer, but by an anonymous editor, who wished to make R. Eliezer's compendious work more readily available. Even Urbach, who held to this particular viewpoint did not make a full comparative study of the manuscript of Eben Harasha in our possession with the printed text of Eben Haezer.<sup>270</sup> No final statement of authorship, or to be more accurate, editorship, can be made for Eben Harasha. What is evident is that the text was indeed a compilation. Whether that process was begun by R. Eliezer or not is purely a matter of speculation.

R. Eliezer, as we have noted, was honored greatly during the course of his lifetime. He was recognized as one of the great men of his time and his fame spread throughout

<sup>269</sup>S. Albeck, Introduction, Ch. 9, par. 1. The manuscripts noted originally by Albeck were not available for him to look at, and it is amazing that he was able to project his ingenious theory simply on the basis of the printed texts. Albeck referred to a London manuscript he was unable to procure. In all probability, the reference was to a manuscript in the Montefiore Library listed in the Hirshfeld descriptive catalogue as Ms. 103 (p. 21). This same manuscript is to be found in Adler's collection at the Jewish Theological Seminary (p. 20, Ms. 317) where I had the opportunity to peruse it. Another manuscript is to be found at Oxford (Neubauer catalogue, pt. 2, p. 20, Ms. 2697 (4). Aptowitz (Mabo, p. 55) was puzzled by the text, but accepted Albeck's thesis since it accorded so well with one of his own.

<sup>270</sup>E. Urbach, op. cit., p. 155. In all probability, Urbach's view is the one closest to the truth.

the Jewish world in the West. He was quoted often in the Tosafot literature under a number of names easily identifiable as our R. Eliezer. He was referred to as ר' אליעזר<sup>271</sup> ממגוזא<sup>272</sup>, or simply R. Eliezer.<sup>273</sup> Sometimes R. Eliezer was called רבינו אבן, leading to some confusion on the part of historians. He is referred to in that way not only in the Tosafot literature but also in Mordecai and the Responsa of R. Meir of Rothenburg.<sup>274</sup>

Many of the references within the Tosafot literature reflected the extensive correspondence between R. Eliezer and R. Samuel b. Meir.<sup>275</sup> At times, references to R. Eliezer associated his name closely with his book. He was, e.g., referred to as ר"א בן נתן צפנת פענח<sup>276</sup> or even "אבן העזר".<sup>277</sup> His influence was determined in part by the

<sup>271</sup>Tosafot, Shavuot, 26b.

<sup>272</sup>Tosafot, Shab., 16b. In this particular source, R. Eliezer had already died. והקשה ר' אליעזר הזקן ז"ל

<sup>273</sup>Tosafot, Shab., 69b.

<sup>274</sup>Tosafot, Hullin, 47b, as well as Responsa of R. Meir of Rothenburg, par. 580. Note Albeck's long discussion on the names by which R. Eliezer was known. S. Albeck, op. cit., Ch. 1. Cf. E. Urbach, op. cit., p. 155.

<sup>275</sup>That correspondence has already been discussed above at great length. Note one among many such references in Tosafot, Shabbat, 23ב. והקשה ר' אליעזר... והשיב לו ר' שמואל.

<sup>276</sup>Sefer Rabiah, par. 172.

<sup>277</sup>Responsa of R. Meir of Rothenburg, p. 159b.

group of students that R. Eliezer gathered about himself during the course of his lifetime and by his intimate relationship with the French Tosafot, so important for the development of Talmudic scholarship in the world. In addition, the importance of his grandson, R. Eliezer b. Joel Halevi, contributed to his own influence. Rabiah was quoted widely by R. Isaac Or Zarua, Mordecai b. Hillel, and, of course, by R. Meir of Rothenburg. The dependence of Rabiah on his grandfather not only directly but indirectly through his own father extended considerably R. Eliezer's influence. R. Eliezer was honored then during his lifetime, and honored by his influence after his death.

## CHAPTER II

### EBEN HAEZER - ITS COMPOSITION AND STRUCTURE

This work is based upon the printed edition of Eben Haezer, for no manuscript of the text has survived to our own time. Our text is not complete, and some material written by R. Eliezer did not make its way into the edition that is in our hands.<sup>1</sup> Before it was put into print, the manuscript went through a process of editing. Some of the editing was done by R. Eliezer himself; some of the editing occurred at the hands of copyists. The evidence for the editing of the text on the part of R. Eliezer is overwhelming. He prepared the index himself, which he labeled

ראשי האמירות . The index is far from complete, for it included material only from two-thirds of the text.<sup>2</sup> In our printed text, we find frequent references by R. Eliezer

<sup>1</sup>V. Aptowitzer, Mabo L'Sefer Rabiah, p. 171, pars. 1028, 1029. Aptowitzer, in his great work on R. Eliezer b. Joel Halevi, noted a number of places in which reference was made by Rabiah<sup>1</sup> to material from Eben Haezer that was only partially reflected in our own text. Emendations made by copyists could well have been considerable.

<sup>2</sup>In R. Eliezer's words, the index was appended  
למען ירוץ הקורא בו וימצא חש מהר את אשר יחפץ  
Albeck completed the original index to include the whole book.

to halachic decisions that he had already noted earlier in his work.<sup>3</sup> In such instances, it is clear that R. Eliezer had his original material before him, and then appended a comment indicating the changes he found it necessary to make in positions he had already taken. R. Eliezer also bore evidence to the fact that he had sent a copy of his text to his son-in-law, R. Joel Halevi, for his comments and criticism. That first draft was commented on forcefully by R. Joel Halevi's colleagues, and R. Eliezer was forced into a response. His response was expressed through comments made on the margins of the text as well as between its chapters.<sup>4</sup> There were times in which his comments were an afterthought, and came after the traditional postscript to indicate the conclusion of a particular segment of the book.<sup>5</sup> The rather disordered nature of the text often reflected the hand of R. Eliezer, who appended to the text responses to questions that were addressed to him, both at the beginning of the text and at its conclusion. A much more logical arrangement would have

<sup>3</sup>R. Eliezer often reiterated a statement he had made earlier only to emphasize the point he was making and to assert that the law was as he had already described it. See e.g., Eben Haezer, 224b.

<sup>4</sup>R. Eliezer's reaction to the criticism directed at him by the Regensburg elders was noted throughout the course of the volume. An excellent example of that reaction can be found wedged in between his comments on B. Bathra and those on Sanhedrin (Eben Haezer, 224b.).

<sup>5</sup>Eben Haezer, 184d.

dictated their being placed in the body of the text. Again and again we find evidence that R. Eliezer fretted and worried about his work, continually introducing changes and additions in the parts of the text where they belonged.<sup>6</sup>

Tracing the activity of the anonymous editors is enormously difficult. It is clear that copyists introduced their own changes.<sup>7</sup> Since we possess no extant manuscript of R. Eliezer's text, it is impossible to trace changes made in that text by anonymous copyists until it was reduced to printed form. It is clear that some changes were made, since there are differences between our text and that of other sources that claim direct quotation from Eben Haezer.<sup>8</sup>

<sup>6</sup>S. Albeck, Introduction, Ch. 7. Albeck gives an excellent summary on the manner of which R. Eliezer edited his work.

<sup>7</sup>As a prime illustration of the role of the copyist in determining the nature of the printed text, note Eben Haezer, 30c. Paragraph 39 refers to a commentary on a collection of religious poems, but the commentary itself was excised from the text by the copyist and forever lost. Cf. E. Urbach, Baale HaTosafot, pp. 152-3.

<sup>8</sup>The single most important source we possess in tracing changes introduced into our text is the the correspondence between R. Eliezer and the Tosafists of France. Although a thoroughgoing textual comparison is beyond the scope of this work, a comparison of the following two texts is instructive. They constitute a rescension of a reply by R. Tam to a question put by R. Eliezer.

Eben Haezer, 297c.

על עובי בית הכנסת ששאל ארונ  
והקשה משני צדין טריפה מה חידוש  
נראה בעינינו דמשרס רישא נקטה והכי  
פירושא מחט שנמצא בעובי בית הכנסת  
מצד אחד כשירה שנמצא המחט לצד הריעי  
שאם נמצא לצד החלל אמרין דרך הרושט

Sefer Hayyashar, par. 10,  
p. 22.

על עובי בית הכנסת ששאל ארונ  
והקשה מב' צדין טריפה מאי  
חידוש... נראה בעיני משום רישא  
נקטיה וה"פ (מצד) אחד כשרה שנמצא  
המחט לצד הריעי שאם לצד החלל  
אמרי' דרך בית הרושט באה וניקב

באת ונקבה הורשט ונטרפה מחמת נקובה  
הורשט כדמוכא שמעתא גבי חיתוכא  
דכבדא...

הורשט וטרפה מחמת נקובה כדמוכא  
שמעתא גבי חיתוכא דכבדא...

Similarly we possess two separate rescensions of a letter sent by R. Eliezer to R. Meir and his sons. The one is preserved in Sefer Hayyashar, the other in Eben Haezer.

Eben Haezer, 297a.

Sefer Hayyashar, par. 40,  
p. 69

הוצרכתי לשאוב מים מבאר שבע אשר  
ישער יהודה מקום שבט מחוקק משם בארה  
(ישקו) הצאן יין ישן ומבושם מים  
חיים נזולים הישיש הרב רבינו ר'  
מאיר ומפלגי מימיו החביבים  
והנעימים המתפלגים מעץ החיים  
וארבעה ראשים והנהר הרביעי הוא  
פרת אני אליעזר ב"ר נתן תלמידכם  
שחר טובתכם בהדין לרבותי ומחלה  
פניכם להשיבני דבר ולהבינני עומק  
הדין. ראובן אפטרופס (של) היתום  
טען על שמעון בב"ד בית שאתה דר  
בו של יתום זה הוא שהכל יודעין  
שהיה של אבותיו ואתה דר בו כמה  
שנים ואין אתה מעלה לו שכר והשכר  
של השנים אני תובעך וצא מן הבית  
ושמעון השיב בית זה שכירות וגוף  
ניכסי מלוג אשתי הוא לא (ש)ל  
יתומין שאביה היה דר בו והיא אמרה  
לי אני רוצה שתזקק לנכסיי לטעון  
עליהם כלום ואם יתבעני לדין  
אפטרופס היתום אני ארד עמו לדין...

הוצרכתי לשאוב מים מבאר שבע אשר  
בשער יהודה מקום שבט מחוקק משם  
בארה שיקוי הצאן יין ישן ומבושם  
מים חיים נזולים הישיש הרב ר'  
מאיר ומפלגי מימיו החביבים  
והנעימים המתפלגים מעץ החיים  
לארבעה ראשים והנהר הרביעי הוא  
פרת אנכי אליעזר בר נתן תלמידכם  
שחר טובתכם ודורש שלומכם כהדין  
עלי לרבותי ומחלה פניכם להשיבני  
דבר ולהבינני דין זה. ראובן  
אפטרופס של יתומים תבעו לשמעון  
בב"ד בית שאתה דר בו של יתום הוא  
שהכל יודעין שהיה של אבותיו ואתה  
דר בו כמה שנים ואין אתה מעלה לי  
שכר והשכר של כל השנים שדרת בו  
אני תובעך וגם צא מן הבית.  
ושמעון משיב בית זה שאתה תובעני  
שכירות והגוף נכסי מלוג אשתי הוא  
אני רוצה שתזקק לנכסי לטעון  
עליהם כלום אם יתבעני לדין  
אפטרופס אני ארד עמו לדין...

In both cases, the text of Sefer Hayyashar is based upon a manuscript edited by E. Margalio. In a great many instances there are significant differences to be noted between the two texts. Since the Margalio text is based on proven manuscript readings and our text has no manuscript behind it, it seems reasonable to assume that there were errors in transcribing our text.

There are also instances in which we find portions of an alleged quotation from Eben Haezer, only to find that such a reference is non-existent in our text.<sup>9</sup>

Eben Haezer was printed for the first time in Prague in 1610. That printed edition remained for many years the only edition of the text that was available. It was printed from an old manuscript taken from the archives of R. Eliezer b. Naphtali Herz Treves of Frankfurt, who lived during the sixteenth century. The manuscript was discovered quite by accident. In his prologue to the first printed text, Joseph Halevi, a scribe, described the process by which the text was discovered by R. Isaac b. Aaron Ashkenazi. The library of R. Eliezer Treves was transferred to his sons after his death. While in the process of perusing that library, R. Isaac stumbled over the text of Eben Haezer and immediately decided upon publication. Though selections of R. Eliezer's work had been widely quoted, it was many years since a full text had been in circulation. Among the signatories to the printed text were R. Mordecai Jaffe and R. Solomon Ephraim Lundschutz.<sup>10</sup> Only in the beginning of the

<sup>9</sup>V. Aptowitzer, Mabo L'Sefer Rabiah, p. 171 (pars. 928, 929). Aptowitzer brings a responsum from R. Eliezer to R. Joel Halevi which finds its parallel in Eben Haezer, 58c through 62d. The material in Eben Haezer was not complete. After the words "הלכך לא מיהוי כשיקרא" to be found at the end of par. 79, the text as preserved by Rabiah contains a great deal of additional material. There is no question that the text before Rabiah was substantially different than the text that is before us. The process of copying inevitably brought with it some editing of our text.

<sup>10</sup>Folio page of Eben Haezer, 1610 edition. Although

twentieth century were any additional attempts made to publish Eben Haezer. The first such edition was one published by S. Albeck in 1905. Albeck also published the extensive and highly important introduction to the text that was utilized by many scholars who wrote about our period. Unfortunately, he never completed his work, and the published work extended only through par. 337, at the conclusion of the tractate Niddah.<sup>11</sup> A second portion of the work was published in Jerusalem in 1913 and a third in 1915 in the same city. Both volumes were produced under the editorship of R. Aryeh Leib Reskas and contained a commentary entitled "אבן לשם בדביר", which was primarily halachic in nature.<sup>12</sup> Later, in 1927, still another version of the text was reprinted in the City of Samlai with an extensive introduction by Solomon Ehrenreich, entitled "אבן שלמה". The commentary exhibited extensive knowledge of R. Eliezer's writing, as well as encyclopedic knowledge of the sources utilized by R. Eliezer. Although this commentary, too, was primarily halachic in tone, it contained a number of

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the 1610 edition was not the one most frequently used for reference in this work, it was readily available when the reading of a given text was at issue.

<sup>11</sup>Albeck's edition was published in Warsaw in 1905. The rest of the unpublished manuscript remains in the hands of his grandson in Jerusalem, although no one from that scholarly family has yet to deal with the unfinished material.

<sup>12</sup>The two texts were published as separate volumes. The Reskas edition began essentially where the Albeck text left off.

historical comments of worth.<sup>13</sup> Finally, the book was republished in 1958 by Joshua Ehrenreich, the son of the commentator, as a memorial to his father. Though the text is a photograph of the earlier work by Solomon Ehrenreich, it has appended to it Albeck's introduction. It is this last text that was used as the basis for this work. All quotations that were made came directly from this text. In cases where the text was unclear, comparisons were made with the 1610 text.<sup>14</sup> None of the printed texts are entirely adequate, but without a proper manuscript, no scientific edition of the text can be published.

In his prologue, R. Eliezer noted the reasons for the title he gave to the book. It was to be called Eben Haezer, he asserted, for the Almighty had aided him in discovering the reasons for the customs of the early authorities as well as in plumbing the depths of civil and ritual law. In his prologue, R. Eliezer indicated that he was also including comments on three orders of the Talmud whose

<sup>13</sup>The Ehrenreich commentary was utilized extensively in this work. The grasp by Ehrenreich of the extensive and far-reaching sources utilized by R. Eliezer was phenomenal. His comments were helpful in identifying such sources and weighing their importance.

<sup>14</sup>The text was published by Joshua Ehrenreich in memory of his father who perished in Auschwitz. Like many recently published texts of this kind, it is merely a photograph, and at times rather unclear. It does possess the virtue of making our text much more widely available, since the previously published volumes are so scarce. The addition of the Albeck introduction is particularly valuable.

interpretation taxed one's wisdom and knowledge.<sup>15</sup> He stressed his interest in the deep, hidden meaning of the Halacha rather than with its superficial message. The text of Eben Haezer is very disordered. The work, taken as a whole, contains within itself a conglomerate of Tosafot, general commentary, halachic decisions and Teshubot apparently with little pattern. All of these elements often co-exist on the very same page of the text. The first part of the work consists of a grouping of responsa, not arranged in any logical order. R. Eliezer grouped them together at the beginning of his work for the sake of convenience and added material when he felt moved to do so.<sup>16</sup> This section includes some of the controversies in which R. Eliezer was embroiled, particularly his disagreements with R.

<sup>15</sup>Eben Haezer, 2a. אקרא לספר הזה אבן העזר על כי עזרני צורי לגלות בו טעמי מנהגי ראשונים וגם עמקי סתרי דינין ופירושי עמקי הלכות איסור והיתר, והיבורי הלכות של ג' סדריים הצריכות לעתים דעה ביניהם... (שם א', ז' יב)  
 Urbach misinterpreted the statement by understanding it to refer to the division of the text into three parts. See E. Urbach, op. cit., p. 152 Cf. S. Albeck, Introduction, Ch. 7. Urbach then went on to weaken his own case by maintaining correctly that R. Eliezer did not hold consistently to such a division. The fact is that there was an admixture of elements from many different halachic contexts in all parts of the text. R. Eliezer never did project a clear cut division of the text into three subject areas. His way was not to insist on such a logical order. In the prologue he was interested merely in providing a rationale for his work, as well as the reason for its title. A better understanding of the division of the text would be as follows: (1) assorted responsas; (2) Issur V'Heter as expressed in numerous varied tractates of the Talmud; (3) commentary on the three Sedarim; (4) assorted responsa appended to the end of the text. In all parts of the work, an attempt was made to deal with the inner meaning of the Halacha. It was not a separate portion.

<sup>16</sup>This section begins in our text on p. 2a and continues through 87b.

Tam.<sup>17</sup> Those responsa that were chosen for selection were not, however, those in which he was in conflict with other authorities. They represented merely a cross section of R. Eliezer's correspondence. Often, the correspondence was utilized as a springboard for a discussion in depth of those halachic issues that were of interest to R. Eliezer. Many of the discussions belonged logically to the part of the text that dealt with the Talmudic commentary. In most instances, no later references were made by R. Eliezer to the earlier discussion. The main section of our text is in the form of a commentary on the tractates of Berachot,<sup>18</sup> Hullin,<sup>19</sup> Aboda

<sup>17</sup>Supra, Chapter I.

<sup>18</sup>The tractates are listed in the order in which R. Eliezer dealt with them. Berachot is commented on for a number of reasons. It is traditional that Man's relationship to God precede all other considerations; the fact that the Talmud itself begins with Berachot explains R. Eliezer's choice as well. Berachot was also considered to be in the category of Issur V'heter (see Halachot Gedolot, Ch. 4) and was, therefore, included (supra, footnote 15). Berachot was also important for R. Eliezer because of his interest in the liturgy. He included material in it that was covered in his commentary on the prayer book, and it constituted one of the larger chapters of his book.

<sup>19</sup>Hullin was chosen because it constituted the best possible example of Issur V'heter. A great deal of attention was devoted to Hullin, and the page by page commentary, including a series of related Teshubot, extended over many pages of our text.

Zara,<sup>20</sup> Niddah,<sup>21</sup> Shabbat, Erubin, Pesachim, Yoma, Beza, Megillah, Rosh Hashana, Sukkah, Taanit, Moed Katan, Babba Kama, Baba Metzia, Baba Bathra, Sanhedrin, Shabuot, Yebamot, Ketubot, Kiddushin, Gittin, and Sotah. The tractates noted come from the three Orders of Moed,<sup>22</sup> Nezikin,<sup>23</sup> and Nashim.<sup>24</sup> The comments on the tractates follow one another consecutively through the texts, but there is no pattern to the selection of material. Some minor points are treated at length, while others were hardly touched on at all. Some of the commentary reflected R. Eliezer's own academic interests. In other cases, he reacted to questions that were put to him by his students and disciples. Often the commentary was

<sup>20</sup>Aboda Zara is part of the Order of Nezikin, one of the orders dealt with by R. Eliezer. It is not, however, arranged together with the other tractates of Nezikin. Rather, it was considered also as falling into the category of Issur V'heter (see S. Albeck, Introduction, Ch. 7). His commentary to Aboda Zara highlighted the relationship of the Jewish community to the non-Jewish world. It contains not only the usual academic discussion common in Talmudic commentary, but also pointed practical comments on Jewish relationships to non-Jews. See infra, Chapter V.

<sup>21</sup>Niddah is of the Order of Taharot, but is included here as part of R. Eliezer's comments on Issur V'heter. As will be noted, Niddah was considered to be a matter of great importance for R. Eliezer. See supra, Chapter III. Immediately after Niddah, R. Eliezer began with the three selected Orders.

<sup>22</sup>Missing from Moed are the tractates Shekalim and Hagiga, with some minor variations in order from the accepted Talmudic arrangement of tractates.

<sup>23</sup>Notably missing from Nezikin are Makkot and Horayot with Aboda Zara dealt with above as a species of Issur V'heter.

<sup>24</sup>There is some disorder in the arrangement. R. Eliezer did not deal with Nazir; Niddah was dealt with above.

punctuated with Halachic decisions; R. Eliezer first summarized the discussion in the Talmud and then proceeded to state the Halacha as he understood it. No attempt was made to delineate those areas where he dealt with halachic decision and those where his primary concern was for the understanding of the Talmudic discussion. In his commentary, R. Eliezer showed himself to be thoroughly familiar with the commentators who preceded him. His own comments displayed originality and insight, and he went beyond his predecessors when he thought it necessary.

In the final portion of the text, R. Eliezer included his famous correspondence with R. Samuel b. Meir that he reproduced in complete detail.<sup>25</sup> At the end of the text, he also appended other significant correspondence, among which were a number of questions he circularized widely among numerous Torah centers for comment.<sup>26</sup> The text as a whole has the quality of a giant compendium, into which R. Eliezer placed the totality of his life's work in the area of Halacha.<sup>27</sup> It was reworked continually, with material that

<sup>25</sup>The correspondence with R. Samuel extends from 290b to 294c. It is probable that R. Eliezer kept all of his correspondence and that this procedure applied to all the scholars at the time. See supra, footnote 7.

<sup>26</sup>Reference is made here to the famous window question in Eben Haezer, 308d through 310d. For a fuller discussion of the problem, note infra, Chapter VIII.

<sup>27</sup>This is the view taken by Aptowitz (Mabo L'Sefer Rabiah, p. 53').

R. Eliezer thought might elucidate further the positions that he had taken. The material that he chose to write on reflected in part the major areas of R. Eliezer's concern. As we have noted, the stress that he placed on the tractate of Berachot reflected in part the deep interest he had in the liturgy. The material contained on the liturgy in Eben Haezer was related to his work on the prayer book. While it is extremely difficult to judge which source came first, it is apparent that R. Eliezer's initial interest was expressed in his work on the liturgy which he later incorporated into the larger, more compendious work.<sup>28</sup>

We have noted that R. Eliezer termed his work Eben Haezer because of a play on words.<sup>29</sup> There was a deliberate relationship between the title of his text and his name. The coincidence prompted many who quoted him to identify him with his text. He was often given the title, Eben Haezer, and it is in that manner R. Eliezer was quoted by his son-in-law, R. Joel.<sup>30</sup> That the title of the text was well established during the course of R. Eliezer's lifetime is indicated in an exchange

<sup>28</sup>Supra, Chapter I, footnote 263. Particularly important was R. Eliezer's comment (Eben Haezer, 175b)

... וכתבתם בסדר החפלות.

<sup>29</sup>Supra, footnote 7      ... על כי עזרני צורי לגלות בו טעמי  
מנהגי ראשונים

<sup>30</sup>Sefer Rabiah, par. 990.      ... וכבר שאל ר' אברהם בר' שמואל  
מחמי רבנא אבן העזר.

of letters between R. Eliezer and Shemariah b. Mordecai.<sup>31</sup> Similarly, R. Eliezer's communications with the elders of Paris also alluded to the text as Eben Haezer.<sup>32</sup> Very soon after it was written and disseminated, it was referred to not by the name given to us by R. Eliezer, but by the title of Tsofnat Pa'aneah. This title was utilized by scholars who lived not long after the death of R. Eliezer. Among others it was noted by R. Meir of Rothenburg,<sup>33</sup> Mordecai b. Hillel,<sup>34</sup> as well as by R. Haim Or Zarua.<sup>35</sup> In a number of the references given by these authorities, the source in our

<sup>31</sup>Eben Haezer, 294d, 296a. Both of these references relate unquestionably to Shemariah b. Mordecai, a relative of R. Eliezer as indicated above (Chapter I, par. 141). Ehrenreich, in his commentary on that paragraph, mistakenly attributed the words אבן העזר to R. Samuel b. Meir, whose exchange of letters immediately preceded Shemariah's comments. The first statement לארץ ומוציא הדין could, indeed, be attributed to R. Samuel because it falls in the middle of the two texts. Later on, however, (296c) the phrase מורי וקדושי אבן העזר marks the text unmistakably as that of R. Shemariah.

<sup>32</sup>Ibid., 308d. The salutation to R. Eliezer did not spell out formally the title of the text but it is apparent that it was hinted at rather broadly, reading מגדל עזר אבן נזר הרב ר' אליעזר

<sup>33</sup>Responsa of R. Meir of Rothenburg, par. 388. At the conclusion of his work, R. Meir included a summary of the Takkanot of the French Synod of 1160. In doing so, he referred to R. Eliezer as ר' אליעזר בן נתן צמח פענא

<sup>34</sup>Mordecai, Hullin, par. 692.

<sup>35</sup>R. Haim Or Zarua, par. 117. כתב לי ר' עובדיה שראה הצמח פענא בשם ר' אסף עזר בן נתן

own Eben Haezer can easily be discovered. In others, no parallel text can be found within our own sources.<sup>36</sup> At no time was the title Tsofnat Pa'aneah ever suggested by R. Eliezer. Contemporary scholars discussed the contradiction in great detail. It was suggested by some that the two names were a reflection of the fact that there were two books written by R. Eliezer, the first entitled Eben Haezer, and the second, Tsofnat Pa'aneah. Such a view held that material from Tsofnat Pa'aneah found its way into our edition of Eben Haezer primarily because the copyists of the text were none too careful in their recopying of the material.<sup>37</sup> A second view, first expressed by Michal, held that the real title of the text was Tsofnat Pa'aneah and not Eben Haezer. That is the view expressed by L. Zunz, who in all probability derived his views from Michal.<sup>38</sup> Michal

<sup>36</sup> See also S. Albeck, Introduction, Ch. 7. Note, e.g., that the quotation cited by R. Meir of Rothenburg in par. 388 of his responsa is to be found in our text (Eben Haezer, 68d), Albeck noted many similar parallels in R. Meir's citation (Introduction, Ch. 7). However, the sources for quotations made in the name of Tsofnat Pa'aneah cannot always be found in our text.

<sup>37</sup> This was the view held by Azulai (Shem HaGedolim, pt. 3, 63b, as well as pt. 1, 14b). Azulai originally held that Tsofnat Pa'aneah had no connection with Eben Haezer at all. Later, he changed his view to hold that the two were separate works that came from the pen of the same person. Urbach (Baale Hatosafot, p. 53) also holds to this view.

<sup>38</sup> L. Zunz, Zur Geschichte und Literatur, p. 162. Aptowitz (Mabo L'Sefer Rabiah, p. 53) quoted a letter from Michal to Zunz in which Michal alleged that the name of the book was Tsofnat Pa'aneah and not Eben Haezer. It was that

later modified his views considerably, and held that there was but one book, known by two names. The title, Eben Haezer, was the one assigned to the text by R. Eliezer himself. The other, Tsofnat Pa'aneah, was the name assigned to it by later commentators.<sup>39</sup> The reasons for such a discrepancy were never spelled out by Michal. It was supplied ingeniously by Albeck, who held that later authorities supplied that name as a compliment to the author for having the ability to unravel the secrets of the law.<sup>40</sup> The commentators were, however, sharply divided over the title to be used. There were, indeed, some who called it Tsofnat Pa'aneah, but there were many others, perhaps most, who called it Eben Haezer. Moreover, such a division is unknown in Rabbinic literature. If a book is given a specific name by its author, then that

position which was accepted by Zunz uncritically and incorporated into his own work. Zunz was evidently unfamiliar with the later shift in Michal's position.

<sup>39</sup>H. Michal, Or HaHayyim, p. 214. In his comments, Michal did not indicate that he had once maintained a prior position with regard to the problem.

<sup>40</sup>S. Albeck, Introduction, Ch. 7. ...ונראה שכנעו כן לגודל חשיבותו. According to Albeck, R. Eliezer's insights were so deep that another title, implying its mystic character, was utilized. As interesting and provocative as such a theory is, it seems highly improbable. It is precisely because the text dealt with the deeper levels of the law that R. Eliezer gave it the name Eben Haezer. It is, therefore, difficult to comprehend why later commentators would choose a name other than that already chosen by R. Eliezer.

is the name by which it is known to all future authorities. A third position that has much to commend it is one suggested by Aptowitzer. According to Aptowitzer, the only possible solution is one that retains the unity of the text and at the same time provides an explanation for the two names that were extant. Both conditions could be fulfilled if one assumes the existence of a shortened version of Eben Haezer, known as Tsofnat Pa'aneah that was circulated among the Jewish communities.<sup>41</sup> Eben Haezer, as we know it, is a gigantic work. In the medieval world, there was often a scarcity of books. Both the technical problem of copying books and the financial difficulties involved in purchasing them and maintaining a large library constituted serious impediments to medieval scholarship.<sup>42</sup> It would not be

<sup>41</sup>V. Aptowitzer, Mabo, pp. 54-55. Aptowitzer's point of view is also based on pure hypothesis. It was on that score that it was attacked by Urbach (op. cit., p. 153). According to Urbach, the entire theory was based on assumptions that could not be proven. Unfortunately, the material does not lend itself to firm and proveable interpretation. There is no theory that can be buttressed with proveable fact because our sources have left us no clues as to the development of both titles, except for the fact that they existed. Urbach's other objection was that the smaller text was lost while the larger text is extant. That fact is also far from correct. It was sheer accident, as we have noted, that the manuscript of our own text was found. R. Eliezer was quoted widely by his contemporaries, and he exerted a strong influence on those who immediately succeeded him. However, his text was not studied assiduously over a long period of time, and it should, therefore, be understandable that a part of it could well be lost. Certainly, the far-reaching conclusions drawn by Urbach on the loss of the text are not justified.

<sup>42</sup>As profound a scholar as R. Eliezer b. Joel Halevi found himself on occasion without some very fundamental

surprising for a digest of a large study to be circulated, if for no other reason than the fact that such circulation would insure the ready availability of R. Eliezer's legal opinions. This particular procedure was not entirely novel. It is the opinion of some authorities that the work of R. Eliezer b. Joel Halevi was similarly digested.<sup>43</sup> We find no hint of the name in the writing of R. Eliezer because the digest was probably not written by Eliezer himself but by a student. It is clear that all three of the assumptions in the literature to account for the existence of the two separate titles leave something to be desired. In all of the cases, historical theories were based upon tenuous hypotheses, a circumstance dictated by the absence of a manuscript. Aptowitzer's theories seem to have the most validity, are particularly since they/ compatible with the views expressed

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tools of scholarship. He attested in his work, e.g., that there were times in which he did not have before him the commentary of Rashi (Sefer Rabiah, par. 1006). See also infra, Chapter VI.

<sup>43</sup>It is probable that Aptowitzer came upon this particular theory with regard to Eben Haezer out of his work on Rabiah. In that case, the relationship between ר' עובדיה and ר' עובדיה was extremely similar to the relationship he suggested for Eben Haezer and Tsofnat Pa'aneah. Of note, also, is the fact that there were two rescensions of Rashi's work, reflecting for Aptowitzer the existence of larger and smaller editions of a large compendium. V. Aptowitzer, loc. cit.

here on Eben Harasha.<sup>44</sup>

The problem of securing books with which to study was a problem for R. Eliezer as it was for everyone else in his period. The extensive use, therefore, of many different sources by R. Eliezer constitutes a tribute to the thoroughness of his scholarship. An analysis of the sources utilized discloses a veritable encyclopedia of the gamut of Rabbinic literature.<sup>45</sup> This is particularly so in the case of gaonic literature that figured so prominently in R. Eliezer's philosophy of the Halacha. The Babylonian gaonim constituted in the early days of the German community a most significant link with Jewish scholarship. Eben Haezer constituted one of the prime vehicles for the transmission of the halachic values of the East to the Western community.<sup>46</sup> R. Eliezer made use of the following sources:

1. Talmud Babli<sup>47</sup>

<sup>44</sup>See supra, Chapter I, footnote 270. The exact relationship between Tsofnat Pa'aneah and Eben Harasha is open to question. Aptowitz suggested the possibility that Eben Harasha is itself a shortening of Tsofnat Pa'aneah.

<sup>45</sup>Urbach (op. cit., p.153) made some attempt to deal with the sources utilized by R. Eliezer. His list, however, is incomplete and his references sketchy.

<sup>46</sup>References by R. Eliezer to Gaonic literature were scattered among many texts. Often the material cited cannot be found in our extant collections of gaonic literature. It is probable that some of the gaonic texts that were before R. Eliezer are no longer in our possession.

<sup>47</sup>Our entire text was based upon the Babylonian Talmud. References to the Babylonian Talmud were scattered liberally throughout the length and breadth of the text, though special

2. Talmud Yerushalmi<sup>48</sup>
3. Tosefta<sup>49</sup>
4. Bereshit Rabba<sup>50</sup>

attention is paid to the tractates R. Eliezer chose to comment upon. R. Eliezer showed a thorough and systematic knowledge of the entire corpus of Talmudic literature, an encyclopedic understanding that served him well. In most instances, the text that was before him was identical with the text that is before us. However, there was at least one exception, unnoticed by the traditional commentators. The Talmudic text in Ketubot, 54a reads as follows: רב אמר הלכה כאנשי יהודה ושמואל אמר הלכה כאנשי גליל בבל וכל פרווהא נהיג כרב

However, in Eben Haezer, 261a the text, as quoted by R. Eliezer, is quite different. רב אמר הלכה כאנשי ירושלים ושמואל אמר הלכה כאנשי יהודה ואמרינן בבל וכל פרווהא נהיג לבתחילה כאנשי יהודה

Ehrenreich, in his commentary to our text, noted the discrepancy in the reading. It is possible that R. Eliezer had a variant reading of the Talmud in front of him. R. Hananel reflected in his comment (as quoted by Tosafot Ket., 54a) the standard reading of the text.

<sup>48</sup>The Palestinian Talmud was quoted liberally by R. Eliezer. There are seventy-nine separate references to it in the course of our text. In most instances, it is referred to simply as the 'ירושלמי'. In others, it is cited as תלמוד (Eben Haezer, 257a, 257b). Often R. Eliezer utilized the Palestinian Talmud in order to compare readings with the Babylonian. The following quotation illustrates the attitude of R. Eliezer towards the Palestinian Talmud: ...והנה תלמוד שלנו והירושלמי אחד (הוא אלא) שהירושלמי מפורש יותר ומינה נשמע לפרש תלמוד שלנו. (Eben Haezer, 286b)

The Palestinian Talmud was used often by R. Eliezer, and constituted one of his most important sources.

<sup>49</sup>The Tosefta is mentioned as a source on the following pages of Eben Haezer, 43a; 112b; 115a; 132b; 160b; 204a. Though the Tosefta was not cited often, it was available for use. The usual Tannaitic source for him was the Mishna which he utilized much more often.

<sup>50</sup>Bereshit Rabba is the only Aggadic Midrash referred to frequently by R. Eliezer. It is mentioned in Eben Haezer, 30a; 87a; 101a; 188b; 230d (where Aggadic material is used merely to illustrate an halachic problem); 240a; 251a. R. Eliezer showed himself to be thoroughly familiar with the

5. Sifra<sup>51</sup>
6. Sifre<sup>52</sup>
7. Seder Olam<sup>53</sup>
8. Midrah on Lamentations<sup>54</sup>

contents of the Midrash. Though he was mildly interested in Aggada, his primary focus was Halacha.

<sup>51</sup>Eben Haezer, 287d; 169a; 30a. R. Eliezer referred to the Sifra in the manner in which it was often quoted, viz., חז"ל הכהנים. Albeck, in his exhaustive introduction, neglected to note the Sifra as one of R. Eliezer's sources.

<sup>52</sup>There are two separate references to the Sifre in Eben Haezer. The first occurs on 86b and is accompanied by a statement identifying the source as פרשת וזאת הברכה. The second reference is to be found in Eben Haezer, 117d. Ehrenreich pointed out that the reference is nowhere to be found in the Sifre. (The verse quoted in Deut. 14:21, also occurring in Ex. 23:19 and Ex. 34:26.) It can be found, however, in the Mechilta (Lauterbach Ed, Vol. III, p. 188). The discrepancy is explained by the fact that Sifre was a term taken by the authorities of our period in a fashion different than the manner in which it is ordinarily used. According to R. Samuel b. Meir (commentary on B. Bathra, 124b), the term Sifre applied to the halachic Midrash on Exodus (including the Mechilta) as well as Numbers and Deuteronomy. It is in this sense that R. Eliezer used the term Sifre.

<sup>53</sup>Eben Haezer, 86d. The reference is to Seder Olam Rabba, Ch. I. It was made in response to a question that dealt with an Aggadic problem.

<sup>54</sup>Ibid., 296a.

9. Pesikta D'Rav Kahana<sup>55</sup>
10. Tanna Debe Eliyahu<sup>56</sup>
11. Pirke de R. Eliezer<sup>57</sup>
12. Seder Rav Amram<sup>58</sup>

<sup>55</sup>Ibid., 63a. The text can be found in Pesikta D'Rav Kahana, Buber ed., p. 123.(par. HaOmer). See footnote 23 of Buber that took cognizance of R. Eliezer's comments. In addition, a question posed to R. Eliezer by R. Hillel, his relative, included a reference to the Pesikta (Eben Haezer, 67c) which R. Eliezer interpreted with great ingenuity. The reference can be found in the Pesikta, Buber ed. p. 244. Note particularly Buber's footnote 48 in which he claims that R. Eliezer's comment was a valid one.

<sup>56</sup>Ibid., 141b,, quoted again on 145a. This particular Midrash was composed by a Babylonian at the end of the tenth century. See M. Steinschneider, Jewish Literature From the Eighth to the Eighteenth Century, p. 41.

<sup>57</sup>Ibid., 54a.

<sup>58</sup>Seder Rav Amram is mentioned in Eben Haezer, a total of eight times. See Eben Haezer, 53c; 164c; 166b; 166d; 174a; 176a; 177a; 181c. In all of the references, R. Eliezer showed a thoroughgoing knowledge of the text. In some instances, he described himself as researching a specific problem in the text, ultimately finding that which he sought. The words מִצָּחִי, מִצָּחִי occur frequently in these references, leaving one with the impression that the text was readily available to R. Eliezer and that he studied it assiduously. While R. Eliezer was generally familiar with the work of Saadiah, he had no knowledge of Saadiah's Siddur which was circulated widely but only in Arabic speaking countries. The text of Seder Rav Amram that was before R. Eliezer is identical with the text that we possess. In one instance, however, R. Eliezer might have possessed a variant text. Eben Haezer, 160a, reads as follows:

ובסדר תפילות לא הזכיר כל נדרי כלל... ומצאני נמי בסדר שהתחפלל  
במנוחה מברך כל הברכות כו'ל...;

In his commentary, Ehrenreich identifies the text referred to by R. Eliezer with Seder Rav Amram. There are two problems involved in such an identification. The first is that R. Eliezer always identified Seder Rav Amram by its proper name and never once by a reference to an anonymous prayer book. Secondly, there is a discrepancy between our text of

13. Halachot Gedolot<sup>59</sup>  
 14. Halachot Ketuot<sup>60</sup>

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Seder Rav Amram and the source referred to by R. Eliezer. While R. Eliezer indicated that Kol Nidre was excluded from his text, it is included in our text of Seder Rav Amram. It is possible that the text R. Eliezer had before him was different from our own. On the problem of Kol Nidre, see infra, Chapter VIII.

<sup>59</sup>Reference to Halachot Gedolot are to be found in Eben Haezer, 9b; 13c; 14c; 17c; 23a; 45c; 128c; 155d; 69c; 70a; 81b; 11b; 112a; 173d; 257b; 246c. The authorship of Halachot Gedolot is a matter of some dispute. Complicating the question of its authorship was the fact that the work went through a process of emendation and change. By the time it reached the hands of R. Eliezer, it was not one text but a conflation of many different texts. In common with the dominant opinion of his period, R. Eliezer considered the Halachot Gedolot to have been written by Yehudai Gaon. See, e.g., Eben Haezer, 112a.

...וכן אמר רב יהודאי גאון זצ"ל בהלכות גדולות

A similar view could be adduced from comments made by R. Eliezer in 234b and 70a. It is now the dominant view that the author was Simeon of Kahira. See M. Steinschneider, op. cit., p. 26.

<sup>60</sup>The title of Halachot Ketuot was not used consistently by R. Eliezer. It was one of a variety of names used by R. Eliezer to describe a small compendium of gaonic halachot, distinguished from Halachot Gedolot noted above. Mueller has pointed out (J. Mueller, Mafteah Litteshubot HaGeonim, p. 3) that there were two different kinds of Gaonic commentary. The first is a commentary on the totality of the Talmud. This approach was characteristic of Halachot Gedolot. The second focused on the conclusions of Talmudic debate rather than the debate itself. This second approach was far more practical in nature and sought to provide guidance in the principles of Jewish law to the people. That was the approach utilized in Halachot Ketuot. Mueller holds that copyists and editors confused the two approaches, and many glosses were added over the course of time. The small compendium of Halachot was in all probability edited by Yehudai Gaon. In Eben Haezer, it was referred to as follows: Halachot Ketuot - Eben Haezer, 128c; 257b; 13d; Halachot Ketsuvot - Eben Haezer, 128d; Halachot Pesukot - Eben Haezer, 9b. The different titles

15. She'eltot of R. Ahai<sup>61</sup>
16. Teshubot HaGeonim<sup>62</sup>
17. Works of Hai Gaon<sup>63</sup>

utilized by R. Eliezer all refer to a common text, despite differences in nomenclature. R. Eliezer referred much more to the Halachot Gedolot than he did to the smaller collection.

<sup>61</sup>The She'eltot of R. Ahai were mentioned with some frequency by R. Eliezer. In all probability the text was composed in Palestine as held by Louis Ginzberg (Article entitled "Ahai Gaon," Jewish Encyclopedia, Vol. I, 278-280). The She'eltot were known in the Western World. Ginzburg did not mention R. Eliezer as one of those to whom the She'eltot were available, although he did note Rashi's use of the text. The She'eltot are mentioned by R. Eliezer in Eben Haezer, 9b (where it is cited together with Halachot Gedolot and Pesukot.), 16a; 104a ( 'וכן רב אחאי גאון בשאלות פ' בהעלותך ) 195d ( שאלות דרב אחאי ). R Tam also made liberal use of the She'eltot. The texts that they possessed were different from the printed She'eltot that are, according to Steinschneider, mere extracts and compendia (M. Steinschneider, loc. cit.).

<sup>62</sup>As was indicated, R. Eliezer made copious references to gaonic literature. It represented perhaps a most significant influence upon him. Often R. Eliezer left us specific information on the identities of the Gaonim to whom he referred. Just as often, the references are anonymous, and it is impossible to identify them on the basis of R. Eliezer's statements. They are referred to in various ways, such as:

They are all covered here under the rubric of Teshubot HaGeonim. Gaonic statements that were identified in some fashion are listed separately. The following are the references as they occur in Eben Haezer: 18a; 62b; 102d; 104b; 105c (Note the parallel passage in Or Zarua, Part I, par. 381 in which the text quotes Rabiah, but not R. Eliezer. The gaonic source here too remains anonymous), 108b; 111a (identified by Ehrenreich as included in a collection entitled Hemda Genuza. See J. Mueller, Mafteah, pp. 26-28, 128a (also identified by Ehrenreich as having been included in a collection entitled Teshubot Geonim Rishonim, par. 46. See J. Mueller, Mafteah, pp. 23-26), 137c; 154a; 162a; 209d; 234c; 260cd.

<sup>63</sup>The references that R. Eliezer made to Hai Gaon were frequent, more frequent than to any other scholar of the Gaonic

period. Hai was the last of the influential gaonim. His work constituted a significant bridge between the earlier and the later period. He was quoted at length not only by R. Eliezer but by his contemporaries as well. Hai was one of the most prolific of the Gaonim. In the collection of rabbinic responsa, his contribution was perhaps greater than those of any of his contemporaries. Moreover, his halachic work included not only responsa literature, but also commentaries on the Talmud and a series of other halachic volumes. It is apparent that R. Eliezer was familiar with a good deal of that literature. A good deal of material originally written by Hai has been lost. See S. Assaf, Tekufat HaGeonim V'Sifruta, pp. 198-202; 139-142, for a precise summary of Hai's extant work as well as an estimate of that which has been lost. At times, the references noted in Eben Haezer point to their sources in Hai's work. At other times, they are obscure and impossible to identify. Wherever possible, the sources for R. Eliezer statements are identified in the following references:

ובשערי רבינו בחיי (האי) מצאתי

a. 26b.

R. Eliezer was referring to a large work by Hai known as Shearim DeRav Hai (cf. Rashi, Shab. 39d ר"ה מחמה מררין) widely known to the scholars of France and Germany. The name of this particular text is Sefer MaKah U'MemKar and was originally written in Arabic; the translation became current in the twelfth century. It is also possible but not probable that R. Eliezer referred here to a totally different text entitled Sefer Shabuot, also called Sha'are Shabuot.

b. 38c. משערי רבינו האי...

c. 44a. בשערים דרבינו האי גאון

d. 81a. רב האי גאון כתב בספר החכמה שלו...

The title of the text to which R. Eliezer referred is extremely difficult to identify. R. Hai did not write a book entitled Sefer HaHochma. The context of the discussion suggests reference was to Sefer MeKah U'MemKar.

e. 70d. רבן פסק רבינו האי בשערים שלו...

This phrase was quoted in the context of a question posed to R. Eliezer by R. Isaac b. Asher Halevi of Speyer. Both the statement and R. Eliezer's reaction to it are indications that was a text in wide circulation among German scholars.

f. 74c. רבן נמי חרץ רב האי גאון את המשפט בשערי בינה שלו

g. 104c. רב... רבפי' רב היי גאון... מצאתי Cf. Or Zarua,

par. 378. Though it is none too clear what the reference refers to, Hai wrote a tractate called Hilchot Shehita to which R. Eliezer probably refers. See S. Assaf, op. cit., p. 202.

- h. 108a. בשערי הגאון מצאתי Probable reference to Hai.
- i. 112a פירש רב האי גאון
- j. 155a, par. 268 וכן פירש רב האי גאון par. 269 וכן פסק האי גאון Both instances refer to responsa of Hai.
- k. 115b. וכן הורה מר רב האי גאון
- l. 117d. וכן פירש מר רב היי גאון Reference here is probably to Hai's commentary on Hullin, extant only in the form of a lexicon.
- m. 121c. כך פי' מר רב האי גאון
- n. 202d. והכי תריץ רב האי גאון
- o. 213b. כבר נשאלה שאלה זו לפני רבינו האי See the collection of responsa entitled Zichron LaRishonim, par. 20.
- p. 224b. דאמר רב האי
- q. 256c. וכן פירש רבינו האי בשערי החכמה שלו Refers to Shaare Hai.
- r. 263c. וכן פסק רבינו האי Possible reference to Shaare Shevua.
- s. 237d. וכן פסק רבינו האי זצ"ל Possible reference to Shaare Shevua.
- t. 242b. וכן פסק רבינו האי
- u. 292b. וכן חרץ רב האי גאון את המשפט בשערים שלו

It is clear from the many references to Hai's work that R. Eliezer considered him to be one of the most important of the halachic authorities of the earlier period. It was to a large extent Hai Gaon who R. Eliezer had in mind when he wrote with such respect about the earlier authorities. See supra, Chapter I.

18. Works of Sherira Gaon<sup>64</sup>

19. Commentary of R. Hannanel b. Hushiel<sup>65</sup>

<sup>64</sup>Sherira Gaon was not mentioned as frequently by R. Eliezer as his son, Hai Gaon. His comments were noted twice. The first reference is Eben Haezer, 102c (probably a responsum dealing with the laws of slaughter) and 104c (see Zichron Rishonim, par. 376. Note J. Mueller, Mafteah, pp. 197-201, in which we find parallel sources to the joint responsum.

<sup>65</sup>Hannanel b. Hushiel, the Rabbi of Kairwan, lived in the first half of the eleventh century. He was considered by some to have been the student of R. Hai (see H. Michal, op. cit., p. 416) and certainly followed the views of R. Hai in most of his formulations. There are forty-nine separate references to R. Hannanel in Eben Haezer. All of these are references to R. Hannanel's commentary that originally covered the entire Talmud. The typical reference in R. Eliezer's work is פירוש ר' חננאל

On one occasion, however, R. Eliezer referred to חסידות רבינו חננאל (Eben Haezer, 108d). We know through the comments made by Mordecai (Hullin, par. 714) that R. Hannanel collected a series of his opinions on the laws of ritual slaughter. In his own commentary on Hullin, R. Eliezer mentioned opinions of R. Hannanel in three separate contexts. In none of them did R. Eliezer refer specifically to R. Hannanel's treatise on Shehita, although the possibility of such an inference being made certainly exists. Note Eben Haezer, 108d; 104c; 115a. The wide ranging references of R. Eliezer to the work of R. Hannanel and the depth of knowledge that R. Eliezer had of his work constitute evidence that the Jews of North Africa and those of Germany maintained some measure of contact with one another. Albeck found it difficult to believe that R. Eliezer had the writings of R. Hannanel before him. (S. Albeck, Introduction, Ch. 8) Albeck's view was that R. Eliezer took most of his knowledge of R. Hannanel's work from a secondary source, viz., R. Jacob Halevi. Such an hypothesis seems of doubtful validity because of R. Eliezer's continuous references to his own experience. Again and again he stated "מצאתי בפרוש ר"ח" or words to that effect. Though there were times when quotations were made in the name of other scholars, it is clear that R. Eliezer saw the text with his own eyes.

20. Sefer MaMiktso'ot<sup>66</sup>

21. Sefer Hefetz<sup>67</sup>

<sup>66</sup>Eben Haezer, 196b. There is but this one reference in our text, and it relates to an opinion of R. Amram Gaon ... ראני מצאתי בספר המקצועות שפסק רב עמרם גאון. It was, however, more widely quoted by R. Eliezer's contemporaries. In its original format, Sefer HaMiktso'ot was a large compendium of gaonic opinions which quoted in large measure from Halachot Gedolot among other authorities. Unfortunately, it has not survived in its original form. Scholars have argued over the identity of its author. The Medievals (Mordecai, Ketubot, par. 175, as well as Or Zarua, pt. 1, par. 615) considered the author of Sefer HaMiktso'ot to be R. Hannanel. While speaking of Sefer HaMiktso'ot, R. Eliezer indicated רליחה דמצאתי במיטוק רבינו חננאל implying, if not spelling out, that R. Hannanel was the author of the text. It was a view shared in part by some moderns. See S. Albeck, Introduction, Ch. 8; H. Michal, op. cit., p. 416, as well as H. Azulai, op. cit., Maarechet Sefarim, par. 212. Michal took note of the fact that Sefer HaMiktso'ot quoted R. Hannanel as one of its authorities and held that the book was written by one of his students. Weiss (Dor Dor V'Dorshav, Vol. 4, p. 274) also noted the contradictions between R. Hannanel and Sefer HaMiktso'ot but nonetheless held that the core of the book was that of R. Hannanel. However, included in the book was a great deal of gaonic material not written by him. A survey of the extant literature on the authorship of the book can be found in S. Assaf, op. cit., pp. 208-209.

<sup>67</sup>Ibid., 26d, 233b. Sefer Hefetz was quoted as a source by a number of authorities, among them Tosafot B. M. 4c, as well as SeMaG, pt. II, par. 111. According to Azulai (op. cit., pt. II), the author of Sefer Hefetz was R. Hannanel (Cf. H. Michal, op. cit., p. 117). Most authorities tend to discount that identification and assume that it arose out of a confusion of the abbreviation of his name (ר"ח could be interpreted either as R. Hannanel or R. Hefetz). The view of Albeck (Introduction, Ch. 8) was that the author of the text was R. Hefetz b. Yatzliah, a view concurred in by some authorities and not by others. Whether the true author was that Babylonian scholar, or another of different origin, the consensus was that the author of the text was indeed a R. Hefetz and not R. Hannanel. Note the summary of the literature in S. Assaf, op. cit., pp. 204-6.

22. Code of R. Isaac Alfasi<sup>68</sup>  
 23. Aruch of R. Nathan<sup>69</sup>

<sup>68</sup>Ibid., 164a (quoted as holding to a view other than R. Hannanel ורבינו חננאל פסק נמי כרב ורבינו יצחק מאלפס פסק כללי) as well as 196a. R. Eliezer only brought two quotations from Alfasi, while he quoted much more extensively from the work of R. Hannanel, Alfasi's teacher. Some of the disparity might find its expression in the lack of contact between Spain and Germany. Though, as we shall note, R. Eliezer's relationship with the scholars of Provence and Narbonne was far-reaching, that relationship did not extend to the communities of Spain to which R. Isaac went after leaving North Africa. The lack of additional references to Alfasi is particularly striking because of the immediate impact his work had upon his own contemporaries. Note the extensive comments made by I. Weiss on R. Isaac's influence (I. Weiss, op. cit., Vol. IV, pp. 286-290). Those men listed by Weiss who were deeply influenced as well as those who were moved to write commentaries on the text were exclusively scholars of Provence as of Spain. On the other hand, Aptowitzer noted in his work on Rabbiah a much greater focus of attention on Alfasi's code. Note his comments in Mabo, p. 259.

<sup>69</sup>Ibid., 43g, 211b ( וסעך לפירוש זה מצאחי בערוך ) Albeck (Introduction, Ch. 8) mistakenly considered the Aruch to be based fully on the work of R. Hannanel. That view was grounded in the fact that R. Hannanel was cited a great many times in the Aruch, and the intertwining of the work of the two men was noted by Rabbenu Tam (Sefer Heyyashar, par. 575). The extent of R. Hannanel's influence on the work of R. Nathan is undisputed. Hannanel's views were, however, not determinative in the writing of the Aruch. R. Nathan's studies in Provence at the feet of R. Moses HaDarshan put him in the center of the intellectual world at the time when Jewish learning was being transferred ~~from~~ Babylonia and North Africa to Western Europe. The Aruch, itself, became one of the prime vehicles for the transference of such learning and was well known to Rashi and the Tosafot.

24. Megillat S'Tarim<sup>70</sup>
25. Responsa of R. Nahshon Gaon<sup>71</sup>
26. Responsa of R. Nathan Gaon<sup>72</sup>
27. Responsa of Mar R. Tsadok Gaon<sup>73</sup>

<sup>70</sup>Ibid., 238a. The book, Megillat S'Tarim, was an halachic work of some significance composed by R. Nissim b. Jacob Gaon, a colleague of R. Hannanel. According to Azulai, R. Nissim was not a gaon at all. His name was derived from the fact that was considered to be a student of Hai Gaon though, in fact, he never was in Babylonia. Cf. H. Azulai, op. cit., Pt. I, par. 49. Though the text itself appeared only once in Eben Haezer, it was referred to frequently by R. Eliezer's contemporaries. Note, e.g., Tosafot on Erubin, 77b, as well as Pesahim, 51a. Note S. Albeck, Introduction, Ch. 8, for a full listing of the sources. R. Nissim was mentioned in one other context (Eben Haezer, 46b). In that reference, R. Eliezer did not mention that the material quoted came from Megillat S'tarim. He did not indicate either what the source was for R. Nissim's comments.

<sup>71</sup>Ibid., 282b, 111b ( רבן הורה רבינו נחשון גאון )  
See J. Mueller, Mafteah, p. 132. Nahshon was Gaon of Sura at the end of the ninth century. His responsa were widely known during the period of R. Eliezer.

<sup>72</sup>Ibid., 175a, 176a. Cf. Seder Rav Amram, 37a.

<sup>73</sup>Ibid., 174a (based on Seder Rav Amram, p. 326), 138a (is based upon an anonymous gaonic responsum. It purported to tell of a controversy between the students of R. Jacob Gaon and R. Tsadok. R. Eliezer identified himself as siding with the views of R. Tsadok. The issue is summarized by Mordecai in Shavuot, 63, except that Yehudai Gaon is the protagonist and not Jacob Gaon; 145; 111b (a disputation over the laws of Shehita between R. Tsadok Gaon and R. Jacob Gaon). R. Tsadok was gaon of Sura from 820-821 following Abimi Gaon. Note I. Weiss, op. cit., Vol. IV, pp. 43-45 on R. Tsadok's role in the Babylonian hierarchy of the time.

28. Works of R. Samuel b. Hofni<sup>74</sup>
29. Works of Saadia Gaon<sup>75</sup>
30. Sefer HaRfu'ot<sup>76</sup>

<sup>74</sup>Ibid., 101a (reference to Sha'are Shehita); 104d (Sha'are Shehita, in our text erroneously as Sha'are Shehitot); 156b (no specific reference to R. Samuel's writings but the context suggests the possibility that R. Samuel included these comments in his work entitled Sha'are Berachot). R. Samuel was the Gaon of Sura from 997-1013. He was the father-in-law of Hai Gaon, and was extremely prolific and many sided in his writings. R. Eliezer knew of his writings but it is doubtful that he was aware of their scope. For a survey of R. Samuel's halachic work, note S. Assaf, op. cit., pp. 194-197.

<sup>75</sup>Ibid., 86d. The quotation from Saadia did not occur in an halachic context. Its concern was primarily that of Biblical exegesis. It is possible that R. Eliezer did not derive his knowledge of Saadia's comment directly but from the work of Judah b. Barzilai on Sefer Yetsira. It is noteworthy that Hai Gaon is quoted at great length and Saadia not at all in halachic matters. The difference is probably explained by the fact that Saadia's work was seldom translated into Hebrew and the German scholars did not know Arabic. In all probability other European authors of the period derived their knowledge of Saadia also from secondary texts. Cf. H. Malter, Saadia Gaon, p. 287. For R. Eliezer, as for Rashi, Saadia was the great and famous authority of the East who was known above all by reputation, but not through his works.

<sup>76</sup>Ibid., 117d (Cf. E. Urbach, op. cit., p. 154, footnote 33, where he erred in citing the reference in Eben Haezer). Note the interesting parallel between the comments of R. Eliezer here and those of R. Nathan in the Aruch (on the word שִׁבְחָא) though R. Nathan apparently was not aware of the comments of Asaph. Note also the comments of the gaonim collected by B. Levine, Otsar HaGeoim, Taanit, par. 66. See also Eben Haezer, 246b. In all likelihood, R. Eliezer did have Asaph's writing before him since it was known by others of his time. See, e.g., Rashi's comments on Judges 16:16. The date as well as the place of Asaph has been a subject of some dispute among scholars. There are some who date him as late as the ninth or tenth century, which would make R. Eliezer one of the earliest scholars to be aware of Asaph's

31. Responsa of R. Jacob Gaon<sup>77</sup>
32. Responsa of R. Moses Gaon<sup>78</sup>
33. Responsa of R. Sar Shalom Gaon<sup>79</sup>
34. Responsa of Mar R. Tsemah Gaon<sup>80</sup>

work. Note Steinschneider's dissent from such a view (M. Steinschneider, op. cit., p. 367), as well as the comprehensive Bibliography noted in S. Baron, A Social and Religious History, Vol. 8, p. 393.

<sup>77</sup>Ibid., 111a (where he is described as taking a position seriously attacked by his colleagues and their students), 138a (where again he is described as involved in controversy with his students, R. Tsadek Gaon). Jacob was gaon of Sura from 801 to 815 and was considered by some to be the author of Seder Tannaim. See S. Baron, A Social and Religious History, Vol. VI, 31. See also J. Mueller, Mafteah, p. 73.

<sup>78</sup>Ibid., 196a, 166b. See S. Albeck, Introduction, Ch. 8. He was Gaon in Sura for ten years.

<sup>79</sup>Ibid., 84a (רמב"ן לי מנצחתי בחבורות (רב) שר שלום גאון). Cf. Or Zarua, B. Kamma, par. 353. R. Isaac Or Zarua quoted the text exactly as given by R. Eliezer; 156a (quoted by J. Mueller, Mafteah, p. 96, par. 47, except that Mueller mistakenly ascribed the quotation to Rabbeinu Asher, Ch. 4, Rosh Hashana, instead of recognizing the original source in Eben Haezer); 166d (וכן אמר מר רב שלום גאון... Cf. Seder Rav Amram, p. 41. Sar Shalom was Gaon of Sura for ten years from ca. 849-859, and left approximately one hundred responsa.

<sup>80</sup>Albeck indicated in his Introduction, Ch. 8, that there were three separate gaonim known by that name, two of Pumbeditha and one of Sura who functioned as gaonim within fifty years of one another. It was impossible for Albeck to discern which one was meant by R. Eliezer. The references in Eben Haezer are as follows: 97b ... ומר רב צמח גאון אמר ; 81d וכן פסק רב צמח גאון ; 4cd. (Note the long comment of Ehrenreich ascribing the responsum to R. Tsemah Gaon though his name is not specifically noted. The additional difficulty of the text is that its original Talmudic source cannot be identified. Cf. Mordecai, Ketubot, par. 256. In none of these references did R. Eliezer indicate exactly which Gaon named

35. Responsa of Abimi Gaon<sup>81</sup>
36. Sefer V'Hizhir<sup>82</sup>
37. Maase HaMechiri<sup>83</sup>
38. Kaliri<sup>84</sup>

Tsemah he was quoting. It might, however, be significant that R. Eliezer fixed most of his attention on the gaonim of Sura rather than on those of Pumbeditha. On that basis, it would seem at least logical to assume that our R. Tsemah was Tsemah b. Mar R. Hayyim, the half brother of R. Nahshon Gaon.

<sup>81</sup>Mar R. Abimi Gaon was mentioned just once in our entire compendium and then only together with a group of his colleagues who were engaged in disputation with their mentor, R. Jacob Gaon (Eben Haezer, 111b). It was this incident that was discussed by Mueller in his index (J. Mueller, Mafteah, p. 74). Unfortunately, Mueller assigned the text by error to Rabbenu Asher rather than recognizing its original source in Eben Haezer.

<sup>82</sup>Eben Haezer, 13b. Cf. Tosafot, Hullin, 106b, in which the very same issues are discussed. Note, however, that the text mentioned is given as Sefer Hizhir. That the correct title is V'Hizhir was noted by I. Stein in his commentary on SeMaG, Hilchot N'tillat Yedayim, p. 112a. Note also L. Zunz, Hadrashot B'Yisrael, pp. 428-9, footnote 25. H. Albeck, in bringing Zunz up to date, denied Zunz's thesis that Sefer V'Hizhir is to be identified with Midrash Hashkem.

<sup>83</sup>Ibid., 185a. Albeck (Introduction, Ch. 8) identified the text as being identical with Sefer HaPardes ascribed to Rashi, but edited by R. Nathan b. Machir and R. Menacham b. Machir, both students of Rashi. Note also Ehrenreich's commentary on the text that follows Albeck's thesis. For a clarification of the role of the brothers in the editing process, see Sefer Ha Pardes, par. 25.

<sup>84</sup>Ibid., 175a. This is the single reference to the religious poetry of R. Eliezer Kalir. However, it must have been a relatively popular selection, recited on Shabbat Shekalim, because it is brought by a number of authorities including Rashi (Voma, 47a) and the Tosafot (Men. 35b). L. Landshut (Amude HaAvoda, p. 37) does not note Eben Haezer as one of the sources quoting Kalir.

39. Works of Rabbeinu Gershom<sup>85</sup>  
 40. Responsa of R. Machir b. Judah<sup>86</sup>  
 41. Responsa of R. Leon<sup>87</sup>

<sup>85</sup>In addition to the earlier gaonim, perhaps the most important influence on R. Eliezer was that of R. Gershom. He was referred to by R. Eliezer as Meor HaGolah. (See *infra*, Chapter III). It is clear from the references to him that R. Gershom fulfilled the most important role of acting as a bridge between the older wisdom of the Babylonian Gaonim and the newly developing center of Jewish life in Germany. Most of R. Eliezer's references were to the responsa literature of R. Gershom. Some reflected R. Gershom's role as legislator and initiator within the Jewish community, and there was some reference to his work as commentator. The references are as follows: Eben Haezer, 114b (רַבֵּנוּ גֵרְשֹׁם מֵאֵר הַגּוֹלָה... , an interpretation of a difficult matter in Hullin), 196d (again רַבֵּנוּ גֵרְשֹׁם מֵאֵר הַגּוֹלָה in which R. Gershom's decision was accepted by later authorities though it was in marked conflict with a view of Yehudai Gaon. R. Gershom gave due credit to his own teacher, R. Leon). The exact passage repeated once more in Eben Haezer, 234b (רַבֵּנוּ גֵרְשֹׁם מֵאֵר עֵינֵי הַגּוֹלָה ) without it being commented on either by R. Eliezer or by later commentators, 242b (this time only רַבֵּנוּ גֵרְשֹׁם ), 294a (in R. Eliezer's correspondence with R. Samuel b. Meir, R. Samuel noted the fact that he used R. Gershom's commentary on the Mishna אֲנִי בִדְקָתִי בַּמִּשְׁנָה דְּמִשְׁנֵיּוֹת שֶׁכָּתַב רַבֵּנוּ גֵרְשֹׁם מֵאֵר הַגּוֹלָה The text was well known (See Tosafot, Zeb. 42a or Men. 16a). R. Gershom left many students to continue with his work. See Eben Haezer, 108d, in which a controversy is described between R. Gershom's students and R. Judah b. Baruch. From the context, it is clear that R. Gershom had already died.

<sup>86</sup>Ibid., 108d. Reference to R. Machir, the brother of R. Gershom, is to be found in the correspondence of R. Eliezer with R. Samuel b. Meir. R. Machir was the author of a commentary organized in alphabetical fashion and known to the authorities of the period. See, e.g., Rashi, Erubin, 22a, Suk. 12b. Cf. H. Michal, *op. cit.*, p. 526. Michal suggested along with Albeck (Introduction, Ch. 8) the possibility that the text should read רַבֵּנוּ גֵרְשֹׁם מֵאֵר בֶּן רַבִּינָא מְכִיר

<sup>87</sup>Ibid., 196d (repeated in 234b). R. Leon was also known as R. Leontin. His real name was R. Judah b. Meir HaCohen (See Or Zarua, Ab. Zara, par. 256). As indicated by R. Eliezer, he constituted one of the most important teachers of R. Gershom. R. Gershom himself attested to the degree to which R. Leon was

42. Responsa of R. Judah b. Baruch<sup>88</sup>  
 43. Responsa of R. Eliezer (HaGadol)<sup>89</sup>  
 44. Responsa of R. Judah HaKohen<sup>90</sup>  
 45. Responsa of R. Jacob b. Yakar<sup>91</sup>

held in respect as a scholar (Responsa of R. Meir of Rothenberg, par. 264, quoting R. Gershom) שר' לראון רבי שלמדני רוב תלמודי זצ"ל חכם מופלא...

<sup>88</sup>Ibid., 108d. R. Judah was a colleague of R. Gershom's disciples and was considered to be a person of considerable knowledge. See Sefer HaPardes, par. 182, where he was described as initiating the custom of celebrating a second Day of Atonement.

<sup>89</sup>Ibid., 156a. R. Eliezer HaGadol was mentioned by R. Eliezer in an attempt to trace the sources of a specific tradition. He was one of the earliest scholars of Mayence. According to R. Eliezer, R. Eliezer HaGadol was the teacher of R. Isaac b. Judah, one of the teachers of Rashi. For a full description of R. Eliezer's background and contribution, see H. Michal, op. cit., pp. 205-6.

<sup>90</sup>Ibid., 177a. R. Judah was one of the important students of R. Gershom, whose children, at least in R. Eliezer's view, were also scholars of note. He was the author of Sefer Dinim, although R. Eliezer did not quote that particular text. See H. Michal, op. cit., p. 462.

<sup>91</sup>Ibid., 30d. (וכן מצאתי בשם רבינו יעקב בן יקר R. Eliezer gave no indication where he derived the view he quoted in the name of R. Jacob. Sefer HaPardes (par. 133) gave exactly the same view quoted by R. Eliezer but did not mention R. Jacob, one of Rashi's teachers, at its source.) 108d (The second reference is contained in a responsum of Rashi that quotes the view of his teacher.

שאלתי את פי מורי ר' יעקב בן יקר

R. Jacob was a student of Rabbeinu Gershom. He had a great influence on his famous student, but that influence remained primarily with his disciples since he did not write anything of note. See H. Michael (op. cit., p. 492).

46. Poetry of R. Solomon b. Judah HaBabli<sup>92</sup>

We have noted above R. Eliezer's deep and far-reaching relationship with his contemporaries, those with whom he was joined in a lifelong labor of dedication to the spread of Torah and to the strengthening of the Jewish community. We have noted, too, the fashion by which R. Eliezer lived on through the work of his sons-in-law and his grandchildren who quoted him widely. Eben Haezer was a book of considerable influence in the immediate generation that followed his own. Yet, as we have noted, R. Eliezer was more widely known as an authority, than was the actual text of Eben Haezer studied with diligence.

The following consists of a listing of those authorities which make use of Eben Haezer.<sup>93</sup>

<sup>92</sup>Ibid., 96c, 169a. The text of Eben Haezer does not contain here a specific reference to R. Solomon HaBabli. Rather, R. Eliezer referred to the identified by Albeck as R. Solomon HaBabli. R. Solomon was well known in R. Eliezer's generation. See, e.g., Rashi, Exodus 26:15. Albeck erred in dating R. Solomon. He quoted Emek HaBaha (p. 15) that spoke of R. Solomon being burned in Spain in the seventh century. Albeck also paired R. Solomon with Amittai b. Shefatya (see Chronicle of Ahimaaz, pp. 15-16). Both Steinschneider (op. cit., p. 343), as well as Zunz (Zur Geschichte und Literatur, p. 63) held that R. Solomon did not live in a Moslem land and that he was a contemporary of R. Gershom. In only one instance did R. Eliezer share the text of the paytan's poetry. In Eben Haezer, 170a, we find the following text: אחה...  
מבין תעלומות לב בו יסד הפיוט סקילה שריפה הרב רחנק טודם גליה ליורדי  
שמוחך

<sup>93</sup>This list is exclusive of those authors who were in contact with R. Eliezer during the course of his lifetime. Those scholars have been adequately treated in Chapter I above. The list that follows does not pretend to be exhaustive. It seeks merely to list the most significant authors in the period following R. Eliezer who made use of his text.

1. Mordecai<sup>94</sup>
2. Mahzor Vitry<sup>95</sup>
3. R. Solomon Luria<sup>96</sup>
4. Rabbenu Asher b. Yehiel<sup>97</sup>
5. Hagahot Maimuniot<sup>98</sup>

<sup>94</sup>Mordecai b. Hillel, as we have noted above (Chapter I) was a highly elective author who often quoted directly from a series of authors known to him, including R. Eliezer b. Joel Halevi. It is for this reason that R. Eliezer has mistakenly been considered Mordecai's grandfather (see Chapter I). However, he did have recourse directly to Eben Haezer, as in the following places: Hullin, pars. 592, 821; Aboda Zara, pars. 847, 858, 859; B. Bathra, pars. 556, 594; Megilla, par. 800; Ket., par. 250; Sanhedrin, par. 681, et al.

<sup>95</sup>It is difficult at times to distinguish between the references to R. Eliezer that arise out of his halachic work and the material which came from his commentary on the prayer book. See, e.g., Mahzor Vitry, par. 161 for which no reference can be found in Eben Haezer but which could possibly be traced to the prayer book commentary we know existed. It is different, however, in the case of pars. 321 and 328 for which parallels in Eben Haezer can be found.

<sup>96</sup>Yam Shel Shlomo B. Kamma, par. 269. Solomon b. Yehiel Luria of the sixteenth century was one of the later authorities who was aware of R. Eliezer's work. Luria was scrupulous in investigating the earlier sources for his interpretation of Halacha, unlike many of his contemporaries.

<sup>97</sup>As we have noted above, R. Asher was mistakenly considered by some authorities to have been the grandson of R. Eliezer (Supra, Chapter I). There is no foundation at all for such a view, but R. Asher did make frequent reference to Eben Haezer. See, e.g., Rosh Hashana, p. 31, Moed Katan, Chapter 3, par. 103, 108 Hullin, Ch. 4, par. 3.

<sup>98</sup>Hilchot Z'chiya U'Matana, Ch. 2, Hal. 14; Hilchot Ishut, Ch. 17, Hal. 9; Ch. 7, Hal. 9. Meir HaKohen, the author of the Hagahot, was the student of R. Meir of Rothenburg.

6. R. Meir of Rothenburg<sup>99</sup>
7. Sefer Rokeah<sup>100</sup>
8. Or Zarua<sup>101</sup>
9. R. Hayyim Or Zarua<sup>102</sup>
10. R. Moses Mintz<sup>103</sup>
11. R. Joseph Colon<sup>104</sup>

<sup>99</sup>The responsa of R. Meir are extremely eclectic. Many of them are not original with R. Meir. Rather, they consist of excerpts from the responsa of others. It does not follow, therefore, that each time R. Meir quoted R. Eliezer he had a text of R. Eliezer before him. However, he was very much aware of R. Eliezer's work and his major responsa. See, e.g., R. Meir's references to responsa of R. Eliezer in pars. 442, 550, 580, 581, 946, 388, 389, 390, 391. These responses were copied directly by R. Meir from Eben Haezer. In addition, R. Meir quoted a transcript of the results of the synod held in France that was attended by R. Eliezer (see par. 1002 as well as a discussion of that synod, supra, Chapter III).

<sup>100</sup>Sefer Rokeah, par. 319. Eben Haezer was not one of the most important sources for R. Eliezer of Worms.

<sup>101</sup>Or Zarua of R. Isaac b. Moses of Vienna, had within it a great many references to R. Eliezer b. Joel Halevi, so many, in fact, that Aptowitzer estimated at least to a third of the text to have originated with him. Similarly, he was familiar with the work of R. Eliezer. See, e.g., Or Zarua, Pt. I, par. 752.

<sup>102</sup>Teshubot R. Hayyim Or Zarua, par. 117.

<sup>103</sup>Teshubot R. Moses Mintz, par. 118.

העיקרי מספר ר"א בן נתן המכונה צפנה פענה

<sup>104</sup>Teshubot Maharik, pars. 111, 77

It is clear, then, that R. Eliezer utilized in his work a wide variety of sources, and helped to bridge the gap between the gaonim and his own period. Though R. Eliezer's work was dwarfed by that of his grandson and the Tosafot, his work contributed to the perpetuation of the past for which he so fervently hoped.

## PART II

### THE LIFE OF THE JEWS IN GERMANY OF THE TWELFTH CENTURY

#### CHAPTER III

##### THE STRUCTURE AND ORGANIZATION OF THE JEWISH COMMUNITY

The areas of Jewish settlement in Germany in our period were primarily urban, rather than rural. This is not to say that there were no Jews who lived outside of the urban communities.<sup>1</sup> The great majority of the problems addressed to R. Eliezer reflected urban, rather than rural conditions. This fact is particularly striking when R. Eliezer's responsa are compared to the Northern French responsa of the period with their plethora of rural detail and the posing of significant problems that arise out of a rural environment.<sup>2</sup>

<sup>1</sup>E.g., Eben Haezer, 205a. This particular responsum reflects a rural rather than urban setting.

<sup>2</sup>Cf. L. Rabinowitz, The Social Life of the Jews of Northern France in the 12-14th Centuries as Reflected in the Rabbinical Literature of the Period, pp. 41-42. Rabinowitz's account of a widespread partially rural French

The German Jewish community was concentrated in remarkably few areas of settlement. The following are the names of German cities mentioned by R. Eliezer: Oppenheim,<sup>3</sup> Speyer,<sup>4</sup> Worms,<sup>5</sup> Wurzburg,<sup>6</sup> Frankfort,<sup>7</sup> Mayence,<sup>8</sup> Cologne,<sup>9</sup> Regensburg,<sup>10</sup> and Strassburg.<sup>11</sup> In addition to those cities

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population with agriculture as an important occupation stands in marked contrast to the distribution of population as reflected in R. Eliezer's responsa.

<sup>3</sup>Eben Haezer, 79a.

<sup>4</sup>Ibid., 79d, 138d, 294d.

<sup>5</sup>Ibid., 8b, 47c, 79b, 108c, 160a, 173b.

<sup>6</sup>Ibid., 13c.

<sup>7</sup>Ibid., 158a, 176d.

<sup>8</sup>Ibid., 16d, 49c, 79a, 108c, 112a (pars. 255 and 256), 155c, 157b, 164a, 170b, 173d, 174a, 181c, 198d, 230d, 238b, 265c, 283a. The great number of references to Mayence can be explained not merely in terms of its importance for the period but also because of the fact that it was R. Eliezer's home city. He had contact with its day to day problems much more frequently than with cities further removed from him. Mayence was one of the most important centers of Jewish population.

<sup>9</sup>Ibid., 36a, 47c, 69c, 104a, 157b, 181c, 197c, 198d, 199c, 202a, 204a, 205a, 283a.

<sup>10</sup>Ibid., 32a, 40b, 125d, 295b.

<sup>11</sup>Ibid., 294d.

specifically mentioned by R. Eliezer, we know of the existence of a Jewish community in one more city in his time, viz., the City of Bonn, because it was the birthplace of R. Joel, R. Eliezer's son-in-law.<sup>12</sup> There exists another source of importance for the establishment of the areas of Jewish settlement during our period. Benjamin of Tudela, the renowned traveler, made his famous journey around the then known world from ca. 1160-1173. He stopped in a number of German cities where Jews had settled and the names of those cities appear in his itinerary. Unfortunately, Benjamin's account of the cities he visited was corrupted by the ignorance of transcribers, and the cities that he mentioned are difficult to identify.<sup>13</sup> The following are the cities mentioned by Benjamin that had Jewish communities: Metz, Treves,<sup>14</sup>

<sup>12</sup>See supra, Chapter I, footnote 49.

<sup>13</sup>Aronius questioned whether Benjamin actually toured Germany. Aronius' feeling was partly due to loose statements made by Benjamin about Germany's geography. See Julius Aronius, Regesten zur Geschichte der Juden in frankischen und deutschen Reide bis zum Jahr 1272, p. 131.

<sup>14</sup>Marcus Nathan Adler, The Itinerary of Benjamin of Tudela, pp. 79-80 and A. Asher, The Itinerary of Rabbi Benjamin of Tudela, pp. 109-111. Asher's edition is widely quoted but is based on printed versions only, while Adler makes use of manuscripts and produces the closest approximation of a critical text. The travels of Petahiah that also fall in our period did not deal with the German cities. The placesnames Metz and Treves are based on a reading in Adler, p. 80, and are not contained in Asher's text.

Coblenz, Andernach, Bonn,<sup>15</sup> Cologne,<sup>16</sup> Bingers, Munster,<sup>17</sup> Worms,<sup>18</sup> Strassburg,<sup>19</sup> Wurzburg,<sup>20</sup> Mantern, Bamberg, Freising, and Regensburg.<sup>21</sup>

The difficulties involved in arriving at an accurate transcription make it hazardous to draw definitive conclusions from the list of cities given to us by Benjamin. Despite dubious transcriptions, one can see some affinity between the cities mentioned by R. Eliezer and those noted by Benjamin, with two strange exceptions. Both the City of Mayence, R. Eliezer's birthplace, and the City of Speyer, do

<sup>15</sup>An alternate manuscript reading in Adler reads קרובה instead of ברונה on which the translation is based. This second reading is the one Asher had before him. Germania Judaica (p. 68) does bring the City of Caub as one in which a Jewish community existed in our century. Note also that the City of Bonn was mentioned by R. Eliezer only by indirection, the City of Caub not at all.

<sup>16</sup>The Asher text reads קרטניא

<sup>17</sup>Munster does not appear at all in the Asher edition.

<sup>18</sup>The Asher text has at this point a passage that Adler interprets as an interpolation, but that includes a supposed place called משהראן or Mistran according to Asher's translation. There are no grounds for assuming Asher to be correct.

<sup>19</sup>Asher translated Astransburg.

<sup>20</sup>An alternate reading of Asher leads to an identification of Duidisburg.

<sup>21</sup>Asher adds another City of Tzor (צר) apparently based on a mistaken reading.

not appear in Benjamin's itinerary, although the closely associated City of Worms does appear. This fact is perplexing in light of the intellectual leadership provided by Mayence to German Jewry in the twelfth century. On the other hand, only six of the fifteen cities mentioned by Benjamin are known to us from R. Eliezer's works. In any event, it appears that the Jewish population of Germany was concentrated within relatively few urban centers.<sup>22</sup>

With regard to German cities, Benjamin did not give any population statistics unlike his treatment of Italian and French communities. He made the general statement that the German Jewish communities possessed many sages and men of wealth.<sup>23</sup> R. Eliezer was not any more helpful. At no time did he refer, even in passing, to numbers of Jews in a particular city. No numerical records, even remotely accurate, are to be found until 1241, at which time we have tax rolls on

<sup>22</sup>Cf. Solo Baron, A Social and Religious History of Jews, Vol. 4, p. 73, who points out that Jewish settlement was in cities within episcopal sees rather than in cities controlled by secular authority. Frank holds that the Jewish community was widely dispersed, but the sources he uses to substantiate that position are much later than our own period. See Moshe Frank, Kehillot Ashkenaz, p. 19.

<sup>23</sup>M. Adler, op. cit., Heb., p. 72.

ובאילו המדינות הרבה מישראל חכמים ועשירים

Adler translates: In these cities there are many Israelites, wise men and rich. We noted above (footnote 13) the doubts of some authorities whether Benjamin ever toured Germany. The fact that R. Eliezer's references to places of Jewish settlement only partially agrees with those of Benjamin lends further weight to such doubts. Still more, they are buttressed by Benjamin's vague references to the nature of Jewish life in Germany.

which to depend for our information.<sup>24</sup>

The First Crusade brought with it a decimation of some part of the Jewish population. Based upon the figures transmitted by the Chronicles of the Crusades, 1,100 Jews lost their lives at Mayence and another 800 at Worms.<sup>25</sup> The accuracy of the figures given to us by the Chronicles are, however, seriously open to question. There is much exaggeration by the chroniclers. They were not eye-witnesses at all, but rather transmitted to us second hand information that is not accurate even in its narrative, let alone in any statistical sense.<sup>26</sup> The actual figures for Jewish losses during the First Crusade are impossible to obtain.

<sup>24</sup>Baron, in the notes to his monumental social and religious history (Chapter 20, footnote 94) mentions a particular work as containing "considerable data" on Jewish population. The name of the work is Deutsches Städtebuch in four volumes by E. Keyser. Instead of providing such data, however, the book, printed in Nazi Germany, contains a fantastic number of inaccuracies as well as strong racist prejudice. Among its innumerable errors, the book alleges that there was no Jewish settlement in Rothenburg till the nineteenth century. Moreover, whatever accurate information it does contain was gleaned from well-known Jewish secondary sources. Schipper (Toledot HaKalkala Haychudit, Vol. I, p. 162) held that there were 1,500 Jews in Mayence in 1090, before the outbreak of the Crusades. His estimates, however, are wholly without support.

<sup>25</sup>A. M. Habermann, Sefer Gezerot Ashkenaz V'Tsorfat, p. 32 (in accord with the chronicle of R. Solomon b. Simeon). In his introduction to this excellent volume, Y. Baer gives an incisive explanation on the manner in which the texts of the chronicles were compiled and the nature of the exaggerations that are to be found in them. See Y. Baer, Mabo L'Sefer Gezerot Ashkenaz V'Tsorfat, p. 4.

<sup>26</sup>In this respect, R. Eliezer's own chronicle is instructive. See supra, Chapter I, footnote 254.

There was undoubtedly much loss of life and many forced conversions during the Crusade period in 1096. R. Eliezer was filled with memories of the persecution and made references to them. He did not, however, give us a picture of a wholly decimated City of Mayence. Rather, Mayence reverted quickly to its former high state of culture and learning. It is somewhat difficult to believe that this could be done in a city that lost two-thirds of its Jewish inhabitants when R. Eliezer was but six years old. No matter what the true number of Jewish martyrs, a majority of the population survived and rebounded energetically during our century from the disasters that had befallen them.<sup>27</sup> That majority must have been substantial.

Proceeding now to the internal life of the Jews in Germany, as reflected in Eben Haezer, we find that the Jews scattered in the urban areas were not merely a conglomerate group having their own separate existence within their own cities. Although they may not have yet maintained formal organization as a total community, it is clear that the bonds holding them together were relatively strong. Contact was maintained between cities; at times the individual cities of Germany were able to function as one community, despite the

<sup>27</sup>No consideration has been given here to the possible effects on population of the Second Crusade of 1146, since that crusade barely touched the German Jewish communities.

issues that divided them.<sup>28</sup> R. Eliezer continually functioned as a unifying force, dealing with the questions that came to him from different areas of Jewish settlement and providing some common direction for many communities, each with its own problems and its own traditions. Both his travels and the travels of students and merchants kept the lines of communication open and provided the basis for unified communal action at a time when it was needed.<sup>29</sup>

To understand how Jewish communities functioned, we must first analyze the legal basis of their self-rule. In Eben Haezer, we find numerous references to the functioning of the Jewish community in different areas of self-government.<sup>30</sup> It dealt with every aspect of Jewish life; its

<sup>28</sup>Louis Finkelstein, Jewish Self Government in the Middle Ages, p. 42. In the French Synod of 1160, we find R. Eliezer and R. Eliezer b. Samson of Cologne acting as representatives of the German community as a whole. See supra, Chapter I, footnote 76.

<sup>29</sup>Eben Haezer, 13a. An extremely interesting illustration of this phenomena is provided by R. Eliezer's references to his son-in-law, R. Joel, whose travels from city to city enabled R. Eliezer to maintain informal contact with other cities and their leaders, thereby providing at least the communication necessary for any unified action. See supra, Chapter I, for details on R. Eliezer's contributions in this area.

<sup>30</sup>Eben Haezer, 70a; 208c; 224a et. al.

regulations and authority were imposed upon every member of the Jewish community, with the consent of both local and imperial governmental authorities.

The granting of privileges or charters to cities and to Jewish communities in Germany dates from the latter part of the eleventh century. The charter of Henry IV for Worms in 1074 is the first example of city privileges appearing as a new category of constitutional documents. Jewish communal life involved detailed series of laws and privileges both of a local and imperial nature. Without undertaking a detailed study of the secular law relating to Jewish life, we must consider the background in law as guidelines for R. Eliezer's legal opinions in matters relating to Jewish community activities. Of particular concern are the privileges extended by Henry IV to the Jews of Worms in 1090. Taking the Worms privileges as prototype, we note the following articles among others:

Article II: Quod si christianus contra Iudeum vel

Iudeus contra cristianum litem aliqua pro  
re vel contencionem habuerit, uterque prout  
res est secundum legem suam iusticiam faciat  
et causam suam probet.

Article 14: Quod si Iudei litem inter se aut causam habuerint discerendam, as suis paribus et non aliis convincantur et iudicentur. Et si aliquis eorum pertidus rei alicuius inter eos geste occultare voluerit veritatem, ab eo, qui ex parte episcopi preest synagoge, iuxta legem suam cogatur, ut de eo quod queritur verum fateatur. Si quando aut inter eos aut contra eos difficiles Orte fuerint questiones vel lites, salva interim pace eorum, ad presenciam referantur episcopi, ut eius valcant iudicio Terminari.<sup>31</sup>

These privileges were not applicable for all time. They needed periodic reaffirmation, and were, in fact, confirmed for the Jews of Worms in 1157 by Frederick I.<sup>32</sup> Through extension on a local basis to other communities, they provided the basis for a Jewish court system in accord with Jewish law. It is obvious that the privileges were not helpful during the First Crusade. However, it must be said that such outbreaks and other more isolated instances cited

<sup>31</sup>J. Aronius, op. cit., p. 73, #170.

<sup>32</sup>Ibid., p. 123, #280.

by R. Eliezer were breaches of the law. Local authorities attempted to enforce the privileges, but were powerless against mob violence. It is within this context that we often find R. Eliezer proscribing a given course of action,

משום איבה , for fear of stirring up a hornet's nest of hatred that the Jewish community had good reason to fear.<sup>33</sup> In normal times, however, he acted under the law along with the leaders of the community.<sup>34</sup>

Of particular interest also is the Imperial land peace of Mayence, sworn to in 1103 for a period of four years by the nobles of the land, and which included the Jews among protected groups. This particular land peace was widely extended with respect to both territory and time. The land peace was intended to provide a more effective protection for Jews than the earlier privileges, particularly in light of the disastrous events of 1096.<sup>35</sup> Henry IV took a specially liberal attitude to Jewish interests during the period of the

<sup>33</sup>Eben Haezer, 231b.

<sup>34</sup>It must be clear that the privilege documents only provided a context within which the Jewish community could function. At no point did the rabbinic authorities ever quote the privilege documents or other secular expressions as a source for their authority. That source always was Talmudic law. See L. Landman, Jewish Law in the Diaspora: Confrontation and Accommodation, p. 67. See also infra, footnote, 38, Chapter IV, footnote 49.

<sup>35</sup>G. Kisch, The Jews in Medieval Germany, p. 141. The land peace was to have at a later time profound negative implications, particularly with regard to the right of a Jew to bear arms, but for the moment its effect was beneficial.

First Crusade, contravening even canon law by allowing forcibly converted Jews to return to the faith of their fathers.

Reference to the Jewish community should not be interpreted to mean a legally constituted Jewish community. On the contrary, in the period in which the privileges were granted, there were no corporate communities, either Christian or Jewish. Both at Worms and Speyer, privileges were granted to specific individuals living in these cities and extended by implication to all other resident Jews. R. Eliezer lived, in fact, in a period in which the community as a corporate institution was only beginning to take form, and his comments from that standpoint take on increased significance. It is important also to comprehend fully the nature of the privileges. Every attempt ~~was made~~ to lure the Jews of Speyer to ~~that~~ city for the many economic advantages they would ~~bring~~ to the city. Bishop Rudiger of Speyer, himself, indicated: ". . . cum ex Spirensi villa urbem facerem, putavi milies amplificare honorem loci nostri, si et judeos collegerem."<sup>36</sup>

It would be wrong, however, to assume that the privileges applied exclusively to Jews. Kisch pointed out in convincing fashion, that the privileges represented a "jus

<sup>36</sup>J. Aronius, op. cit., p. 70, footnote 168.

commune" that singled out a particular grouping of individuals for attention. There were many others to whom similar privileges were accorded. Royal charters of protection are extant in which special protection is accorded Christian ecclesiastical institutions, non-Jewish private persons, merchants, and others.<sup>37</sup> Attempts have even been made to assume that the laws and charters of Jewry protection were used as models for the protection of Christian merchants. This contention does not appear to be valid, for the charters that were applied to the Jews were couched in language that was used with reference to other groups as well.

The Jewish community of R. Eliezer's time was then in its initial stages of legal organization. It derived its right to self-government directly from the Emperor, although technically its privileges were addressed to individuals rather than to the community as a whole. R. Eliezer and the others with him who fulfilled leadership roles in the community functioned implicitly and explicitly through the sanction of government. Unfortunately, however, the failure of the imperial office to make good on its promise of protection during the First Crusade and at other more isolated times in our period, engendered bitterness within R. Eliezer against the very authority by which he functioned. However,

<sup>37</sup> Monumenta Germaniae, form. imp. Nos. 31, 37, 52. See also G. Kisch, op. cit., p.135 ff. for a full discussion of the issue.

the consequences of the wedge being driven between the Jews and the rest of the population were not to be evident until after his time.

It is important to realize that the rights granted in the privilege documents were not the basis of Rabbinic authority for the discharge of any community responsibility. In all the references to rabbinic functions in R. Eliezer's writings, the pattern of authority was related to Jewish law and communal regulations, rather than to any vested authority coming from secular sources.<sup>38</sup> Despite the implicit and explicit consent of the authorities to the functioning of a Jewish community, R. Eliezer seemed to view the secular government more as an impediment than a support.<sup>39</sup> A mistrusted government is seldom viewed as a foundation upon which to build legal and political precedent. One can

<sup>38</sup>The information collected here from R. Eliezer's responsa supports the views held by Agus on the significance of the privilege documents in Jewish sources of our period. Cf. I. Agus, Rabbi Meir of Rothenburg, Vol. I, 58. See also, supra, footnote 34.

<sup>39</sup>Eben Haezer, 283ab. This was true of a particularly vexing situation in which R. Eliezer was called in to help in a case of a fraudulent betrothal, but found that he had to deal with the possible interference of government as a result of the governmental connections of one of the parties. See infra, Chapter V.

speaking meaningfully about a Jewish community in existence and functioning virtually as a unit of self-government during the time of R. Eliezer. During the first year of residency in a community a newcomer gradually took on the fiscal responsibilities of older residents, at first contributing only to the support of the local poor and then gradually broadening the scope of his participation to include contributions to the official charity fund, and care for the burial of the dead.<sup>40</sup> An individual who was himself dependent on the community for support

<sup>40</sup>Eben Haezer, 208d. Cf. Baba Bathra, 8a, as well as the Palestinian Talmud, Peah 36b.

could not participate with an equal voice in the community's affairs.

Although R. Eliezer paid particular attention to the process by which one becomes a member of the community, he made no statement on excluding individuals from settling in the community.<sup>41</sup> There would be ample grounds for excluding one who came to settle in the community if he did not fulfill his citizenship requirements during the period of his residency. The Herem Hayyishub, though known, had not as yet been fully established as an institution by R. Eliezer's time.<sup>42</sup>

<sup>41</sup>This is in direct contradiction to the position held by L. Rabinowitz (Herem Hayyishub, p. 42). Rabinowitz sought to establish that R. Eliezer was one of the earliest authorities to mention the Herem Hayyishub, but did not cite the exact reference in Eben Haezer on which he based his contention. Rather, he quotes Joseph Colon of the fifteenth century who, in turn, makes reference to R. Eliezer (Joseph Colon, נ"ט 96a). He totally misinterprets the reference. Colon probably had in mind the source quoted above (Eben Haezer, 208d) while noting that later authorities held that a one year absence leads to a forfeiture of residence rights. Since it took one year to establish rights, a one year absence would lead to this forfeiture. It is clear, however, that R. Eliezer discusses only the establishment of resident rights and not their forfeiture except by implication. Moreover, the concept of החרה so crucial to Rabinowitz does not occur at all in R. Eliezer. Its inclusion in Colon's text is intended only to lend support from earlier authorities for a later controversy.

<sup>42</sup>This is by no means meant to imply that the institution was unknown in R. Eliezer's time. We would agree with Finkelstein that the institution probably predated R. Gershom, although we would reject the rather far-fetched anti-urban reasoning of Finkelstein (cf. L. Finkelstein, op. cit., pp. 13-14). The point simply is that any institution grows and develops over a period of time. In R. Eliezer's time, the concept of exclusion of social undesirables had taken root. The use of Herem Hayyishub as a means of buttressing the economic position of old settlers against new settlers is, however, nowhere reflected in the sources.

The term never appears at all in Eben Haezer.<sup>43</sup> At a later period, when the economic situation of the community became more difficult, the right of the community's elders to exclude newcomers because of possible economic competition was exercised. Whatever determination there did exist of the rights of residence in our period was put into the hands of the leaders of the community who dealt with it administratively.<sup>44</sup>

<sup>43</sup>Some fuller mention should be made of Rabinowitz's thesis that the Herem Hayyishub was essentially motivated by economic protectionism. It arises, says Rabinowitz, particularly in the Rhine communities of our period because this is the period in which the Jewish communities were established for the first time by Imperial privilege, and it is a period linked to the rise of medieval towns as interpreted by Pirenne. Pirenne's thesis on the interrelationship between the rise of medieval cities and the rise of a merchant class (H. Pirenne, Medieval Cities (Princeton, 1925)) is given specific Jewish interpretation by Rabinowitz. The nascent Jewish communities consisting largely of merchants, easily found their place in the rising medieval city. Most important, the Rheinish privileges allowed for internal regulation of economic competition and permitted the carrying into practice of the Herem Hayyishub. Unfortunately, this hypothesis appears a bit too facile. Not only are Pirenne's theses open to question and Rabinowitz's interpretation of the Rheinish privileges oversimplified. There are also a great many questions to be asked about the application of economic restrictions so early in the development of the Jewish medieval community. One fact, above all, is clear. On the basis of R. Eliezer's text, no such thesis could be proven.

<sup>44</sup>A significant division of opinion exists between Rashi on the one hand and Rabbenu Tam on the other. Rashi held that the Herem Hayyishub has a Talmudic basis, and therefore the proceedings against any who violate it must be in line with accepted Talmudic legal procedure. According to Finkelstein, it was Rashi's intent to limit the possible excesses of communal control of Herem Hayyishub (see L. Finkelstein, loc. cit.). Rabbenu Tam, on the other hand, held that the application of Herem Hayyishub was totally in the hands of

The community then developed means by which it made decisions, and was capable of taking action. It was successful in providing significant leadership. The early Worms privileges recognized a head of the community whom the Latin documents refer to as the Jewish bishop.<sup>45</sup>

We can identify the names of many of the leaders of the

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the communal authorities. He claimed, however, that its application was limited to social undesirables and to those who constituted a danger to the Jewish community as informers. While R. Tam would allow for decisions made by the local community, the impact of his opinion would be to allow almost all newcomers into the towns, thereby limiting the scope of the Herem significantly. Basing himself on Rabbiah, who held that R. Tam's views on the Herem were theoretical rather than practical, Finkelstein conceived the notion that the views of R. Tam were accepted in France but rejected in Germany. That opinion is not supported by the evidence in R. Eliezer. On the one hand R. Eliezer accepts the view that decisions on rights of settlement are administrative rather than judicial, and on the other holds with R. Tam that exclusion from the community stems from non-payment of taxes or similar factors rather than anything more general. The debate is reflected in the disagreement between Zeitlin (Review of the Herem Hayyishub, JQR, N. S., Vol. 37), and Rabinowitz as to whether Herem Hayyishub is implied in the Talmud. Without entering into that controversy here, we do not detect a clearly proven Talmudic basis for Herem Hayyishub.

<sup>45</sup>J. Aronius, op. cit., p. 171. "... tempore Salmanni eorundum Iudeorum episcopi." Zeitlin's view is that the term "episcopi" can be interpreted as referring to the parnas of the community. Cf. S. Zeitlin, "Rashi and the Rabbinate," Jewish Quarterly Review, N. S., Vol. 31, No. 1, 31.

community who are mentioned in these early privileges,<sup>46</sup> and they all possess the characteristic of being not only worldly, but to at least some extent, scholarly. The secular sources were correct in at least one respect. The leaders of the early Jewish community were not merely wielders of secular power. They constituted the most significant authorities in the religious life of the people as well. They were recruited from a group that possessed its own form of "noblesse oblige" for which one qualified because of two factors, birth and learning. We know from the writings of R. Eliezer of the existence of non-rabbinic members of the community who held leadership positions and who wielded power within the community.<sup>47</sup> They shared many areas of community responsibility, particularly taxation and finance where the Rabbis were

<sup>46</sup>Frank seeks to identify this Solomon of the Worms privileges as the Solomon b. Samson who was martyred during the Crusade of 1096, and who was the famous friend of Rashi (M. Frank, op. cit., p. 2). Haberman (op. cit., p. 247) doubts whether this Solomon was indeed martyred in 1096. He feels instead that he was the author of one of the chronicles of the Crusades. The individuals mentioned in the Speyer privileges are better known to us. Yehuda bar Kalonymus was the head of a Yeshiva in Speyer, David bar Meshullam, a well known author of religious poetry, and Moshe bar Yekutiel a parnas of the community who also functioned as a teacher.

<sup>47</sup>Eben Haezer, 283a. This particular responsum deals with an extremely deep cleavage in a Jewish community on an issue that involved fraud in arrangements for an important marriage. Although a synod that was convoked was attended in large part by Rabbis who were called upon to make the basic decisions, the protagonists in the dispute, deeply involved themselves in the Jewish community, were laymen. It was they who called the Rabbis together. The participants in the litigation were apparently close to the government. See supra, Chapter I, footnote 14.

loathe to function. R. Eliezer was turned to, not only to deal with ritual issues, but also as a source of guidance as well as ruling on the relationship of the Jewish community with the secular authorities. His position of leadership was assumed after it had been held earlier by his father-in-law, R. Eliakim, and his son-in-law shared the position of leadership in the community during his lifetime exactly as he had shared it once with his own father-in-law before his passing.<sup>48</sup> R. Eliezer did not function as the official single head of the Jewish community of Mayence.<sup>49</sup> Always there were others who participated with him in the decisions that shaped the life of the community.

The leaders of the community were referred to again and again by R. Eliezer as Rabbis.<sup>50</sup> Their right to sit as

<sup>48</sup>See supra, Chapter I.

<sup>49</sup>It has been pointed out that the function of leadership was often equated with the position of judge. See M. Frank, op. cit., p. 5.

<sup>50</sup>Some mention ought to be made here of Zeitlin's thesis that authority was not vested in the Rabbis prior to the eleventh century and that R. Gershom acted only together with the Kahal. Zeitlin assumes that the decrees of Henry II were addressed only to the parnas (see supra, footnote 45). He further presumes that this situation changed only with Rashi who asserted the authority of the Rabbi. In Zeitlin's view, Rashi was, in fact, the founder of the Rabbinate in Western Europe. This work deals with a period when the developments spoken of by Zeitlin are presumed already to have had occurred. Note should also be taken of Zeitlin's thesis that the title of Rabbi in the German literature merely indicated scholarship while that of Rab was indicative of authorization and position. For a full discussion of his case, see S. Zeitlin, "Rashi and the Rabbinate," J.Q.R., N. S., Vol. 31.

judges was transferred by master to disciple on an individual basis. Apparently they were not paid for their services. Their assumption of the title of Rabbi and their position of leadership in the community did not bring them any material advantage. On the contrary, individual rabbis expended their own funds on the maintenance of Academies in which young scholars studied under their tutelage. A good many of them may have been independently wealthy. R. Eliezer did not reveal the manner in which he made a living. It is possible that he was a money lender, or a trader. Clearly, his assumption of community responsibility in no way accrued to his material gain.<sup>51</sup> In R. Eliezer's time, then, the position of Rabbi had attached to it the secular function of the parnas as well. We see the Rabbi both as initiator and arbitrator of disputes, as presiding over a court of last resort, involved in all of the day to day problems of the community. Only at a later period did there occur a bifurcation of rabbinic and lay responsibilities with the gradual withdrawal of the Rabbi, and the assuming of greater responsibilities by the lay parnas.<sup>52</sup>

<sup>51</sup>This should not be taken as a peculiar virtue of R. Eliezer. Rather, independent wealth was almost a precondition of attaining Rabbinical position that involved one deeply in community affairs. See M. Frank, op. cit., p. 22. See also supra, Chapter I, footnote 74. This situation had already changed in the period of R. Meir of Rothenburg. Cf. Responsa of R. Meir of Rothenburg, par. 942.

<sup>52</sup>M. Frank, op. cit., pp. 20ff. For a fuller discussion of the development of the Rabbinate from its earliest time, see S. Assaf's work, L'Korot HaRabanut, passim.

There is no evidence that the secular authorities interfered in any way with the choosing of Jewish leadership. Rather, they negotiated, when necessary, with the duly constituted authorities of the community. There does exist some question as to the manner in which the Jews chose their own leaders. There were times in which elections took place within the Jewish community.<sup>53</sup> By and large, the community was controlled by a small number of families.<sup>54</sup> R. Eliezer noted the functioning of a leadership group in communities other than his own. At times he referred to זקני אשפירא , meaning heads of the Speyer community, and similarly to

זקני מגנצא , the heads of the Mayence community.<sup>55</sup>

In a similar fashion, he made reference to זקני וקציני

נרבו נא ופרובנצא .<sup>56</sup> These references had nothing to do with

<sup>53</sup>Such an interpretation is compatible with Eben Haezer, 224b.

<sup>54</sup>Agus presumes a growing process of democratization as the original small communities began to establish themselves. This would apply not only to the selection of a leadership group. Agus constructs his thesis to some extent on material derived from R. Eliezer. His thinking leads him to assume that as scholarship in the German communities deepened, there was a concomitant rise in the degree of democracy permissible within the framework of the community. Although this is a compelling thesis and one which has much to commend it, it is questionable whether it can be considered proven. See I. Agus, Rabbi Meir of Rothenburg, pp. 89-96.

<sup>55</sup>Eben Haezer, 79cd.

<sup>56</sup>Ibid., 84a.

the age of the individuals involved, but rather to their leadership position. At times he used a different term, referring to the חכמים of a particular city,<sup>57</sup> or to the

טובי העיר.<sup>57a</sup> The heads of the community functioned as a group, and their area of concern was many faceted. R.

Eliezer distinguished between a city that had a חבר עיר, and that which did not possess such an institution. The

חבר עיר, composed of the Rabbis of that particular city who constituted the heads of the Jewish community, made decisions that affected the lives of each of the citizens of the community. In areas where Jewish population had not grown adequately and there was no official חבר עיר, the inhabitants of a city were dependent upon those of a nearby city for their needs and they were turned to for guidance and direction.<sup>58</sup> That there was no central organization appears to be obvious from the entire orientation of R. Eliezer's work. Each city maintained its own autonomy,

<sup>57a</sup>  
<sup>57</sup>Ibid., 32a. The term טובי העיר is found in 60c and refers to a city in France. On the other hand, R. Eliezer described the חכמי העיר as functioning as mediators, determining for two litigants the value of a piece of currency (Eben Haezer, 42c), as well as supervising the local slaughterer (104a). In a different context, they are referred to as חכמי מונצא or חכמי וורמזא (108c).

<sup>58</sup>Ibid., 176c. R. Eliezer referred here to the City of וורנקברט, already identified, where there was no חבר עיר at the time.

but at periods of stress, or when burning issues engulfed many communities, they were capable of unified action, always with the understanding that action depended on consent rather than compulsion.

No specific number of community officials was stipulated by R. Eliezer. While there is good reason to believe that the institution of a governing group of scholars was derived from the שבעה טובי העיר of the Talmud, the number of participants in the governing group varied from city to city.<sup>59</sup> Some influence from Christian sources on Jewish institutions of self-government undoubtedly occurred, although the extent of such influence has been exaggerated by some authorities.<sup>60</sup>

One looks in vain through the Eben Haezer to secure some insight not merely into the functioning of the leadership group, but also to the reaction of the people. How did the people react to the direction that was being driven to the community by its leadership? If it is true that elections were held within the community,<sup>61</sup> we should find some attempt

<sup>59</sup>The term שבעה טובי העיר was still in common use during our period and was used in the synodal legislation of 1160. See L. Finkelstein, op. cit., p. 153. However, what was meant was not a specific number of leaders of the community but only a designation of the city council structure.

<sup>60</sup>G. Kisch, The Jews in Medieval Germany, p. 348. Kisch takes note of the possibility of Christian influence on Jewish forms of self-government without taking adequate cognizance of the fact that the Jews had their own traditions of self-government.

<sup>61</sup>See supra, footnote 53.

to give the people a measure of involvement in the decisions of their community. We do find some evidence of developments in R. Eliezer's time that would lead us to that conclusion.

In a responsum attributed to Rabbenu Gershom, a group of Jews were travelling by boat with a cargo of gold. The ship was subsequently wrecked. In the process of salvaging part of the cargo, it fell into the hands of gentiles and subsequently was sold by a gentile to a Jew. The owner of the gold demanded his property back from his fellow Jew and was refused on the assumption that the property now had to be considered **הפקר**. Rabbenu Gershom held that the property must be returned to its original owners, and he invoked the principle of **הפקר ב"ד הפקר**. A community, said R. Gershom, possessed the rights of an ordained court, and could deprive an individual of his legally required possessions.<sup>62</sup> A case quoted by R. Eliezer was strikingly similar. A shipment of goods was stolen by a group of gentiles and then sold by a gentile to a Jew. The buyer claimed that he had a right to the goods because of the well-known Talmudic principle that lost objects washed ashore may become the

<sup>62</sup> Joel Mueller, Teshubot Hachme Tsofot V'Luter, par. 97. The responsum is quoted in translation by Agus. See I. Agus, Rabbi Meir of Rothenburg, p. 91.

property of the finder. But then R. Eliezer continued:

אבל אם ביקש ראובן מן הקהל וגזרו על כל בר ישראל  
שיבוא אביתו לידו שיחזירו לו חייב להחזיר מפני תקנה  
תקנה הקהל שהקנה זו תקנה היא לו וניחא ליה בה שאם  
יארע לו כעין זה יעשו כמו כן תקנה...

However, if A requested of the community that they pronounce a ban against any Jew who refuses to return A's property and the community complies, then such an edict is proper. It is assumed that each individual would agree to the community enactment since a similar ordinance would be to his benefit if he were ever in A's place.<sup>63</sup>

R. Eliezer ruled, then, exactly as did R. Gershom. However, while R. Gershom was insistent on the rights and prerogatives of the community, R. Eliezer stressed the consent of the individual. These two approaches to similar problems are striking in their dissimilarity. Agus, in commenting on the disparity, holds that it indicated a shift in emphasis from an all powerful community on the one hand, to a much greater concern for the rights of the individual on the other. R. Eliezer's comments do seem to indicate greater concern for the individual. However, his change in orientation might well have arisen from the inability of the Jewish community to exert its will rather than with the development of democratic processes as alleged by Agus.<sup>64</sup> In

<sup>63</sup>Eben Haezer, 197d. It should be noted that although both incidents appear to be unconnected with another, they are related to the discussion in B. Metsia, 22b.

<sup>64</sup>Agus's interpretation of the effect of R. Eliezer's ruling is fundamentally correct. The question that is raised here is whether increased preoccupation with the rights of the individual arises from the heightened democracy or whether we are to find its source in other factors.

another comment made by R. Eliezer on an incident recorded in Baba Bathra, he noted the limitations of community authority. In contrasting conditions in the Talmudic world with conditions in his own time, R. Eliezer said:

והם שהיה בידם לייסר ולכוף והיו כופתין אבל אנן שאין בידינו לכוף ולייסר...<sup>65</sup>

They had it in their power to force and compel but we have no such power.<sup>65</sup>

R. Eliezer was ~~not~~ prepared to utilize the ability of the community to make Takkanot and to enforce them. However, he would rather have seen the community derive its basis for acting from the consent of its members rather than from the threat of compulsion.

The community was prepared when the situation demanded it to react vigorously to challenge. Sometimes individual communities acted totally on their own to police their own affairs and to deal with their own problems. At times, the heads of different communities came together to solve a specific problem.<sup>66</sup> When the challenge was great enough, the German communities gathering together with their co-religionists elsewhere in order to solve the perplexing problems of the day. It is this kind of challenge that was implicit in the events of the Second Crusade and that brought R. Eliezer along with other German representatives to the

<sup>65</sup>Eben Haezer, 223c, based on B. Bathra, 167a.

<sup>66</sup>Ibid., 283ab.

synod called by Rabbenu Tam in France in 1160.<sup>67</sup>

Ordinarily, the community legislated through means of a Takkana and enforced its will through the institution of the Herem. Through R. Eliezer's eyes, we see abundant evidence of both legislative enactment and prohibition. We learn, for example, from R. Eliezer, of the acceptance in his time of the prohibition against a man taking a second wife as well as divorcing a woman against her will.<sup>68</sup> R. Eliezer discussed its enforcement, in

<sup>67</sup>L. Finkelstein, op. cit., p. 42. See supra, Chapter I.

<sup>68</sup>Eben Haezer, 245d. See infra, Chapter VI, footnotes 2 and 3. Note, too, the stress placed by Zeitlin in his interpretation of R. Gershom's Takkana. According to Zeitlin, R. Gershom was forced to invoke his ordinance only with the consent of the Kahal, thereby underscoring the limitations in R. Gershom's authority. See S. Zeitlin, "Rashi and the Rabbinate," JQR, Vol. 31.

situations in which the wife was childless after ten years and the husband was loathe to divorce her and take a second wife.<sup>69</sup> We also note a Takkana that expanded the permissibility of oath taking in a courtroom over an earlier period when oaths were taken much less frequently.<sup>70</sup> In still another situation, R. Eliezer discussed a Takkana whereby the wording of a Ketuba was changed.<sup>71</sup> Similarly, it was through a Takkana that an individual could demand from the community punishment for one who did not return his lost articles.<sup>72</sup> All of the Takkanot had one basic quality in common. In each of them, the community showed itself not to be immobilized by changes in conditions of life. Within the framework of its own legal traditions, it proceeded with innovations in order to create a society more in keeping with changing conditions in the world. The Takkanot were accepted widely by the populace. There were times, however, when the community was obliged to declare a Herem against those who would not accept its ruling. Such was the case with the Jew who took a matter at legal issue into the Gentile court for adjudication.<sup>73</sup> The Herem was not permanent. It applied

<sup>69</sup>Ibid.

<sup>70</sup>Eben Haezer, 234c.

<sup>71</sup>Ibid., 206c. See infra, Chapter VI.

<sup>72</sup>Supra, footnote 63. In all likelihood, the demand was made of the community during the course of religious services as provided by R. Gershom. See L. Finkelstein, op. cit., p. 33.

<sup>73</sup>Eben Haezer, 193c. A distinction should be made between two types of bans that were in use during the course of the

only until such time as the specific violation was removed.<sup>74</sup>

In his zeal for proper observance of the laws of Nidah, R.

Eliezer said:

וצריך לעשות גדר וסייג בזה שלא יוסיפו  
לעשות עוד ולגזור ולהחרים אשר יעשנה

It is necessary to make a ledge around the law so that it will no longer be violated and to declare a Herem against any who violate it.<sup>75</sup>

There is an interesting statement by R. Eliezer that threatens a Herem against anyone who rules in accordance with him, rather than taking the approach of earlier authorities. The context of the statement makes clear, however, that the threat was merely a manner of speech.<sup>76</sup> R. Eliezer did not indicate when the Herem may be invoked, nor did he indicate who had the power to invoke it within the community. Clearly, it was a power used when the authorities of the time held that a danger to the community existed. During this early period, the right to declare a Herem was not misused.

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Middle Ages. The first was the Niddui or temporary ban, utilized for a limited period until a person changed his behavior. The Herem was a more permanent and severe form of punishment. For the Talmudic source of this distinction, see Moed Katan, 16b.

<sup>74</sup>Ibid., 170c.

<sup>75</sup>Ibid., 152a.

<sup>76</sup>Ibid., 15b. ואשר יקל ויפרוץ גדר הראשונים ויסמוך על  
דבר מה שפירשתי ובא באלה ובנידוי...

Note the use of the less stringent Niddui. See supra, footnote 73.

## CHAPTER IV

### THE FUNCTIONING OF JEWISH SELF-GOVERNMENT

The Jewish community functioned in almost every area of life. Its range of interest was wide, for it extended not only into the synagogue and the school but into every area dealt with by the secular government of the time. It was, in fact, a government within a government, and from the birth of a Jewish child to his death no force was more significant for him than that of the Jewish community. An examination of the functioning of that community in the many areas of its concern discloses an amazing structure of self-government that sustained itself in a hostile environment through the commitment of the governed. Any Jew could leave the community through the simple process of conversion. The fact that this seldom happened is an indication not only of the success of the self-governing process, but of the success of the Jewish community in imparting its values to its members.

We have already indicated that the heads of the Jewish community consisted largely of the intellectual elite of the community. In addition to these men, there were a number of

lesser functionaries in the community, some of whom functioned on a professional basis, and some on a voluntaristic basis. We know of the existence of Gabbain shel Tsedaka whose function it was to maintain custody of the community's charity funds and to distribute them among the poor.<sup>1</sup> Such charity funds were set up and entrusted to a respected member of the community. Although R. Eliezer did not indicate the manner in which the Gabbai was chosen, it is reasonable to assume that such a person was a widely respected member of the community, appointed by its leadership.<sup>2</sup> He did not receive remuneration for the fulfillment of his responsibility. Instead, he found himself under pressure to maintain the highest standards of honesty in the gathering and distributing of funds. Unlike the Talmudic authorities who were loathe to entrust the Kuppa shel Tsedaka to one individual, the medievals were prepared to do so, provided that the standards applied to such steward-

<sup>1</sup>Eben Haezer, 191d, 208d, 166d. R. Eliezer made no distinction between those who collected and those who distributed the funds. Such a distinction is known in later sources.

<sup>2</sup>There are those who would claim that the Gabbai was elected by the community. See, e.g., D. Shohet, The Jewish Court in the Middle Ages, p. 37. There is, however, no evidence that this, in fact, was done. Shohet based himself on a quotation from Mordecai (Nez. 488, B.B. 8b) in which Mordecai stated איהו נהגו בכל המקומות להעמיד גבאי אחד אחד שהצבור חפצים בו למנוחו. Mordecai's statement does not, however, lead one to the conclusion that the Gabbai was elected. He may just as well have been appointed.

ship were of the most stringent.<sup>3</sup>

The responsibilities of the Gabbai were such that he had to be assured of the safety of the funds put into his hands, at the same time keeping them available for immediate distribution, if necessary. There were communities in which the number of poor were limited and the demands upon the charity chest were not great. From a later source, we learn that the number of charity poor had increased to such an extent that the Gabbai himself was called upon to take funds from his own resources to fill the depleted charity fund.<sup>4</sup> The impression one derives from R. Eliezer is that this need rarely, if ever, arose in his time, since the communities were in good financial circumstances and possessed very few indigent poor whose main source of support was the charity chest. Distribution of wealth in our early period was good, even after the period of the First Crusade. It was only much later that there developed extremes of poverty and wealth, against which the

<sup>3</sup>The Baraita in Baba Bathra, 8b, is rather specific in this regard. קופה של צדקה נגביח בשנים ומחלקת בשלשה שאין עושים שררו על הצבור פחות משנים ומחלקת בשלשה כדיני ממונות.

Mordecai in his commentary (Nez. 488, B.B. 8b) made it evident that the custom in his time was to have only one Gabbai. R. Isaac of Vienna (On Zarua, Hilchot Tsedakah 4), while preferring two gabbaim, made the following statement:

...כבר נהגו בכל המקומות להעמיד גבאי אחד...

R. Eliezer on his part (191d) also spoke of a single Gabbai. However, even the Amoraim in such singular instances as the saintly R. Hananiah ben Tradyon settled for only one Gabbai.

<sup>4</sup>Mordecai, Nez. 489, B.B. 8b.

דרך גבאים שהם מלויים לתוך כיס של צדקה עד שיחא בכיס צדקה

earlier forms of poor relief were to prove wholly inadequate.<sup>5</sup>

The contribution of each individual to the charity fund was not determined by the individual himself. Rather, the elders of the city determined it for him.<sup>6</sup> R. Eliezer also indicated that the individual was not permitted to appeal the assessment or to argue about the method by which it was computed with those who were charged with its collection.<sup>7</sup> The responsibility to participate in the community chest was incumbent upon any new arrival in a city after he had been in the city for three months in accordance with the Talmudic view, and it was one of the elements of citizenship taken for granted by the medieval community.<sup>8</sup>

<sup>5</sup>Abrahams propounds a similar thesis. He does not go far enough, however, in distinguishing different layers of development within the early period. See I. Abrahams, Jewish Life in the Middle Ages, p. 322.

<sup>6</sup>Eben Haezer, 176d. This position of R. Eliezer in keeping with talmudic precedent and in support of compulsory contributions to the Kuppa was not without its detractors in the community. In the Tosafhot, B.B., 8b we note the following:

אכפיה לר נחן: ואר"ת דודאי כפיה בדבריהם...ועוד הירץ והכא קבלו עליהם שיכופו אותן הגבאי ולר"י נראה שבצדקה כופין.

Or Zarua, Hilchot Tsedakah, 4 spelled out further the position of Rabbenu Tam ועוד היה מפרש רבינו תם זצ"ל דודאי אין בני העיר יכולין לכופ R. Gershom, on the other hand, made the following statement in his commentary to B. Bathra, 8b: מאי שרירות איכא בגבאי צדקה הואיל דבר קצוב הוא ונותנין ברצון.

<sup>7</sup>Eben Haezer, 208d. R. Eliezer based himself on the talmudic injunction of B. Bathra, 9a against any attempt to negotiate the amount of money owed to the community chest.

<sup>8</sup>See Baba Bathra, 8a, as well as supra, Chapter III, footnote 40.

In addition to the Kuppa shel Tsedaka, the poor were aided in many other ways. In accordance with Talmudic precedent, provision was made for distribution of clothing and food,<sup>9</sup> and for the burial of the indigent dead. The concern shown by the community for the Jewish poor was extended as well to the poor among the non-Jews in order to contribute to better relations between Jew and gentile.<sup>10</sup> Special consideration was shown to orphans who were exempted from taxes levied by the Jewish community, though they were compelled to pay those taxes imposed upon the community from without.<sup>11</sup>

The community also set aside a sum of money for the ransoming of captives. In case of need, it came to the aid of a co-religionist who was detained by hostile gentiles who negotiated with the Jewish community for his release.<sup>12</sup>

<sup>9</sup>Reference here is to the talmudic 'ממון incorporated by R. Eliezer into the list of the funds to which the individual was compelled to contribute. See Eben Haezer, 208d. The retention of the term would seem to indicate that even at this relatively late date the custom of distributing charity in kind as well as in money was retained. It is questionable whether 'ממון was of particular importance in our period. Note the interesting comment of Maimonides in Hilchot Matnot Ani'im, Chapter 9, Par. 3.

<sup>10</sup>Eben Haezer, 281c. See infra, Chapter V for the relationships between Jew and gentile in detail.

<sup>11</sup>Ibid., 281a.

<sup>12</sup>Ibid., 208d. R. Eliezer held with the general view that the estate of orphans could not be depleted even in case of the need to have funds available for the ransoming of captives.

Reference is made to the capturing of a Jew and to his removal to a far off area.<sup>13</sup> The charitable institutions of the community were limited to those who resided within it. Occasionally, funds were made available for strangers passing through the city, but the orientation of all charitable institutions was to the community itself; there is no record of cities joining together for any charitable purpose outside of their own jurisdiction. The pattern accepted was the localized Talmudic one, with very little evidence of patterns of poor relief that went beyond Talmudic provisions. This seems to lead to the conclusion that in the aftermath of the First Crusade, there were no hordes of indigent poor descending upon the established institutions, upsetting them and causing new patterns of poor relief to arise as in a later period. Despite the persecutions, the accepted patterns of poor relief known for some centuries continued to prevail.

The most important communal institution was the synagogue, an institution with a long history that moulded Jewish life many centuries before our period. In R. Eliezer's time, the synagogue played a crucial and central role in the community. The synagogue was more than a building in which prayers were uttered; rather it was a place where the entire life of the people was given expression. It was a place where public approval or disapproval was voiced on the moral

<sup>13</sup>Ibid., 199d.

behavior of the people, and where individuals had the right to protest against wrongs done to them by individuals or by the community. Although the synagogue was open to all members of the Jewish community, there were grounds upon which one could be expelled from it. R. Eliezer left us an interesting example of one who was expelled from the synagogue for gambling.<sup>14</sup> How the expulsion was accomplished is not clear. It appears that the organized community made the expulsion decision, which was carried out by the elders of the synagogue. The expulsion was warning to the malefactor to turn from his ways.<sup>15</sup>

R. Eliezer left us one other example of the use of the synagogue as a forum in which to reprove members of the community for alleged immorality. It was the case of a wife who rebelled against her husband. Among other actions taken against her was a public warning proclaimed in the synagogue instructing her to cease and desist from her rebellious acts against the authority of her husband. This act took place on four consecutive Sabbaths, presumably to insure the most public exposure of such an act before the entire community.<sup>16</sup>

<sup>14</sup>Ibid., 226c. דמי שהוציאורו הקהל מביה הכנסת מפני ששחק בקוביא As R. Eliezer indicated clearly, the reference is to one who gambles for money professionally. There is good reason to believe that Jews of our period played games of chance for entertainment. See infra, Chapter VI, footnote 77.

<sup>15</sup>Ibid. אין הכרזה גדולה מזו...

<sup>16</sup>Ibid., 261c. R. Eliezer quoted here almost verbatim from Ket. 63a, but the context of his remarks would seem to

The synagogue did not function as an institution to discipline waywardness in the community. This was accomplished in the court, a more appropriate agency to effect discipline. It was rather the forum through which public exposure of individual misdeeds could take place.

It is not to be assumed that there was only one synagogue in the town of Mayence or any of the other cities in Germany during our period. On the contrary, the preponderance of evidence indicates that there was a proliferation of houses of worship in the medieval community, private, semi-private, and communal in nature. Of course, in the smaller community, one synagogue was sufficient to meet its needs, and discussion of matters of communal concern was made somewhat easier.<sup>17</sup> The synagogue known to R. Eliezer was built through the sale of individual seats. The head of the family

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indicate that the case was of more than academic interest. See also Z. Falk, Jewish Matrimonial Law in the Middle Ages, p. 16. On the general status of women, see infra, Chapter VI.

<sup>17</sup>S. Baron, The Jewish Community, Vol. II, p. 125. See also L. Finkelstein, Jewish Self-Government in the Middle Ages, p. 119, in which he indicates that Rabbenu Gershom took for granted the existence of more than one synagogue in a given community. Later generations sought to impose controls on private synagogues. No private individual could exclude anyone from a synagogue even if it met within the confines of his own home. See Or Zarua, Baba Metzia, par. 21. See also A. M. Habermann, Gezerot Ashkenaz V'Tsorfat, p. 60, in which the existence of more than one synagogue is assumed.

bought the family pew, and then divided the seats among the various members of his family to remain as the property of that family in perpetuity. Though the community had the responsibility of seeing to it that the members of the community had a place in which to pray, the primary responsibilities for the synagogue were in the hands of individual families. They might, if they so desired, sell their rights in the synagogue. For R. Eliezer, however, such an act was calculated to bring disgrace down upon the family name and was prohibited.<sup>18</sup> The costs of synagogue administration were borne to a large extent through the gathering of free will offerings rather than through the granting of any specific funds through the resources of the community as a whole.<sup>19</sup>

If the synagogue imposed moral standards upon the people, it also was an institution which gave ample room for the individual to bring to light many of his own cares and

<sup>18</sup> Eben Haezer, 191d. שאינו יכול לא למכור ולא ליהן מקום אבוהיו... בבית הכנסת שיה נמי פגם משפחה הוא ואין מכירתו מכירה ולא מחנו מחנה...  
Later generations bought and sold seats in the synagogue as they would any other piece of property.

<sup>19</sup> Although R. Eliezer did make reference to the many areas where community funds were used, particularly in the area of poor relief, we do not possess a single statement to the effect that such funds were put at the disposal of a specific synagogue function. We learn from Mordecai (Aboda Zara 840) that the Synagogue at Cologne had stained glass windows upon which were engraved pictures of lions and snakes to which R. Eliakim objected vociferously. Such embellishments were paid for from individual donations. See supra, Chapter I, footnote 19, as well as infra, Chapter VIII, footnote 5.

problems, wholly secular in nature. An indication of such an instance is cited giving the right to an individual to interrupt public prayer and a Herem was pronounced against anyone who had withheld information about a lost article which had not been returned.<sup>20</sup> The statement of R. Eliezer was based upon an earlier Takkana of R. Gershom with regard to the limitations put upon the right to interrupt public prayer.<sup>21</sup> Public prayer was interrupted in our period for all sorts of individual grievances; only at a later time was the right to interrupt public prayers severely limited.

Decorum was observed during the reading of the Torah when the worshippers remained seated and attentive, but during the services proper, their attention drifted to secular concerns. During the afternoon prayer, people walked in and out of the synagogue. Such activity represented the intrusion of secular concerns into the sanctuary and reflected the rather poor decorum observed in the medieval synagogue.<sup>22</sup>

<sup>20</sup>Eben Haezer, 93c. See also supra, Chapter III, footnote 72.

<sup>21</sup>L. Finkelstein, op. cit., p. 120. It was Finkelstein's view that the custom of interrupting prayers was exclusively a feature of the Franco-German community, although the custom did spread to some small extent (pp. 15-17).

<sup>22</sup>Eben Haezer, 53d. ובקריאת התורה כל הצבור בבית הכנסת...בתפילה המוספין לא היו שם רוב עם לפי שיוצאין ונכנסין אבל בס"ת אין יוצאין  
It is interesting to note the difference between this statement and that of Salo Baron, The Jewish Community, Vol. 2, 141. "During the reading of the Torah audiences tended to gossip and read other books, while some congregated in the courtyard."

R. Eliezer at no time castigated his contemporaries for lack of proper religious attitude, but seemed to accept such intrusions of secular concerns into the synagogue as a matter of course.

In addition to the unsalaried Rabbi already noted, there were two categories of professional or semi-professional functionaries who were attached to the synagogue. The first was the Shamash, who among his other duties was responsible for the calling of worshippers to prayer.<sup>23</sup> The office of the Shamash is as old as Talmudic times, but the sources have left no adequate description of the duties of the Shamash of our period.<sup>24</sup> It is reasonable to assume that the Shamash performed the many menial duties involved in the day to day functioning of the synagogue. There is no evidence that his responsibilities involved him in activity outside of the realm of the synagogue characteristic of a later time.

In addition to the Shamash, we know, too, of the synagogue cantor, referred to always in our text as Shalish Tsibur.<sup>25</sup> It appears fairly certain that the cantor was a

<sup>23</sup>Ibid., 174b. רוכן הקשה שמש על הפתח בשבח לקרוא לבי"כ. See Mordecai, Moed, 696. Note also Eben Haezer, 153c.

<sup>24</sup>A. Berliner, Aus dem Leben der deutschen Juden in Mittelalter, p. 114. See also the comments of Abrahams on the term "Schulkopfer." I. Abrahams, Jewish Life in the Middle Ages, p. 56.

<sup>25</sup>The alternate term whereby such an individual is known in later time would be Hazan. The history of this particular word from its Talmudic origins is subject to many possible explanations, and much too involved for treatment here. Suffice be it to say that the term Hazan never occurs in R. Eliezer's work.

permanent official of the synagogue. It is impossible to determine whether he was engaged professionally or whether he functioned on a voluntary basis.<sup>26</sup> At a time when there were no prayer books in the hands of the congregation, the cantor fulfilled an extremely important role in the congregation.<sup>27</sup> At times, the cantor introduced his own compositions in the service, but it appears that the cantor's original compositions were subject to the approval of the local scholarly group, and that his authority as innovator was circumscribed severely by those authorities.<sup>28</sup> The cantor functioned not only as the leader of the service. He acted also as Torah reader, for by this time the reading of the Torah was taken out of the hands of those who were called to the Torah. It was entrusted to someone who was proficient, lest embarrassment be caused to those who were called to the Torah and could not read properly.<sup>29</sup>

<sup>26</sup>R. Eliezer did not comment on the professionalization of the cantor. However, we do have a later source in which reference is made to a paid cantor. See Or Zarua, par. 113. It is reasonable to assume that some degree of professionalization did occur, particularly if the position was combined with that of teacher as indicated in the Or Zarua responsum. There are no grounds, however, for assuming that the professional cantor was an established practise as is assumed by Shohet (The Jewish Court in the Middle Ages, p. 46).

<sup>27</sup>Eben Haezer, 30d. This responsum clearly implies that there were no prayer books in the hands of the congregation. See also infra, Chapter VIII.

<sup>28</sup>Ibid., 178a.

<sup>29</sup>Tosafot, Megillah, 30a. ומה שנוהגין עכשיו שמסייע ש"ץ לקורא בתורה כדי שלא לבייש את מי שאינו קורא.

The roles of the Shamash and the cantor were largely ritualistic in nature. In no sense were they involved in the shaping of policy within the synagogue. A committee of elders elected the cantor; they looked after the repair of the synagogue building and they adjudicated disputes that arose from time to time. This committee was part of the larger leadership group that supervised the affairs of the entire community. The structure of the committee was, however, loose and informal, and the adjudication of important disputes remained firmly in the hands of the acknowledged leaders of the community, such as R. Eliakim b. Joseph.<sup>30</sup>

If there did arise at any time conflict between the leadership of the community and the elders of any synagogue, it was not reflected in our text. The synagogue remained the social center of all community activities and observances. Utilized daily for prayer by all the members of the community, it was a vehicle for the transmission of the latest news and gossip.<sup>31</sup>

The synagogue was the site at which the marriage ceremony took place. It was the place in which the local court held

<sup>30</sup>We possess an interesting illustration of a dispute that flared within a synagogue with regard to a shofar that was blown improperly. As is evident in the text, R. Eliakim, R. Eliezer's father-in-law, was involved in the adjudication of the dispute. See Eben Haezer, 49cd. See also supra, Chapter I, footnote 17.

<sup>31</sup>The extent to which the synagogue was utilized by its many worshippers was noted by Mordecai (Gittin, par. 462).

its sessions,<sup>32</sup> and often, as we shall see, it was utilized as a school as well. In short, the synagogue was the most important institution that sustained the medieval Jewish community.<sup>33</sup>

It is assumed by some authorities that along with the institution of the synagogue, the first settlers in a given community were concerned with the establishment of a cemetery.<sup>34</sup> In opposition to this position, Berliner holds that unlike the synagogue which existed in every community, no matter how small, a cemetery was set up only in the larger Jewish community. A death that occurred in the surrounding smaller communities necessitated the moving of the body from the place of death to that of burial, with the resulting expense in the form of taxes that had to be paid to the local municipal authorities for the privilege.<sup>35</sup> A communal

<sup>32</sup>All the sources that we possess indicating that the synagogue was utilized in such a fashion belong to a period later than our own. See, e.g., J. Aronius, Regesten #547, par. 30, p. 236, dating from 1244. The recognition on the part of the secular authorities that a Jewish trial was ordinarily held in the synagogue and their willingness to participate in a trial at such a site would seem to indicate that such a practise was rather deeply rooted. There is no reason to doubt that the procedure occurred in R. Eliezer's time as well, although it was not specifically mentioned by him.

<sup>33</sup>Despite some unfortunate polemics, the treatment by Israel Abrahams of the medieval synagogue is substantially correct. See I. Abraham, op. cit., pp.1-34.

<sup>34</sup>See S. Baron, The Jewish Community, Vol. II, 124.244. "The synagogue and the cemetery thus constituted the same constant and universal features of Jewish community life."

<sup>35</sup>A. Berliner, op. cit., p. 118.

ordinance (Takkana) from our period reads as follows:

עיר שיש בה בית הקברות כופים בני הכפרים המוליכים  
מתייהם לשם לדון שם.

Rural residents who bring their dead for burial to a town possessing a cemetery are compelled to come to that town for the adjudication of any dispute they may have.<sup>36</sup>

In our period, the smaller outlying settlements looked to the larger communities generally for aid in many of their affairs, including a cemetery in which to bury their dead. Every Jew was assured a place of burial,<sup>37</sup> and in the case of the indigent the expenses involved in burial were met by the community. The need to care for the indigent dead implied clearly that in the ordinary case a cemetery lot was bought much as one bought a pew in a synagogue.<sup>38</sup> In one responsum, R. Eliezer was called upon to comment on the matter of Jewish burial from the standpoint of Jewish law. The tone of the responsum suggests that the question came to

<sup>36</sup>The text of the Takkana appears as one of a series of ordinances ascribed to Rabbeinu Gershom by R. Meir of Rothenburg (Responsa of R. Meir of Rothenburg, Prague edition, 159d). In addition, Finkelstein brings exactly the same text in a similar series ascribed to R. Tam, in which ordinances of both R. Tam and R. Gershom are intertwined with one another. Cf. L. Finkelstein, op. cit., p. 206. The application of the Takkana to our time is beyond question.

<sup>37</sup>Eben Haezer, 59c. This contention is based on a statement attributed by R. Eliezer to R. Jacob Halevi (ר'עב"ה) on a halachic matter with which R. Eliezer disagreed. There was no disagreement, however, on the fundamental assumptions of R. Jacob with regard to the rights of burial.

<sup>38</sup>Ibid., 208d. This view is supported by Baron. S. Baron, The Jewish Community, Vol. 2, 156.

R. Eliezer from an area of Jewish settlement outside his own city, and that it was addressed to him by a group of people charged with the responsibility of caring for the burial of the dead. Although R. Eliezer at no point in his work mentioned the term Hevra Kadisha, we do know of its existence from a much earlier time.<sup>39</sup>

R. Eliezer's work is exceptionally rich in information on the Jewish courts of his time. He informs us that he sat at the feet of his father-in-law, R. Eliakim, as R. Eliakim sat in court as a judge in Mayence along with Kalonymus Bar Yehuda. R. Eliezer thus prepared himself for the time when he would be called upon to take over the responsibility of judgeship.<sup>40</sup> When he began sitting as a judge, his own son-in-law, R. Samuel, fulfilled exactly the same role. R. Samuel engaged his father-in-law often in spirited debate over interpretations of particular legal points and there were times when R. Eliezer was forced to reprove him.<sup>41</sup> R. Eliezer

<sup>39</sup>Ibid., 295d. It should be noted here that the term Hevra Kadisha should not always be taken as a term implying a burial society. We know from other contexts that often the term is used with respect to a society whose purposes are educational rather than functionary. Cf. M. Gudemann, Quellenschriften, p. 301. For our purposes here, however, it is not the term but rather the function that is of interest.

<sup>40</sup>Ibid., 16d. See also supra, Chapter I, footnotes 17-18.

<sup>41</sup>Ibid., 17a. Note supra, Chapter I for a full discussion of the relationship between R. Samuel and R. Eliezer. See particularly footnotes 36-38.

often functioned as a single judge, with R. Samuel or others functioning as a subsidiary or in a tutorial position. The number of judges that constituted a court was dependent more on the desire of the Ab Bet Din than on any pattern of recognized procedure.<sup>42</sup> In some instances R. Eliezer referred to another judge sitting with him, a procedure that depended on the complexity of the matter being adjudicated, for in some circumstances it was desirable that another share the responsibility of judgment. Since R. Eliezer was recognized as the administrative head of the community, it is clear that the functions of administrative head and judicial head of the community were combined in one person.<sup>43</sup>

In addition to the patterns of adjudication indicated above, there existed as well courts that were set up as the need arose. Such courts were composed of three lay judges, one of whom was chosen by one litigant, the other by the second litigant and the third judge chosen by the first two.

<sup>42</sup>The talmudic tradition provided for a court of three which sat in judgment (San., Chapter 1). Such a court could be composed of three laymen totally unlettered in the law. In our period, we possess a reference by Rashi ב"ד חסר composed of three learned personages of the city who, together, function as a court. J. Mueller, Teshubot Hachme Tserfat V'Luter, par. 27. See also, Responsa of R. Meir of Rothenburg, par. 854. The dominant system for R. Eliezer was for adjudication to take place before a single judge who was, as in the case of R. Eliezer, the recognized authority of the city. Cf. S. Baron, The Jewish Community, Vol. II, 215.

<sup>43</sup>M. Frank, Kehillot Ashkenaz U'Bate Dineihem, p. 35.

In most instances, the lay judges were not necessarily learned in the law. It is possible that such a court was the most common one.<sup>44</sup> However, those who were interested in finding a more adequate source of authority turned for judgment to R. Eliezer and others who possessed similar status in other communities.

There was no established gradation of courts and hence no legal pattern of appeal to a higher court. Nevertheless, a noted rabbi like R. Eliezer acted extra-legally and unofficially in that fashion. R. Eliezer dealt not only with those who were the direct participants in a legal matter at issue. Often he was called upon to express an opinion on matters that had been adjudicated first elsewhere. At such times, he overruled legal decisions that were already made by others.<sup>45</sup> R. Eliezer's informal authority to function as a high court extended beyond the borders of Germany. He was

<sup>44</sup>Ibid., p. 96. Such a procedure was well established in Talmudic times and was based on Sanhedrin, Chapter 3, Mishna, 1. The procedure followed in medieval times was normally to accept the view of the Rabbis rather than that of R. Meir. However, there were a good number of instances in which the German community allowed the litigants to participate in the process of enlisting the third and determining judge. See Eben Haezer, 80b.

<sup>45</sup>A typical example of R. Eliezer's functioning as a court of last resort can be found reflected in his correspondence with R. Baruch of Regensburg. See Eben Haezer, 308c. Note also, supra, Chapter I, passim.

turned to with great frequency by the great scholars and jurists of his time for interpretations of Jewish law. Hence, his function as a court of last resort was actually international and far reaching in scope, though voluntaristic.

Not all matters in dispute were dealt with by a formal court. For example, there is one instance in which a particular problem was submitted by mutual consent to a board of arbitrators whose scholarly knowledge and whose position in the community guaranteed the acceptance of their views by the contending parties.<sup>46</sup> The term used by R. Eliezer to describe such a board did not state the exact number of people involved, nor did it indicate the manner by which they were chosen. One derives the impression, however, that it was common practise to turn to a board of mediators before submitting cases to formal judgment.

The court was convened as the need arose in accordance with the expressed desire of the litigants. At times it

<sup>46</sup>Eben Haezer, 42cd. The actual case involved in this situation is one in which the "חכמי העיר" were utilized in order to evaluate the price of a house that was built. Although it is not in fact a matter of law that was in dispute it is brought up at this point to verify that mediation was an accepted pattern of the community. Note also a similar instance in a responsum quoted by R. Eliezer in the name of R. Joseph Tob Elem in which such arbitration is managed by הסוֹבֵי העיר (Eben Haezer, 60a).

convened within the synagogue or at least in the courtyard of the synagogue, but it is clear that the place of convening the court was by no means definite.<sup>47</sup> Courts functioning in such an ad hoc fashion did not leave records of their proceedings. R. Eliezer kept some private records, at least for the most important and perplexing cases he was charged with handling.

The Jewish court possessed a great deal of authority in enforcing its judgments upon litigants. The court had the unquestioned authority to summon recalcitrants to judgment and to compel them to submit to the judgment of the court.<sup>48</sup> This authority was derived not only from Jewish law but also from the privileges granted by the secular government, though the rabbis never invoked them as the basic source of their authority.<sup>49</sup> Procedures within the court were relatively simple, with litigants presenting their own cases. On occasion, however, they would bring with them another person to present their views. Such a procedure was allowed, but it was somewhat out of the ordinary.<sup>50</sup>

<sup>47</sup>Ibid., 227c. משום דליכא האידנא מקום ורועד קבוע...

<sup>48</sup>Ibid., 36ab.

<sup>49</sup>J. Aronius, Regesten, pars. 169-171. See also D. Stobbe, Die Juden in Deutschland während des Mittelalters, as well as supra, Chapter III, footnotes 34, 38.

<sup>50</sup>Eben Haezer, 199d. R. Eliezer's responsum is very interesting. B., who was brought to court by A., claimed לא איש דברים אנכי and put C in his place to argue for him. R. Eliezer indicated that the court could not stop him

The Jewish court of the time dealt with civil as well as religious issues. It did not, however, deal with criminal matters, at least as far as R. Eliezer was concerned. There were, indeed, all kinds of civil suits that were brought before R. Eliezer, as well as many civil matters that were brought before him for review. At no point during the course of his responsa did he make reference to any matter, criminal in nature, that was brought before him. R. Eliezer formulated the scope of his authority in the following fashion:

יש מהן שדנין אותן בזמן הזה ויש מהן שאין דנין אותן  
 כי לא דיינינן בזמן הזה אלא מילתא דשכיחא ואמת בה  
 חסרון כיס...וכן כל דבר של קנס אין דנין...

There are certain categories of cases that may be tried in our contemporary courts, as well as other categories that may not be tried. We may try cases that involve financial loss arising from circumstances that occur with some frequency . . . and we may not try cases involving the imposition of a fine.<sup>51</sup>

It would appear on the basis of this statement that the Jewish court did not seek jurisdiction over criminal matters. At a later period, we find that the secular authorities spelled out in detail the extent of their own authority over criminal cases, including such matters as theft, assault, and

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from acting in such a fashion, but there is a strong implication that it represented a somewhat new departure. He based his position on Baba Metsia, 39a, and held that while the court was under no obligation to secure an אפוטרופוס if the individual secured one himself, he did so within the law.

<sup>51</sup>Eben Haezer, 185a. R. Eliezer commented here on Baba Kamma, 4b. On the other hand, R. Tam seemed to rule otherwise. See Tosafot, Baba Kamma, 84b. Note also, infra, footnote 56.

adultery, when both parties were Jewish.<sup>52</sup> The Jewish court did its utmost to prevent a criminal from being transferred to a Gentile court for judgment, even expelling him from the city, and, therefore, away from the jurisdiction of the Christian court.<sup>53</sup> Its jurisdiction over civil suits was unquestioned, and we find often that even in an altercation between a Jew and a gentile, judgment could and did take place before the Jewish court.<sup>54</sup> Similarly, there were instances in which a Jew participated in legal proceedings before a Christian court.<sup>55</sup>

<sup>52</sup>Reference is made here to the Cologne privilege document of 1252 granted by Archbishop Konrad and found in J. Aronius, Regesten, par. 588. The period of the document falls somewhat later than our own. However, its proximity to our own is highly suggestive of a similar pattern of authority for our own time as well, especially in light of R. Eliezer's comments.

<sup>53</sup>Sefer Hasidim, par. 1120. Though the source here, too, is later than our period, there is no reason to doubt that a similar approach would be characteristic of R. Eliezer's period.

<sup>54</sup>Eben Haezer, 204b.

<sup>55</sup>Ibid., 194d. The reference here is to a Jew bearing witness along with a non-Jew before a non-Jewish court. Although the practise was viewed with suspicion by R. Eliezer, he accepted it as part of the legal structure in which he was forced to function. See infra, Chapter V. There is, of course, a clear distinction to be drawn between testifying in a Gentile court and bringing a fellow Jew into a Gentile court for judgment. That was expressly forbidden by the synod of Troyes in 1160. See L. Finkelstein, op. cit., p. 153, par. 1.

The procedures before the Jewish court were determined by Talmudic precedent and were regulated by Jewish law as interpreted by the rabbis who acted as judges. As already stated, R. Eliezer felt that he did not have the authority to impose fines of any sort upon the litigants that came before him. He held the view that the authority to exact fines rested with the Sanhedrin of old. Therefore, the right to impose fines was denied the Babylonian community or his own contemporary community.<sup>56</sup> There are grounds for assuming, however, that while fines were not permitted to be levied by the court, there were administrative procedures that could be used in order to permit a fine to be imposed in

<sup>56</sup>Ibid., 185ab. Note especially אין דנין בזמן... זה דמוחין על פי הנשיא בעינין It is very clear from the statements noted here that R. Eliezer did not consider himself at all to be in the line of Palestinian succession. Rather, R. Eliezer had Babylonian precedents in mind in defining the authority of his court. Cf. A. Neman, The Jews in Spain, Vol. I, 126, who holds that despite the ban on imposing fines, the political and social conditions of the time served to develop an effective substitute system that circulocuted the prohibition. See also L. Landman, Jewish Law in the Diaspora: Confrontation and Accommodation, p. 155, footnote 55. Landman's thesis (following S. Zeitlin, "Rashi and the Rabbinat," JQR, Vol. 31) was that courts of the Franco-German center did impose fines since they considered themselves to be in the line of Palestinian succession. The ban against fines did not, therefore, apply to them. Whatever the case was in France, R. Eliezer, for one, was not prepared to extend the jurisdiction of the German court. In effect, he was ruling in accordance with Babylonian rather than Palestinian precedents. Note infra, Chapter VIII, footnote 58, as well as supra, footnote 51.

a situation that called for such an imposition.<sup>57</sup> In this manner, the community was able to deal with the problems that arose without having to turn matters over to the non-Jewish court or to leave them in abeyance. It is indicative of the flexibility of the medieval rabbis that they were able to provide for a circumlocution of specific prohibitions in the law through an administrative mechanism. By the fourteenth century Jewish courts were exacting fines, and the secular government received a good part of these fines for its own coffers.<sup>58</sup>

The procedures cited above had a certain continuity with Talmudic tradition, but undoubtedly it was a case of new conditions producing new situations that were dealt with by Jewish authorities. The courts administered oaths to litigants or to witnesses in situations deemed appropriate from the standpoint of Talmudic law. Sharp distinctions were made between an oath administered in the contemporary courts and the oath administered in an earlier period.

<sup>57</sup> Mordecai, Gittin, par. 284. ודיני קנסות שפירש שאין דנין בזמן הזה שמעתי... שיש לדין ע"פ שבועה טובי העיר.

Note well the fact that the imposition of such penalties was not at all a matter of judgment in law. Rather, very much in the manner of Spain (supra, footnote 56), it represented a circumlocution of the law. It was an administrative, rather than a legal judgment.

<sup>58</sup> E. Carlebach, Die rechtlichen und sozialen Verhältnisse der jüdischen Gemeinden Speyer, Worms und Mainz, p. 53.

R. Eliezer elaborated on the manner in which an oath was administered in an earlier period, indicating at the same time that such a procedure was not followed in his own time.<sup>59</sup> Instead of an elaborate ritual involving the use of ram's horns, R. Eliezer indicated that the oath was to be administered in very simple fashion.<sup>60</sup> The use of the oath was widespread. R. Eliezer insisted on an oath in the case of a bailee to make certain that he had not utilized improperly material put into his hands for safekeeping.<sup>61</sup> The oath was administered generally where a litigant was suspected of not telling the truth.

In the Jewish courts, legal documents were extensively utilized. They were used between lender and debtor for the validation of debts, as evidence for gifts and contracts between business partners, as depositions before the court,

<sup>59</sup>Eben Haezer, 196c.

<sup>60</sup>Ibid., 234c.

<sup>61</sup>Ibid., 63c.

and other similar matters. The documents were prepared by scribes, who had semi-official status in the courts, and who received a fee for the documents they prepared. Extreme care was taken in the preparation of the documents to prevent fraudulent tampering with them.<sup>62</sup> Care was taken to insure that the documents would be accurate, and hence readily probated before a court of Jewish law. At times, a witnessed document would be considered a substitute for direct testimony before the court, particularly after the death of one of the disputants. Such a document was, fortunately, reproduced by R. Eliezer and left for us as follows:

זכרון עדות שהיתה בפנינו בד' בשבת בכ"ב ימים לירח חשרי  
שנה תתצג לבריאת העולם וכו' עד ונתתי לה לבתי פלוני  
ארבע אמות קרקע בחצירי מתנה ואגבן נתתי לה כל החוב שיש  
לי על ר' יצחק וכן אמר ר' פטר כבר עברו חשעה שנים שנתתי  
לו שמונה עשר זקוק כסף להרויח בהם לצורך בתי ינטיל  
ולצורכו ובאותו כסף נתן לי זה שלשה שנים ו' זקוקים וחצי  
ואבן יגונציא שיה זקוק וטבעה שיה זקוק וחצי עד שעלה לט'  
זקוקים ובאתי הנה בקלוניא ושאלתי ממנו המותר הקרן והריוח  
כי רצוני היה להשיא בתי לבעל והתחיל לגבב דברי מהתלות ואני  
אין בי כוח לצעוק ולירד עמו לדין מפני חלאים שבגופי על כן  
אני נוהן לבתי פלוני כל הממון הנשאר לי בידו הקרן והריוח  
וכו' עד שריר וקיים.

In witness before us this fourth day of the week, the twenty-second of the month of Tishri the year 4893 of the creation of the world, the following disposition was made: I gave to my daughter four cubits of land in my courtyard as a gift. Incidental to that gift I also transmitted to her the totality of the debt that is owed to me by R. Isaac. And R. Peter further stated: 'Nine years have already passed since the day I gave eighteen silver Zekukim to him so that he might invest them both for himself and for my daughter Yentil. Out of that sum he returned to

<sup>62</sup>Ibid., 222c. (Due to an error in pagination, 224 follows 222 in our text.)

me three years ago but six and a half zekukim, a precious stone worth one zakuk, a ring worth one zakuk and a half, totalling nine zekukim. I came here to Cologne and asked him for the remainder, both the principal as well as the profit from the invested funds, for it was my desire to marry off my daughter Yentil but he began to pick a frivolous argument, and I do not have the strength to protest and to bring him into court because of the afflictions to which I am subject. Therefore, I have transferred to my daughter all the money remaining in his hands, both the principal and the profit. This document is duly witnessed and signed, etc.<sup>63</sup>

Its existence would appear to indicate a sophisticated pattern of procedures in the court in which formal written evidence played a major role. While all sorts of contracts were accepted by Jewish courts, there was a tendency to be suspicious of contracts that originated from gentile sources. There was at the same time a marked similarity in form between contracts executed in Jewish courts and those of Gentile courts.<sup>64</sup>

The Jewish court was in its early stages of development during the course of our period. It had, however, a considerable degree of autonomy. Its authority was universally accepted, and it had great powers of coercing litigants

<sup>63</sup>Ibid., 36a. It should be noted that the document has within it all the indices of authenticity, viz, an exact date, the names of the litigants and specific information on the matter at issue. R. Eliezer brought immediately afterward (36ab) another document to our attention which purported to constitute evidence that the litigant had already made settlement.

<sup>64</sup>M. Frank, op. cit., pp. 63 ff. See also L. Landman, Jewish Law in the Diaspora, p. 104. A full treatment of the relationships between Gentile and Jewish communities will follow. See infra, Chapter V.

to accept its judgment as well as the ability to impose its will after weighing the case carefully. In all of these matters, R. Eliezer's role was central, not only for those of his own city but for surrounding areas as well. He aided significantly in the development of a legal apparatus whose contribution to the inner stability of the Jewish community was incomparable.

The community sought to deal with its problems well before they appeared before a court of law. In the fashion of the time, it sought to regulate many of the aspects of its economic and social life, and intruded itself into the personal lives of its members. Particularly in the matter of housing, the community sought to enforce its will, basing itself in large part on Talmudic precedent. As in the Talmudic period, houses were built facing in on a common courtyard, and there was understandable preoccupation with safeguarding the privacy of the individual home. There were Talmudic prohibitions against building a house so that one's windows or door faced the house of a neighbor in such a manner as to intrude upon his privacy.<sup>65</sup> The construction

<sup>65</sup>B. Bathra, 59b.f. The full listing of Talmudic regulations in this regard is beyond the scope of this work. It is cited here in order to note both the continuum of medieval regulations as well as the important areas of innovation.

of houses was changed in our period to have the entrance-way face on the street.<sup>66</sup> All the same, the old prohibition remained in force for the medieval period exactly as it did for the Talmudic Jew. The attempt to deal adequately with new conditions in accord with Talmudic principles led R. Eliezer to submit the problem for an opinion to the major Torah centers of the time.<sup>67</sup> In our period, there was very little the owner of a property could do to his home without the permission of the community that expressed concern for the interests of a person's immediate neighbors. One was limited even in buying a new dwelling and subdividing it for tenants lest the coming of additional traffic to the building constitute a source of annoyance to the other tenants.<sup>68</sup>

One of the great concerns of the community was that of taxation. Taxation was of two different types. First, there existed a pattern of extortionist taxation imposed upon the community from

<sup>66</sup>Eben Haezer, 215d. The implications of this fact for Jewish security will be dealt with later. See infra, Chapter V.

<sup>67</sup>Ibid., 308d-309a.

<sup>68</sup>Ibid., 115d. Such a prohibition was not extended to dwellings already in existence where such rights were given to the owner.

without by the secular government.<sup>69</sup> The second type consisted of self-taxation that the community imposed upon itself to finance such matters as poor relief, burial of the dead, etc. In both cases, even where the secular government was involved, it was through the community agencies that taxes were ~~imposed~~ <sup>imposed</sup>. An interesting question was directed by R. Eliezer to Rabbi Isaac ben Asher Halevi, the well-known German Tosafist, who functioned as a judge in Speyer.<sup>70</sup> A local lord requested a loan from the Jewish community which was met by taxing each of its members a certain amount of money in order to meet the demands of the local lord. In commenting on the matter, R. Eliezer indicated that such loans were confiscatory in nature and that no one seriously expected to have his money returned to him.<sup>71</sup> In the ordinary course of ~~events~~ taxes were imposed by the local ruler through the official Jewish community.

<sup>69</sup> Ibid., 125a. ... אבל אנו שנותנים מה לגויים מקרקעות שלנו...

<sup>70</sup> R. Eliezer referred to R. Isaac as אלוף ומידע. See supra, Chapter I, footnotes 120-134.

<sup>71</sup> Eben Haezer, 60b. R. Eliezer took this matter of a loss as constituting a form of taxation for the local lord above and beyond the usual taxation. The following aside is an interesting one: מלוא ביד ההגמון בלא משכון יודאי מחייאשין ממנו.

CHAPTER V

RELATIONSHIPS BETWEEN  
JEW AND GENTILES

The picture that we derive from the responsa of the twelfth century concerning the relationships between Jews and gentiles is general but fairly informative. R. Eliezer lived through a period of travail for the Jewish people. As a child he witnessed the aftermath of the First Crusade; as an adult the effects of the Second Crusade of 1146. Undoubtedly, he had opportunity to speak with eye-witnesses of the excesses of the First Crusade, and we have every reason to believe that they would be reflected in our text. He was affected sufficiently to be the author of a chronicle of the First Crusade, as well as of a number of Piyyutim arising out of the same circumstances.<sup>1</sup> More important than these historical writings was his description of the day to day occurrences between Jews and gentiles. It is within this context that his contribution to our knowledge

<sup>1</sup>A. Haberman, Sefer Gezerot Ashkenaz V'Tsorfat, pp. 72-82. Note also Chapter I, footnotes 254, 257.

must be weighed and evaluated. There is a curious ambiguity in the impression these writings create. On the one hand, there is abundant evidence to show that the Jews of his time lived in greater freedom than in the period following, or, as a matter of fact, during most of recorded German-Jewish history. On the other hand, there are brought to light instances of robbery, violence, and murder committed against Jews, aside from the mass attacks of the organized First and Second Crusades.

Whether the violence perpetrated against Jews was motivated primarily by hatred of Jews, or whether it represented the acts of criminal elements who were set upon plunder is not clear. It was a period in which there was much danger awaiting all who ventured on the roads or who plied the rivers, whether Jew or Christian.<sup>2</sup> When, as happened sometimes, a mob attacked a Jew, it would appear as an anti-Jewish mob attack. The general impression is that attacks against the Jewish community were the exception rather than the rule, and that by and large the Jews lived at peace with their Christian neighbors. What distinguished our period was not so much the frequency of violence, as the fear in the wake of the First Crusade that such violence might be a

<sup>2</sup>James Thompson, An Economic and Social History of the Middle Ages, p. 513.

chronic condition. They felt as strangers in a foreign land who must look well to their defenses. And yet, life went on with considerable friendly contact between Jew and gentile. The seeds of poison, though planted in our period, were to yield deadly fruit only after R. Eliezer had long passed from the scene.

R. Eliezer's responsa are valuable not only as a record of hostile incidents against Jews,<sup>3</sup> but also insofar as they reflect the attitudes toward non-Jews that existed within the Jewish community. Often he recorded events earlier than his own period. Such is the case in a responsum quoted by R. Eliezer in the name of Rashi. It concerned the plight of a woman who had fled from a massacre in which her husband was killed. She returned to the house of her father and remarried. The text, though in no way specific with regard to date and place, bears all the earmarks of originating out of conditions created by the First Crusade.<sup>4</sup> As we

<sup>3</sup>One of the primary methodological problems involved in evaluating the material put into our hands by R. Eliezer is the difficulty in dating specific incidents and occurrences. In most instances R. Eliezer did not leave us a specific date, nor did he indicate sufficient additional information as to allow a reconstruction of the date and place of such occurrences. The problem is particularly significant because of the question of whether specific incidents are to be related to the Crusades, or whether they are to be considered totally unrelated random activity on the part of hostile elements in the population. Similarly, expressions of friendliness or instances of cooperative endeavor on the part of gentiles take on added significance if they can be attached to a specific time and place.

<sup>4</sup>Eben Haezer, 72d ff. The actual problem under discussion here had to do with the conflict between the heirs of

have noted, the First Crusade did not cause the overwhelming loss of life indicated by the Jewish Chroniclers.<sup>5</sup> There is no doubt, however, that the dislocations caused by the First Crusade, such as the one described here by R. Eliezer, continued to plague the Jewish community for a long time.

The contrast between the First Crusade and the Second Crusade of 1146 is instructive and startling. A question was directed to R. Eliezer by R. Eliezer bar Samson of Cologne.<sup>6</sup> R. Eliezer b. Samson described a situation in the City of Cologne. A man leased a home, but was forced, out of fear for his life, to flee the city along with the rest of the Jewish residents.<sup>7</sup> The lease was for a two year period. Within that time, the lessor lived in the house, abandoned it temporarily, and returned to it for the balance of the lease. The point at issue between the lessor and the

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the husband and their remarried mother with regard to the estate that was in dispute. Our interest is not at all directed to the subject under discussion in the responsum, but rather to the references made by the text to the massacre. The words **ביום הרג רב** appear to denote an incident of the First Crusade period.

<sup>5</sup>Note supra, Chapter III, footnotes 25 and 26.

<sup>6</sup>This was the very same R. Eliezer who joined our R. Eliezer in 1160 at a Rabbinical Synod held in France at the invitation of R. Tam. The purpose of the Synod was to deal with the many problems that plagued the Western communities in the aftermath of the Second Crusade. See L. Finkelstein, Jewish Self Government in the Middle Ages, p. 42. Note also, supra, Chapter I, footnote 115.

<sup>7</sup>Eben Haezer, 68d.

lessee was payment for the period in which the house was unoccupied. The period in which the Jewish community remained away from the city could not have been very long. It is clear that there was little, if any, loss of life or property damage. The house was found by its owner exactly as it had been when it was abandoned.<sup>8</sup> Moreover, it appears doubtful whether the entire community fled. R. Eliezer mentioned specifically that a minority of the community did not flee in panic.<sup>9</sup> This is evidently a fair description of the effects of the Second Crusade upon the community of Cologne. The community, or at least most of it, fled for their lives, perhaps remembering the loss of life sustained in the First Crusade. Their fears proved to be exaggerated. Within a short time the Jews returned to their homes.<sup>10</sup> The gentile

<sup>8</sup>It is significant that the only matter brought up for discussion in the responsum was that of rental for the period of time in which the house was left unoccupied. It is clear from the entire tone of the responsum that the Jewish community moved immediately back into the properties they had left and that these properties were not damaged in any way during their absence.

<sup>9</sup>Eben Haezer, 69a. **שְׁהָרֵי נִשְׁאָרוּ מִיָּעוֹט הַקָּהָל בְּבֵיתָא.**

<sup>10</sup>The information we possess from the other sources on the events of the Second Crusade correlates very well with the circumstances described in the responsum under discussion. We know that Abbot Bernard of Clairvaux, while calling upon the people of Cologne to join in the Second Crusade, specifically enjoined against striking out at the Jews resident in the city. Of even greater importance is the fact that Archbishop Arnold transferred to the Jews the fortress of Wolkenburg as a refuge, which would go a long way towards explaining the lack of bloodshed. In addition, the Archbishop had deposited with him the properties of the Jews in

residents did not appropriate or destroy Jewish property in the confusion of the hour. Evidently there were friendly relations between Jews and their neighbors in Cologne. The threat to life and property came from without rather than from within Cologne. The Jewish community had learned its lessons well during the First Crusade, and looked to its own defense. It now took seriously the threat of possible aggression, and accepted the possibility, or even the probability of trouble. Yet, within the city there remained a reservoir of good will between the resident Jews and non-Jews that stood the Jewish community in good stead in time of need.

It is true that during this period the Jews suffered destruction of property and loss of life. Indeed, R. Eliezer referred to an instance which had involved the destruction of a Jewish house during a period of persecution, in all probability the Second Crusade.<sup>11</sup> Still, the

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Cologne and probably put them under his personal protection. Evidently they were returned in an honorable fashion after the immediate danger had passed, a fact which is itself significant. See A. Kober, History of the Jews in Cologne, pp. 18-19.

<sup>11</sup>Eben Haezer, 82d. There is, of course, no way of telling with certainty that this particular incident took place during the Second Crusade. The phrase used by R. Eliezer is בשעה הגזירה and the context would seem to indicate that period. Unfortunately, though a name מר יהואל is mentioned, it is impossible to identify the person sending the question. The name appears only once in the entire text, and is not to be identified with any known scholar of our period. As a matter of fact, R. Eliezer did not at first wish

person submitting the question returned to the same house and attempted to rebuild it and live in it. It is clear that when persecutions and attacks took place, their effects were not long lasting. The Jew did not flee permanently, but indeed returned at the earliest opportunity. While the Second Crusade did not have any lasting effect upon the German communities, there are grounds for believing that it did have somewhat more of an effect upon the French communities. In an exchange of letters the following comment was made by the Tosafist, R. Samuel ben Meir:

...וְצוּרֵינוּ יִשְׁקֵט לְכָל עַמּוֹ מִיָּמֵי רַע  
וְיֵט עֲלֵינוּ חֶסֶד לְפָתוּחַ לָנוּ אֲרוּחוֹת חַיִּים...

May the Lord grant peace to his people from evil days and extend to us His loving kindness, to open before us paths of life . . .<sup>12</sup>

R. Samuel referred to conditions in France, leading us to believe that the conditions prevailing in France were worse than those of Germany.

While the Jewish community as a whole had to contend

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to become involved in a matter where he had not been formally requested to do so. He finally agreed at the pleading of מֶרְיָהוּאל to do so, an indication that מֶרְיָהוּאל did not have formal standing as a scholar or judge in the community.

<sup>12</sup>Ibid., 294c. The quotation appears at the end of an extremely long exchange of opinion between R. Samuel and R. Eliezer. It is impossible to date the exchange of views with absolute accuracy. No date was mentioned by R. Eliezer during the course of the long discussion. Both R. Eliezer and R. Samuel address one another with the greatest respect, and it is clear that both men were in their prime. The text itself points clearly to a period of turmoil, readily established as the Second Crusade. Finally, the calling of a Rabbinical Synod by Rabbeinu Tam in 1160 was itself indicative of

with unrestrained mobs only rarely, there exists abundant evidence in R. Eliezer's responsa that acts of violence were committed with relative frequency against individual Jews, often travelling alone and defenseless. In one such instance a Jew was traveling from Mayence to Worms with his merchandise in a wagon that he engaged for that purpose. Enroute, the driver attacked and killed him, throwing his body into the Rhine.<sup>13</sup> In this case, the authorities cooperated with the family in searching for the murderer. Although we find no mention of the murderer having been brought to trial and properly punished, the description of the incident left no doubt that the authorities investigated thoroughly. The motive of the murderer was robbery; the merchandise of the merchant was found in the home of the murderer. The tragedy was underlined by the responsum, for the merchant's son had to wait a long time for his father's body to be recovered

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dislocations felt in that country in the wake of the Crusades. According to Finkelstein, the original consideration of calling the Synod took place in the immediate aftermath of the Crusade. He also holds that the text of the synodal ordinances is not complete but originally contained other provisions to meet the exigencies of the time. See L. Finkelstein, op. cit., p. 42.

<sup>13</sup>Eben Haezer, 79a. It is possible to arrive only at an approximate date for the incident. We know the exact day of the year in which it took place since R. Eliezer stipulated the date to be **ר"ח טבת** in the midst of winter. We know, too, that R. Eliakim was still alive at the time since it was he who ruled on laws of mourning applicable to the incident. Thus it would seem that it occurred some time before 1145, the approximate death of R. Eliakim.

from the Rhine. One is impressed by the tenuousness of life during a time in which danger lurked everywhere on the roads. This particular incident represented, however, a personal tragedy, not a community tragedy. It reflected a time, too, in which the protection of Jewish life and property were of concern to the municipal authorities.

The spectre of a Jew being attacked and robbed was considered always to be a distinct possibility. It existed even in the areas of extensive Jewish settlement, where one could be attacked on his own doorstep with impunity.<sup>14</sup> However, there were areas where attacks were considered extremely unusual. In such areas one could pursue his daily tasks without fear.<sup>15</sup> Jews were subject not only to bodily attack but suffered also ~~an~~ unwarranted imprisonment or exile. Such a case was cited by R. Eliezer in which an individual

<sup>14</sup>Ibid., 205c. In this responsum, an allegation was made by a defendant in a law suit that he could not return property put into his hands for safekeeping because he was attacked on the "Street of the Jews" and the material taken from his hands forcibly. The claim was not allowed, but not because the possibility was a remote one. Rather, it was assumed by R. Eliezer that since the incident allegedly occurred in a Jewish neighborhood, it must have been witnessed by Jews and the lack of such witnesses was clearly prejudicial to the claim of the defendant.

<sup>15</sup>Ibid., 180b. The actual subject under discussion in the responsum was the Mitzvah of the Sukkah and the responsibility of the Jew to live in the Sukkah during the course of the Tabernacles Festival. If there was danger of attack, R. Eliezer held that one was excused from the responsibility of sleeping in the Sukkah. However, מי שיש לו סוכה במקום שאין לידאג מגרים ומגנבים חייב לישן בה. In other words, for those areas where there was no danger, the responsibility of the individual is clear.

was exiled.<sup>16</sup> Attacks were often motivated entirely by pursuit of economic gain, since goods or even books were taken from Jews and were offered later for sale to members of the Jewish community.<sup>17</sup>

R. Eliezer's religious thinking and many of his decisions in Jewish law were based on the concept that the Jews lived under minority status in a foreign land. Again and again he returned to that theme which colored his thinking about the world in which he lived and determined his position on various matters of Halacha. It behooved the Jewish community to realize, said R. Eliezer, that they lived by sufferance of the Christian majority.

...בזמן הזה שאנו מחי מעט בין הגוים וידם תקיפה...  
ואפילו לא באו גוים אלא על עסקי ממון אין אדם מעמיד  
עצמו על ממונו ואם יעמוד ישראל נגד הגוי...י'הרגנו

. . .In this period, when we are a minority among non-Jews and they possess the power . . . even if one is involved with non-Jews only in a financial dispute, one should not press one's point, for if the Jew stands up against the non-Jew . . . the non-Jew may kill him.<sup>18</sup>

This view was shared by the rabbis in Germany and their contemporaries in France.

<sup>16</sup>Ibid., 199d.

<sup>17</sup>Ibid., 280d. The attempt was often successful since Jews bought such books lest they be destroyed by the non-Jews if they were not sold.

<sup>18</sup>Ibid., 150a.

...ידם תקיפה... וכמה דברים צריך לעשות להם  
דרך בקשה אף כי הדין עמנו

. . . they possess power . . . in some matters  
we must approach them with supplication even  
when our cause is just.<sup>19</sup>

Though we know that Jews often fought bravely in self-defense during the course of the Crusades, there is scant mention of the defense of Jewish rights by force of arms. The recourse left to the Jew, according to R. Eliezer, was to seek legitimate ends through pleading rather than demanding. Unfortunately, his powers of persuasion were to be proven inadequate all too soon.

R. Eliezer and his contemporaries were aware that their action might stimulate prejudice towards them on the part of the Christian majority. This was possibly a cause for their reshaping their inherited views of the hostility of non-Jews. The Talmud was concerned with any implied endorsement of idolatry.<sup>20</sup> Hence, they created a series of laws calculated to render difficult any social relationship between Jew and non-Jew. Such regulations extended from prohibiting the use of non-Jewish wine to the prohibition

<sup>19</sup>Ibid., 209a. This responsum was signed by Elijah b. Judah and Moses b. Yehiel, two French scholars who indicated by their responsum a great similarity in conditions within both countries as well as great similarity in the Jewish reactions of such conditions.

<sup>20</sup>Sanhedrin, 63b.

of business partnerships between Jews and non-Jews.<sup>21</sup> As we shall see, the Medieval Rabbis abrogated much of this legislation by the single expedient of excluding Christians from the category of non-believers.<sup>22</sup> Even the Talmudic concept held that non-Jews who lived outside of the land of Israel were not to be considered as idolaters.<sup>23</sup> For R. Eliezer there were also gradations of idolatry. The Christians of Western Europe, whose customs he knew, appeared to him somewhat less idolatrous than those of Eastern Europe about whom there abounded stories of their taking idols into their homes.<sup>24</sup> Although for him there is no question but that Christianity taught the worship of God, its form remained decidedly idolatrous and differed only in the degree

<sup>21</sup>See Sanhedrin, 63b, for the Talmudic ban on business partnerships with the non-Jew and R. Tam's comments abrogating that ban.

<sup>22</sup>David M. Shohet, op. cit., pp. 82-89. Shohet makes much of the changes in viewpoint introduced by the medievals and ascribes to them a more proper estimate of the religious and ethical teaching of Christianity. The changes were not, however, as fundamental as those assumed by Shohet and the motivations were by no means as simple.

<sup>23</sup>Hullin, 13b.

<sup>24</sup>Eben Haezer, 125a. R. Eliezer referred to practices of the Eastern Church which he reported as taking place in Russia. On the question as to whether he ever witnessed such occurrences himself or whether he was reporting from hearsay evidence, see supra, Chapter I, footnote 77.

to which idolatry was practised. On the assumption that Christians, too, believed in God, a series of impediments against associations between Jews and non-Jews were swept away. It is, of course, impossible to identify adequately the motivation of any group in making such changes in the law. Indeed, there is an entire corpus of apologetic literature that has pointed to this change in thinking as an example of liberalism and religious tolerance.<sup>25</sup> If one reads R. Eliezer and his contemporaries correctly, however, one is led to the assumption that it was not liberality that caused the shift in thinking, but rather the tenuousness of Jewish existence. Dependent as they were upon Christian trade and subject to persecution and the threat of persecution, the rabbis were prepared to take the steps necessary to allow the Jews to live more comfortably in Christian society.

Whatever the motivation, there were developments in the attitude towards gentiles and the laws regarding Jewish behavior toward them, often related to the economic status of the Jew. According to the Talmud, one is not permitted

<sup>25</sup> A good example of such apologetic literature is an article published by Jacob Lauterbach in the Yearbook of the Central Conference of American Rabbis (1921), pp. 186-233, called "The Attitude of the Jew to the Non-Jew." The article picks and chooses among the various expressions of opinion about the non-Jew with its focus much more upon the problems of Anti-Semitism in Lauterbach's own time than upon the need to describe historical reality.

to trade with a non-Jew on a pagan festival because of an implied participation in the joy of the pagan festival, and, therefore, a recognition of the pagan deity.<sup>26</sup> R. Eliezer held that such a limitation was no longer valid because of the hatred such a policy would stimulate in the non-Jewish world. He provided us with the additional reason that the Christians of his time were not to be considered as idol worshippers. Most interesting of all, however, was the comment made by R. Eliezer that Jewish livelihood was dependent upon trade with Gentiles, even on the day of a festival. It is apparent that economic considerations played a very large role in the change from the Talmudic attitude.<sup>27</sup> Rabbenu Tam ruled in exactly the same fashion, indicating no restrictions whatever in trading with Gentiles.<sup>28</sup> A similar

<sup>26</sup>Ab. Zara, 2a.

<sup>27</sup>Eben Haezer, 125d. The telling phrase in R. Eliezer's comments is as follows: **הכא נמי כיון דחיותנו הוא משא...** ...ומתן שרי. He drew an interesting parallel between the permission granted to the Jew to work on when such labor is prohibited and the issue under discussion here where any prohibition must be considered as enjoined by Rabbinic enactment. The obvious importance for the German Jews of the festival day on which potential customers came to the town underlies R. Eliezer's statement.

<sup>28</sup>Tosafot, Aboda Zara, 2a. **משום דעכום שבינינו קים לן...** בגוייהו דלא פלחו לעבודת כוכבים...**לכך נראה דשרי משום איבה.** Rabbenu Tam commented on the two ideological areas but did not find it necessary to comment on the practical daily economic problems.

viewpoint was later expressed by Mordecai b. Hillel.<sup>29</sup>

Liberalization of the Talmudic attitude toward trading with gentiles extended into other areas as well. The medieval authorities permitted dealing in objects utilized for Church services.<sup>30</sup> Among the items which were expressly permitted to be bought and sold, according to R. Eliezer, were vestments of priests, on the assumption that such vestments were utilized for aesthetic reasons as well as for purposes of worship. We are told, e.g., that the vestments were worn by the church hierarchy when they greeted the king on ceremonial occasions.<sup>31</sup> Under such conditions, since the clothes were not used exclusively for the performance of a religious act they might be legitimately bought and sold, and accepted as collateral for loans taken by members of the clergy. Similarly, it was deemed permissible to buy and sell church chalices as well as to lend money upon them. Practically the only items with which Jews could not deal were the statues used in the churches and the incense burners, conceived to be much more intimately involved in idolatrous worship experience.<sup>32</sup> R. Eliezer's liberal

<sup>29</sup>Mordecai, Aboda Zara, par. 790. והאידנא שרי הכל משום דקי"ל בגריהו דלא אזלו ומורד

<sup>30</sup>Eben Haezer, 124d.

<sup>31</sup>Ibid., 125a.

<sup>32</sup>Ibid. R. Eliezer allowed the Jews to deal in Church chalices, an item specifically forbidden by the Takkana of R. Tam. His statements here, despite their apparent liberality with regard to the Christian worship experience, are curiously

position in this regard was to be balanced against his assertion that anyone desirous of being more stringent is to be commended. His position reflected similar feelings expressed by his contemporaries. The French Tosafot, ruled that tapers used in Church services might be utilized in trade as could gifts that were brought to the priests.<sup>33</sup>

What is most surprising about both of these rulings is that they clearly contradicted a Takkana of R. Tam adopted toward the end of the twelfth century. The Takkana specifically excluded Jewish trade in Christian sacred objects because of the great danger that was involved therein.<sup>34</sup>

The pawning of sacred objects by priests and other Church officials was of concern both to Church and civil authorities throughout the Middle Ages. From the time of Charlemagne, a series of pronouncements emanated from both

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ambivalent. In a certain sense, Christians are worshippers of God and, therefore, are not to be put in the Talmudic category of idolatry. But, on the other hand, the utilization of statues as well as other elements of the service appeared to be idolatrous in the eyes of R. Eliezer and his contemporaries.

<sup>33</sup>Tosafot, Aboda Zara, 50b.

<sup>34</sup>L. Finkelstein, Jewish Self-Government in the Middle Ages, p. 178. Finkelstein has pointed out that the Takkana exists in three rescensions. The one in which a specific reason for the enactment is given reads as follows: **שלא ליקח גניבה גביע והרעיבה ובגדים צואים וספר תפילות ע"ז וכל משמשים משום סכנה**. The Takkana implied that Church articles that could be purchased by Jews were presumed to have been stolen. Undoubtedly, such an assumption was grounded in reality, and there was a very real danger to the Jews for participating in such activity.

Church and civil authorities against the practise. The pronouncements were obviously of no avail, however, for as late as 1454 Pope Nicholas V forbade the giving of Church objects as pledges under pain of ~~ex~~communication.<sup>35</sup> The pressure on Church officials for funds was too strong for any pronouncement to have an effect. Similarly the economic pressures on the Jewish community were so powerful that the practise persisted despite the danger and the Takkana of R. Tam. The great medieval authorities, even after the dissemination of the Takkana persisted in the view that the taking of Church objects in pawn as well as trading in them was permissible. Such authorities as Mordecai<sup>36</sup> and R. Asher<sup>37</sup> took such lenient views. The potential benefits to be gained from such trade were such that Jews continued to engage in it despite the obvious dangers, and despite the official opposition both from their own community and the Christian community. Of even greater import was the fact that economic pressures

<sup>35</sup>S. Grayzel, The Church and the Jews in the Thirteenth Century, p. 35, footnote 74. One such instance of flagrant violation of Church regulation is a case brought by Aronius in which an abbot gave as a pledge a gilded cross, candlesticks, and a goblet that he had conveniently appropriated. J. Aronius, Regesten, p. 174, footnote 394.

<sup>36</sup>Mordecai, Nez, 852.

<sup>37</sup>R. Asher, Aboda Zara, 77b. It is true that the medieval authorities utilized the Talmudic principle of ביטול in which the object could be divested of its religious significance by changing it slightly. The contrast with the Takkana, however, remains startling.

influenced even the authorities in their rulings.

The view of the Medievals with regard to יין נסך (libation wine) was similarly far different from that of the Talmudic authorities. R. Eliezer, in particular, eliminated יין נסך altogether as a category applicable to the non-Jews of his time.<sup>38</sup> He based his position on the notion that the non-Jews of his time no longer used wine for the purposes of libation as it was used in the pagan culture. In his words: אין גרים עכשו אדוקין לנסך יין

Non-Jews of today do not observe the ceremony of wine libation scrupulously.<sup>39</sup>

Permission to trade in wine did not mean that wine coming from Christian sources were permissible for a Jew to consume, for drinking wine socially among Jews and gentiles could lead to intermarriage. What the ruling against the category of

did accomplish was to facilitate the moving and handling of wine in a Jewish home by non-Jewish servants. Previously, this was forbidden, i.e., it rendered wine unfit for Jewish consumption. According to Talmudic law, a non-Jew who pours Jewish wine from a container into a receptacle renders unfit the wine still remaining in the container. Such a restriction involved economic hardship during a period in

<sup>38</sup>Eben Haezer, 127d. רבזמן הזה כל יינם סתם יין הוא שלא נהיגי לשכשך בו לשם ע"ז ואי נגע גוי ביינו של ישראל מותר לישראל בהנאה.

<sup>39</sup>Ibid., 127b.

which Christian servants abounded in Jewish houses and in which such acts were a daily occurrence. This medieval view was more liberal in scope than that of the Talmudic period in which contact with pagan worship was feared. R. Eliezer's contemporaries, particularly those who were involved in French viticulture and the preparation of wine tended to be even more liberal in their thinking about

ר"י נטך . Rashi and his disciples sought to find whatever grounds they could for permissiveness.<sup>40</sup> R. Tam was concerned with the problem of financial loss as a result of the prohibition of ר"י נטך. One gets the impression that he considered it to be technically prohibited but when the needs of the people demanded it the prohibition had to be abrogated.<sup>41</sup> He sought to distinguish between the pagan of Talmudic times and the Christian with whom the Jew lived and worked.<sup>42</sup> In a later period, Mordecai b. Hillel, among many others, accepted this view as definitive.<sup>43</sup>

<sup>40</sup>E. Urbach, Baale HaTosafot, p. 57. The fact that this more liberal attitude abounded in an area in which Jews were involved in the manufacture of wine leads one to the hypothesis of a possible relationship between the two.

<sup>41</sup>Rabbenu Tam, Sefer Hayyashar, par. 42. R. Tam expressed this in the form of a rhetorical question אך אם הפסד מרובה יותר מדאי התורה חסה על ממנוה של ישראל ואני לא אחוס ולא אחיר

<sup>42</sup>Tosafot, Aboda Zara, 77b. ...והשובין כאין יודעין בטיב עבודת כוכבים ומשמשיה והוי להו כחינוק בן יומו

<sup>43</sup>Mordecai, Az, par. 856. ...דהעובד כוכבים בזמן הזה לא תקיף להו יצרו לנטך לעבודת כוכבים.

There were those who claimed that such a view was out of keeping with Jewish law. R. Isaac, e.g., wrote to Rabbenu Tam, taking him to task for the position held not only by him, but by the members of his family, including its most illustrious scion Rashi.<sup>44</sup> R. Tam referred to the general neglect of the laws of ייין נסך even before they were permitted officially.<sup>45</sup> In the case of R. Eliezer, we bear witness to a rather bizarre protest against the liberalization of the laws of ייין נסך. R. Eliezer told of a dream he had in which his deceased father-in-law appeared and remonstrated with him for permitting certain wine to be drunk since it was ייין נסך.<sup>46</sup>

The Jews of the eleventh-twelfth centuries lived in close proximity to their non-Jewish neighbors. Though at times there was conflict, the two groups did live together in tranquility and peace. Jewish women acted as midwives to non-Jewish women.<sup>47</sup> R. Eliezer permitted a Jewish midwife to

<sup>44</sup>Tosafot, Aboda Zara, 77b. ...שלח לו ר"י לר"ת האי חזי דמינך ומאבון ומאחון משחרי מגע עובד כוכבים...

<sup>45</sup>Ibid. ...ואעפ"כ לא רצה ר"ת לאסור הואיל ופשט המנהג להתיר והנה לישראל שיהו שוגגין ואל יהו מזידין.

<sup>46</sup>Eben Haezer, 23d. The issue involved was the drinking of wine handled by a non-Jewish servant in R. Eliezer's home.

<sup>47</sup>Ibid., 125b. ...שמילדי לן נכריות ואע"ג דארז"ל בה ישראלית לא היילד בנה של נכריה The Talmudic reference is to be found in Aboda Zara, 26a, both in the Mishna and the Gemara. The Gemara was somewhat more extreme in its suspicion and mistrust of the non-Jew than was the Mishna.

function even on a non-professional basis. The position was, however, challenged by some rabbis. Rabbi Isaac, the Tosafist, remained opposed to the utilization of Jewish midwives in non-Jewish cases. He went further and contended that it was wrong even to leave a child in a gentile home for medical reasons.<sup>48</sup> Even during our period of the Crusades, personal relationships between the Jews and their neighbors were still friendly enough to allow for relatively great freedom, a situation that was to change markedly over the course of years when relationships gradually worsened between the two groups. The willingness of the non-Jew to allow the Jewish midwife to minister to his wife was itself a possible indication of the closeness of the relationship.

In a similar vein, the medieval authorities allowed Jews to turn to Christian doctors for medical care. R. Eliezer leaned heavily on Talmudic precedent, and sought to find justification for the liberalization of the law within the Talmudic framework if that were possible.<sup>49</sup> While he

<sup>48</sup>Tosafot, Aboda Zara, 26a. R. Isaac objected that the non-Jew was suspected on the one hand of a desire to murder Jewish children, and on the other of seeking to wean Jews away from Jewish beliefs. It is perhaps no coincidence that it was this same R. Isaac who objected so vigorously to the liberal views of R. Tam in the case of gentile wine. For a fuller presentation of the approach and the views of R. Isaac, see E. Urbach, op. cit., pp. 200-205.

<sup>49</sup>Eben Haezer, 125c. ראונו השתא מחרפאין מהן... R. Eliezer based his viewpoint clearly on Talmudic precedent as found in Aboda Zara, 27a, both with regard to a doctor who was expert but even with regard to one who wasn't.

did not set any limitations on the qualities of the non-Jewish physician, Mordecai b. Hillel held that the physician in question must be one who was not an idol worshipper.<sup>50</sup>

This same view was held at a still later time by Moses of Concy.<sup>51</sup> The treatment of non-Jews by a Jewish physician never came up for discussion in our sources. There were always Jewish doctors who treated non-Jews, and who often derived their living from such treatment. Unlike the Jewish midwife, no excuses had to be found for the Jewish doctor.

The Jewish community extended a helping hand to needy Christians exactly as they did to the poor of their own community. There were Christians who were prepared to give charity to needy Jews. The Jewish community viewed acceptance of such charity, however, in a bad light.<sup>52</sup> A sick Christian was to be visited and aided exactly as if he were a co-religionist.<sup>53</sup> The reasoning for such an approach was

מפני דרכי שלום (for the sake of peace) in marked

<sup>50</sup>Mordecai, Nezikin, par. 814. אבל מן המינין האדוקין בעבודת כוכבים אסור להתרפאות שום חולי לפי שמלחשין בשם עבודה כוכבים

<sup>51</sup>SeMaG, par. 45.

<sup>52</sup>Eben Haezer, 226c. The original discussion of the problem was based on a statement in Sanhedrin, 26b, by Rav Nachman in which the right to give testimony was denied to one who partook of דבר אחר. The statement was interpreted both by Rashi and the Tosafot by referring to one who took charity from gentiles. This interpretation was accepted by R. Eliezer and incorporated into his treatment of the Talmudic passage.

<sup>53</sup>Ibid., 281a, based upon Gittin, 61a.

contrast to **משום איבה** that was related solely to Jewish defense. The Jew was under the obligation to respect the individuality of the non-Jew and to refrain from cheating him, no matter what the provocation of poor relationship between Christian and Jewish communities. R. Eliezer left a number of examples of behavior towards non-Jews that he considered to be improper because it violated a universally accepted view against the cheating of another human being.<sup>54</sup> He opposed to deception of any kind as applied to a gentile, even that of a relatively innocent nature. The Talmud itself exhibited great concern for the ethical behavior of Jews, not only with regard to their fellow Jews, but also with regard to the stranger who lived with them as well.<sup>55</sup> The medieval authorities expanded on the Talmudic view, since they were so sensitive to a possible reaction of the gentile community. The Sefer Hasidim actually stipulated that to cheat a gentile was worse than cheating a Jew.<sup>56</sup> R. Meir of Rothenburg was equally antagonistic to any fraud committed against a gentile.<sup>57</sup> Although perhaps too much has been made of this

<sup>54</sup>Ibid., 4c, 281c. In this latter case, R. Eliezer dealt with the problem of how a gentile is to be greeted civilly without at the same time involving himself in acknowledging implicitly accepting gentile belief. R. Eliezer ruled that it was permissible to say one thing and mean another, while speaking to gentiles. He did so, however, with great concern for the ethical problems involved.

<sup>55</sup>Baba Metsia, 58b ff.

<sup>56</sup>Sefer Hasidim, par. 600, p. 391.

<sup>57</sup>Responsa of R. Meir of Rothenburg, pars. 252, 803.

particular matter by the apologists of our time, there is no doubt that the trend of medieval Jewish law was to approach the Christian as a human being with the same needs and concerns as the Jew. What is of great historical interest is that the attitude persisted in a period in which the human desire for retaliation must have been extremely great.

One of the reasons for the greater acceptance of the non-Jew as a human being was that there was a great deal of contact between the Jew and the non-Jew. Although there was some tendency for Jews to live together in one section of their own volition,<sup>58</sup> the two groups lived next to one another, often in the same houses.<sup>59</sup> At times the houses were owned by Jews who had both Christian and Jewish tenants.<sup>60</sup> At other times, the houses were owned by Christians, who also permitted both Jews and non-Jews to live in the same dwelling. Undoubtedly, there was daily contact within the same housing units between Jews and non-Jews, and both groups were

<sup>58</sup>Eben Haezer, 205c. R. Eliezer mentioned a so called רחוב של יהודים upon which a Jew was attacked. All other references point to an integration of Jews and gentiles in the same housing area. For evidence of an exactly similar situation in Spain, see A. Neuman, The Jews in Spain, Vol. II, p. 185.

<sup>59</sup>Ibid., 125c, 147d, 309a. As we shall note later, apartment units were built off a common courtyard. It was these units in which Jews and gentiles lived often next door to one another. See infra, Chapter VI.

<sup>60</sup>Ibid., 158a.

apparently able to live together in peace.<sup>61</sup> Daily contact did not, of course, imply mutual understanding, and it is difficult to assess the degree to which there was such understanding among individuals of different faiths. Social relationships did exist between the two groups, although intermarriage was rare. There was not a single case of intermarriage mentioned in Eben Haezer. The institution of the שבת גר' flourished, with the understanding that the שבת גר' was to be paid for his services.<sup>62</sup> Many families had Christian domestics who worked in the kitchen as well as in other areas of the house.<sup>63</sup> In most instances, they roomed in the house and despite some petty thievery from time to time, apparently cordial relations existed.<sup>64</sup> The employment of Christian domestics by Jews as a matter of course shows the inability of the Church to influence its inhereents significantly in our period on the issue of Jewish-Christian relationships. Almost from the very beginning of

<sup>61</sup>Parkes was undoubtedly correct in his view of the merchant class as constituting the best friends of the Jewish community in our period. See J. Parkes, The Jew in the Medieval Community, p. 82. We possess the record of but one instance in which an attack took place against a Jew in an urban area (Eben Haezer, 205c) and even that attack might not have been one that was motivated by anti-Jewish considerations.

<sup>62</sup>Eben Haezer, 150a. There was little difficulty in arranging for a שבת גר'.

<sup>63</sup>Ibid., 87b.

<sup>64</sup>Ibid., 133d.

its ascendancy, the Church had opposed vigorously the employment of Christian domestics by Jews. To the Church it represented the dishonoring of Christianity, facilitating Jewish proselytism.<sup>65</sup> While the Church was perhaps prepared to compromise with reality sufficiently to allow Christians to work for Jews while living at home, it certainly was not prepared to allow a Christian domestic to live in a Jewish home. The Church was particularly exacerbated over Christian wet nurses who served Jewish families. And yet, despite the threat of excommunication and other dire penalties, such as the refusal of Christian burial, Christians continued to serve as domestics as well as nurses, and to live in Jewish homes.<sup>66</sup> Though we have no evidence of a close relationship existing between the Christian domestic and the Jewish employer, there is nothing in the sources that would tend to contradict such a view. Certainly no fear of maintaining Christian domestics in Jewish households and no instance of any problem of a serious nature between employer and employee is brought to our attention.

<sup>65</sup>For a more complete discussion of the problem, along with some of the pertinent documents of a somewhat later period, see S. Grayzel, The Church and the Jews in the 13th Century, p. 25. Note, too, the discussion in A. Neuman, op. cit., Vol. II, 207.

<sup>66</sup>S. Grayzel, op. cit., p. 114. A Papal letter to the Archbishop of Sens was sent by Innocent III in 1205, threatening excommunication against any Christian who lived in the house of a Jew. The dating of the document supports the thesis that the Church view was ignored throughout our period.

The Jews not only engaged Christian domestics; they also possessed slaves who lived with them and served them. We know from an earlier period of the great prominence of Jews in the slave trade, particularly in the Slavic countries.<sup>67</sup> Jewish slave traders possessed slaves of their own and circumcised them, much to the dismay of the Church. The Church always expressed strong opposition to a Jew possessing a slave that had become a Christian.<sup>68</sup> From our sources, we know that Jews possessed slaves, and that they passed such slaves down from generation to generation as a part of their estates.<sup>69</sup> Slaves often remained in loyal service to families for many years. Jews possessed male and female slaves who would be matched with one another.<sup>70</sup> At times, the male slave would be freed voluntarily by the Jewish family, but neither the wife and children or any former belongings of the slave would remain with the manumitted slave. No objection in principle to slavery was

<sup>67</sup>H. Pirenne, Mohammed and Charlemagne, p. 99. This is not the place to evaluate Pirenne's thesis with regard to economic developments preceding and following the Mohammedan conquests. Neither can we deal adequately with his thesis in regard to Jewish participation in the economic life of Europe. However, his thesis with regard to Jewish participation in the slave trade appears to be substantially correct. Contra, see infra, Chapter VII, footnote 41.

<sup>68</sup>J. Aronius, Regesten, par. 114. Also see A. Neuman, op. cit., Vol. II, 194.

<sup>69</sup>Eben Haezer, 68c. עבדי הוא כי של זקני ושל אבי היה

<sup>70</sup>Ibid., 82b.

expressed by Jew or Christian. However, R. Eliezer and his contemporaries raised objections to the enslaving of Jews. They were active in raising funds for their redemption while the principle that slavery was evil occurred nowhere in our sources. We do possess a statement by Meshullam ben Kalonymus advising against the holding of slaves altogether, because of the dangers involved.<sup>71</sup> We have many instances of the manumission of slaves by Jewish masters. R. Eliezer cited the custom of giving the slave a certificate of manumission to prove his free state when he was challenged.<sup>72</sup>

Slavery was common in our period; we even find slaves working Church lands. Despite the prohibition of the Church against Jews owning slaves, they retained Christian slaves who were treated well.<sup>73</sup> Talmudic restrictions against the abuse of slaves were retained in the medieval period, often in marked contrast to the standards of other slaveowning groups. This was particularly so in the case of female slaves who lived in Jewish homes. Slaves were often circumcised

<sup>71</sup>Die Responsen des R. Meschullam, Sohn des R. Kalonymus, ed. J. Mueller, p. 5.

<sup>72</sup>Eben Haezer, 280c. **ראנן שלא נהגינן לשחרר אלא בשטר... כדא שיהא בידו לראיה שהוא בן חורין.**

<sup>73</sup>Israel Abrahams, Jewish Life in the Middle Ages, p. 100. Abrahams' treatment of slavery among Jews is extremely sympathetic to the position of the Jew. While his comments are correct in the main, he tends to idealize somewhat the relationship of the Jew to the slave.

by their Jewish masters in semi-proselytism to the dismay of the Church.<sup>74</sup> Early Talmudic legislation made the presence of an uncircumcised slave in a Jewish home an extremely difficult matter. At the same time, the circumcision of a slave became more and more dangerous. Rather than abandon the institution of slavery entirely, the medieval authorities interpreted the law in such a manner as to allow slaves to live and work within Jewish homes without being circumcised.<sup>75</sup> The comment of Mordecai ben Hillel was particularly instructive in this regard:

...אע"פ שאין מונעין בשעה מקה כירן שפוט שאין למולו  
מפני השר אין לך חנאי גדול מזה ומותרים לקיימם לעולם...

Though no agreement was entered into at the time of sale for the slave to remain uncircumcised, the widespread prohibition by the government against circumcising slaves constitutes a condition of the sale,<sup>76</sup> and he may be retained as long as the master likes.

From time to time, despite the difficulties and the unending hostility of the Church and the authorities, Christian converts to Judaism occurred. It was not, however,

<sup>74</sup>S. Grayzel, *op. cit.*, p. 24. The dangers implicit in such action should not be underestimated. It is a source of profound amazement that there were successful efforts to convert slaves to Judaism.

<sup>75</sup>Only passing reference can be made here to the discussions between Harkavy and Graetz (*REJ*, V., 203) over the extent of the Talmudic demands for the circumcision of slaves. Our own view of *Yebamot*, 48b, on which the discussion is based would indicate that the Talmud did, indeed, allow room for the occasional uncircumcised slave in Jewish society.

<sup>76</sup>*Mordecai*; *Nashim*, par. 41. The comment of Mordecai had particular application to our time and place. Note,

a frequent occurrence because it constituted a capital crime.<sup>77</sup> We know, e.g., of a correspondent of R. Tam, R. Moses of Pointoise, whose brother taught a convert Bible and Talmud. The convert apparently not only lived as a Jew, but died as a Jew, for the question he addressed to R. Tam related to the convert's estate.<sup>78</sup> The Church always considered the possibility of proselytism as one of the prime dangers against which it must stand militant guard. For that reason, it was preoccupied with minimizing contact between Jews and Gentiles. It is all the more wonder that despite the degraded status of the Jew, such conversions did occur.<sup>79</sup> There is no question that Jews made no attempt

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however, the similar reference of Maimonides, Hilchot Avadin, Ch. 8, Hal. 12, ראו... החנה העבד עליו תחלה שלא ימול ה"ז מותר לקיימו כל זמן שינצח בגירו

<sup>77</sup>There are some who hold like Rabinowitz (The Jews of Northern France in the 12th to 14th Centuries, p. 108) that the number of converts to Judaism was considerable. There is no evidence to support this view. Though statistical proof is impossible, the constellation of factors already mentioned militated against any widespread of Jewish proselytism. Rabinowitz's attempt to hold otherwise must be based on much more thorough proof than a few references in the sources to converted Christians. For a further discussion of the attempt to assert that there was a substantial number of converts, see S. Grayzel, op. cit., p. 22, footnote 1. See also A. Neuman, op. cit., Vol. II, 194, who considers the extent of Jewish proselytism in Spain as problematical.

<sup>78</sup>Rabbenu Tam, Sefer Hayyashar, par. 51, p. 107.

<sup>79</sup>There are two references to converts in R. Eliezer's compendious work. See Eben Haezer, 196b, 280d.

to seek proselytes in any way.<sup>80</sup> Those who did have the temerity to convert to Judaism experienced great difficulty, particularly during periods of persecution, where some were moved to return to their native faith.<sup>81</sup> Christians who converted did so often at great risk.<sup>82</sup> A convert to Judaism must have been one who opposed the direction of the thinking of his time, and for that very reason was an anomaly.<sup>83</sup> In contrast, the entire apparatus of the Christian world, including both secular and religious agencies, was geared to the conversion of the non-believer and to the creation of a totalitarian Christian society.

<sup>80</sup>S. Grayzel, op. cit., p. 23.

<sup>81</sup>Eben Haezer, 280d.

<sup>82</sup>Note the excellent listing of sources that bear on the issue in S. Grayzel, op. cit., p. 22, footnote #1.

<sup>83</sup>A. Neuman, op. cit., Vol. II, 196, who comments on the fact that even on the eve of the final expulsion from Spain there was Christians prepared to convert to Judaism.

Our period, i.e., that of the First and Second Crusades, produced many Jewish converts who yielded to baptism by force or threat of death. This mode of conversion was not favored by the Church and even more important was opposed by the secular government. Henry IV allowed converted Jews to return to the religion of their fathers soon after the disturbances were over. The question remained, however, as to how such Jews were to be treated by those who remained loyal during the period of stress. R. Eliezer accepted the view that a convert was still to be considered a Jew from the standpoint of Jewish law. One was not permitted to lend money to him at interest, nor was one permitted to sell him unkosher meat.<sup>84</sup> At the same time, R. Eliezer set forth in no uncertain terms the responsibility of a Jew to die if necessary, rather than yield to persecution.<sup>85</sup> Even at such a time of stark tragedy, conversion was looked upon as a betrayal of the Jewish faith. On the other hand, if a Jew did, in fact, convert R. Eliezer would welcome him back without question. Jewish conversions to Christianity without the threat of death also occurred during the course of our period. In part, they took place because of the encouragement given through the material resources of the Church. The Church

<sup>84</sup>Eben Haezer, 204b.

<sup>85</sup>Ibid., 231c. בשעה השמד אפי' מצוה קלה יהרג ואל יעבור...

could not accept a situation in which its converts maintained a lower material status after their conversion than they had enjoyed before their conversion. As a result, converts were often supported by the nearest ecclesiastical establishment, a fact that stimulated conversions solely for material reasons. The Papacy was continually prodding local ecclesiastical groups to aid Jewish converts, often unsuccessfully.<sup>86</sup>

Some additional information by R. Eliezer's contemporary Tabbenu Tam is of great interest. His comments reveal that voluntary conversions occurred even among scholarly, wealthy, and knowledgeable families. Rabbenu Tam's family itself was not spared the indignity of apostacy in its ranks. He specifically mentioned the son-in-law of the philanthropist, R. Jacob the Parnas, among others.<sup>87</sup> At the same time, Rabbenu Tam, as R. Eliezer, made it abundantly clear that an apostate, though an erring Jew, was still a Jew, and, therefore, he attempted to do all that could be done to facilitate the return of a converted Jew to the fold. The converted Jew was looked upon with disdain and contempt by the Jewish

<sup>86</sup>S. Grayzel, op. cit., p. 17. Grayzel's discussion of the mercenary character of some of the converts is illuminating.

<sup>87</sup>Rabbenu Tam, Sefer Hayyashar, pp. 43-45. R. Tam seemed to draw a picture of apostacy occurring with relative frequency. The instances cited, however, are hardly sufficient to come to any specific conclusion on frequency of apostacy. In general, the Jews lost more through apostacy than they recouped through conversion.

community, although we do not find that they mourned for the apostate as if he were dead, as was often the custom at a much later time.

Relationships between Jews and gentiles did not revolve entirely around the problem of conversion. Business partnerships were frequently entered into between Jews and non-Jews.<sup>88</sup> Even when they were not directly involved in business partnerships, Jewish and Christian merchants had many points of contact that brought them into close relations. The Jewish merchants defied the dangers of the highway and travelled to the local fairs where they displayed their wares next to their Christian colleagues. During their travels, they were housed together in the same hosteleries as gentiles.<sup>89</sup> Some of the members of the Jewish community had entered into high places. We have a record of a local nobleman who took along two of his court Jews on what was apparently a shopping trip in order to provide him with funds to make his purchases. At the same time, the merchants pursued their own business.<sup>90</sup> They had relatively free access to the local ruler and functioned as intermediaries between the Jewish community and the local rulers. There were

<sup>88</sup>Eben Haezer, 125b.

<sup>89</sup>Ibid., 158a. Reference here is to the fair at Frankfort. See infra, Chapter VII, for a full discussion of the economic pursuits of the Jews of our period.

<sup>90</sup>Ibid., 69a.

families that were enriched by monopolies of trade granted to them by the local rulers and which remained with the family, at least as long as they remained in the good graces of the ruler.<sup>91</sup> Such individuals were not hesitant at using their influence at court to pressure individuals within the Jewish community when issues arose of a purely Jewish nature in which they were involved.<sup>92</sup> Contact between Jews and Christians existed, then, not only on the level of the masses. There was, in addition, a significant group whose contact with the ruling classes put them in a very special position within the Jewish community.<sup>93</sup>

It is a widely accepted view that the main contact between Jews and gentiles during our period was in the commercial realm. Jews who functioned as moneylenders and as pawnbrokers came into daily contact with gentiles, contact which eventually became one of the sources for hatred of Jews by gentiles. Increasingly, as the Christian burgher group gained additional standing, its quarrel with the Jewish community became intensified. It is clear that our period was one in which the relationships between individual

<sup>91</sup>Ibid., 60a. The institution of the Mdarufia is extremely complex and has a complete literature written on it. See infra, Chapter VII.

<sup>92</sup>Ibid., 283b. See also, supra, Chapter III, footnote 47,

<sup>93</sup>For a full discussion of this particular kind of Jew within the Spanish community, see A. Neuman, op. cit., Vol. 2, Ch. 20.

Jews and gentiles had acquired little of the animosity that characterized them in the later time. It is true that the Jew functioned in the many traditional roles that exposed him unfavorably to the Christian community. He was, indeed, a pawnbroker and moneylender.<sup>94</sup> He also functioned as a landlord to Christian tenants, as a shopkeeper and as an itinerant merchant. There were gentiles, however, who fulfilled exactly the same functions. We know of gentiles who acted as pawnbrokers for Jews.<sup>95</sup> Non-Jews lent money to Jews on interest, and were often involved in money lending activities of Jews either as intermediaries or as agents of Jews.<sup>96</sup> Jewish landlords rented homes to Jews and gentiles, and Christians likewise had Jews and gentiles as tenants. The economic role of the Jews was still diversified during R. Eliezer's period. The economic activities that were later to bring down upon them the ire of the general community were pursued in part at least by Christians as well.

Since the Jews were a minority wherever they lived, they felt the need to adjust themselves, wherever possible, to the standards and the laws that governed the majority group. As they lived primarily in accord with the dictates of the

<sup>94</sup>See infra, Chapter VII for a fuller discussion of the many different occupations pursued by Jews of our period.

<sup>95</sup>Eben Haezer, 204d.

<sup>96</sup>Ibid., 205b.

Jewish religion and the discipline of Jewish law, there were instances in which conflict arose between the demands of Jewish tradition and the laws of the land. The problem was not a new one. It had already arisen during the Talmudic period and was given its classical formulation in the statement of Samuel: Dina D'Malchuta Dina (The law of the land is binding)<sup>97</sup> Though the only direct statement of Samuel occurs in Gittin, other Talmudic authorities quoted it often and applied it in a variety of different contexts.<sup>98</sup> During the course of the Gaonic period, relatively little attention was paid to the principle of Dina D'Malchuta Dina, for their period was one of unquestioned autonomy for Jews, practised in keeping with Jewish law.<sup>99</sup> The authorities of our period expressed themselves in the spirit of Samuel's view, if for

<sup>97</sup>Gittin, 10b. Samuel's original comment dealt with a Mishnaic statement that accepted as valid both bills of sale as well as bills certifying a gift that emanated from gentile courts.

<sup>98</sup>Among these are a series of principles that apply to property rights expressed by Rava (Baba Bathra, 55b), as well as his statement on the problem of head taxes (Baba Kamma, 113b). See L. Landman, Jewish Law in the Diaspora: Confrontation and Accommodation, pp. 15-25 for an incisive analysis of the application of Samuel's principle during the Talmudic period. Note particularly Landman's excellent destruction of a series of ill-founded hypotheses regarding the motivation for Samuel's novella (pp. 19-22).

<sup>99</sup>L. Landman, op. cit., p. 32. The historical basis for Landman's thesis is undoubtedly correct. Note, e.g., the great difference between the gaonic approach to the problem of open space and the approach of authorities in our period. See infra, footnote 106.

no other reason than the one of self-preservation.<sup>100</sup> The law of the land was taken to be that law governing the Jews in civil and criminal areas but not in the area of religion. Rashi, e.g., held that the law of the land is binding in all civil cases. The exception Rashi made was to exclude the area of divorce, since that was specifically designated as religious legislation. He was prepared to extrapolate from the original commandments given to the sons of Noah the entire corpus of civil legislation of his time.<sup>101</sup> R. Samuel ben Meir presumed the consent of the people to the laws of the land clearly indicating the legality in Jewish eyes of civil legislation that comes from the hand of the King.<sup>102</sup>

<sup>100</sup> Again and again our sources return to the theme that the Gentile world is a threatening one to Jews. See, e.g., Eben Haezer, 231b. The fear of the Gentile world led at times to an acceptance of Dina D'Malchuta, since there was simply no alternative. Note Eben Haezer, 309a, in which this attitude was spelled out. Landman holds (op. cit., p. 36), that fear was not one of the factors in their acceptance of Dina D'Malchuta. He maintains that if that were so, it would not explain the limitations put upon the application of Samuel's principle in our period. Such an opinion ascribes much less flexibility to the Jewish position than actually existed. At times, the fear of dire consequences persuaded Jews of our period to accept laws that were definitely not to their liking. At other times and places, when they felt themselves strong enough politically and economically, they were prepared to seek the circumlocution of secular authority they felt to be unjust. See infra, footnote 108.

<sup>101</sup> Rashi, Gittin, 9b. ...דינא דמלכותא דינא ואע"פ שהנחת המקבל ישראלים הם חוץ מגיטי נשים דלאו בני כריתות ניהו הואיל ולא שייכי בהורח גיטין וקידושין אבל על הדינין נצטור בני נח

<sup>102</sup> Rashbam, Baba Bathra, 54b. והאמר שמואל דינא דמלכותא דינא כל מסים וארנוניות ומנהגות של משפטי מלכים שרגילים להנהיג במלכותם דינא הוא שכל בני המלכות מקבלים עליהם מרצונם חוקי המלך ומשפטי והלכך דין גמור הוא ואין להחזיק בממון חבירו ע"פ חוק המלך הנהוג בעיר משום גזל

Particularly instructive was the contribution of R. Eliezer to the discussion. In a long comment on the appropriateness of a Jew giving testimony before a Christian court, R. Eliezer indicated that such participation was completely in order. He was concerned, first, that there would be a desecration of God's name if the non-Jew depended on the testimony of the Jew and he did not give it. Moreover, such a procedure was provided for by the law of the land, and, therefore, it is binding even if some doubts remain as to its appropriateness from a Jewish point of view.<sup>103</sup> In commenting on Samuel's opinion, R. Eliezer held that the applicability of secular law to the lives of the Jews had particular significance in the areas of real estate and taxation viewed as an outgrowth of the ownership of land.<sup>104</sup>

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Landman (*op. cit.*, p. 35) took R. Samuel's statement to be a Jewish view of a social contract view of government. Though it was true that Jewish sources reacted to wholly unjust laws that emanated from secular government, it is questionable whether R. Samuel's statement should be interpreted quite so broadly. Attention should also be paid to the last part of R. Eliezer's statement whose main purpose was to justify the Jewish tax farmer. See Eben Haezer, 144d. שאם מינה המלך ישראל אחד

מוכס או גבאי מותר לו לעשות כל אילו ואינו גזל אליו דין

<sup>103</sup>Eben Haezer, 194d. A similar point of view is quoted by Mordecai b. Hillel in the name of R. Tam. See Mordecai, Baba Kama, par. 177. It's inappropriateness arises from the fact that all testimony should be by two witnesses, according to Jewish law.

<sup>104</sup>Ibid. ...שהמוכסין כורחין מיער עצים של אדם אחד  
ומחקנין בו את הגשרים שמקבלין בהן את המכס  
דין גמור הוא ואינו גזל.  
There was a point of view that the King could not legislate in areas other than real estate or taxation. See, e.g., Or Zarua, Baba Kama, par. 446, quoted in the name of R. Eliezer of Metz. That was not, however, R. Eliezer's position. Cf. L. Landman, *op. cit.*, p. 47.

It is clear, however, that R. Eliezer considered all civil areas to be covered by the law of the land. He was prepared to accept the emissaries of the King as agents of a proper authority acting within the law.<sup>105</sup> Since the law of the land is binding, said R. Eliezer, there are times when we are compelled to adjust our law so that it is consistent with it.<sup>106</sup> The need to live in a Christian world was sufficient to force Jews to accept laws that were promulgated though they contradicted accepted Jewish tradition.

There were gaonic authorities who counseled acceptance of Jewish law with but scant attention to the demands of secular law. This is the sense of the reaction of Tsemah Gaon to the legal problem of open space between buildings. In his reaction to the problem the gaonic authority expressed the view that Jews should be bound only by their own law, dissociating themselves from any need to adhere to the law of the land. What was possible for the gaonic period was impossible for our period. The authorities of our period were forced to overrule the Gaon and to hold that in the matter of air space secular law was to prevail, not only in litigation between Jews and gentiles, but in litigation between Jews as

<sup>105</sup>R. Eliezer accepted the Talmudic dictum of שלוחא דמלכא found in Baba Kama, 113b, as is evident by his comments in Eben Haezer, 194d.

<sup>106</sup>Eben Haezer, 300b. שאנו מטיין דינינו לדינא דמלכותא... Note also the acceptance of Merchant law. See infra, Chapter VII, footnote 58.

well.<sup>107</sup> Despite the good personal relationships between Jews and Gentiles, the Jew had become increasingly aware of his minority position. It was not a pluralistic society in which Jews lived, but a monolithic one that sought to exert its will on every area of life. Hope was expressed in an earlier period that Jews would have the ability to live in an alien land solely by their own laws and their own traditions. In time, however, that hope was abandoned and the law of the land was accepted as the only realistic course that was open, despite the periodic necessity to rule against their own tradition. At the same time, such acquiescence in community regulation applied only to proper and duly regulated operation of government. When the government overstepped its bonds, when it gave its approval to lawlessness, Jewish authorities refused to give their own approval or to consent tacitly to such oppression, though their ability to act was severely limited.<sup>108</sup>

That the Jews were prepared to accept government

<sup>107</sup>Mordecai, Nez., 553., Mordecai quotes R. Tsemah Gaon as follows: וכהוב בנמוסות שלהם לעשות בחצירו כל אחד מה שרוצה...  
מה לנו ולנמוסות שלהם וכי נניח הלמוד שלנו...

Note the discussion of the problem in D. Shohet, The Jewish Court in the Middle Ages, 112 ff. Unfortunately, Shohet not only misquotes, but ignores the principle of historical development. Note also the quotation in the responsum of the reaction of the French Rabbis to the question originally posed by R. Eliezer.

<sup>108</sup> While they were prepared to enforce government edicts among their own people, they were not prepared to enforce acts of lawlessness. See, e.g., R. Meir of Rothenburg, Responsa

regulation as binding upon them did not imply that they were prepared to accept the gentile court as a valid court having authority over them. Quite to the contrary, the synod of 1160 reiterated the view that a resort to gentile courts was improper.<sup>109</sup> It is important to understand, however, that the edict directed against the utilization of gentile courts was meant for informers who arranged to summon their fellow Jews before the gentile court, either for their own benefit or out of sheer spitefulness. Despite an obvious preference for Jewish courts, the Takkana of R. Tam provided that utilization of the secular court would be proper if agreed to by both parties in the presence of witnesses. It is most noteworthy that such an arrangement was possible. The Talmud provided a total prohibition against the use of secular courts under any conditions.<sup>110</sup> The Takkana was directed then, not against the gentile courts, but against those Jews of the upper levels of society who utilized their position to strike at their fellow Jews.<sup>111</sup> We know of at least one case cited

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289 in the matter of expropriation of books. Note also the famous comment in Tosafot, B.K. 58a. ראינו במדינה שסביבותינו שמשפט היהודים לעמוד כמו פרשים בכל מקום שירצו... ואם יש שר שבא לשנות את הדין ולעשות דין לעצמו אין זה דינא דמלכותא.

Cf. L. Landman, op. cit., pp. 46-58.

<sup>109</sup>L. Finkelstein, Jewish Self-Government in the Middle Ages, p. 153.

<sup>110</sup>Gittin 88b. כל מקום שאתה מוצא אגריאות של עובדי כוכבים אע"פ שדיניהם כדיני ישראל אי אתה רשאי להיזקק להם.

<sup>111</sup>Both Finkelstein (op. cit., p. 156), as well as Shohet (op. cit., p. 85), seek to explain the use of gentile

by R. Eliezer in which only one of the parties to a dispute submitted a case for adjudication to a gentile court without securing the consent of the second part. In that case, said R. Eliezer, pressure in the form of excommunication was to be brought to bear on the individual who went to the gentile court until it was withdrawn and dealt with by a Jewish court.<sup>112</sup> The Jew was often forced to go into the gentile court in search of judgments against Christians who owed him money; there were also times in which the Jew was brought into the gentile court as a co-defendant with a gentile partner. At the same time, despite some suspicion of gentile documents,

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courts in the case of mutual consent as an expression of greater tolerance on the part of the authorities of our period. Landman (op. cit., p. 87) rejects this theory and holds that the Takkana is but an extension of the Talmudic principle that in civil matters each person is essentially free to do what he wishes. Though Finkelstein may be wrong in relating this Takkana to the liberal legislation of this period (supra, footnotes 25-30), neither author paid sufficient attention to the first part of the Takkana. As a matter of fact, Finkelstein cannot understand what drew the leaders of the German and French community together if all that was accomplished was a Takkana against informers. Perhaps, says Finkelstein, a part of the Takkana has been lost, since such a promulgation had been made many times before. Landman comments on this aspect of the Takkana only in passing. It appears to us that the major focus of the Takkana was the Jewish "informer" who had arisen to plague the Jewish community as he had many times in the past. An analysis of the rest of the Takkana will reveal the major preoccupation of the synod to be those Jews of the privileged classes who sought to use their positions to influence the more traditional leadership. (See the case of fraudulent Kiddushin, Eben Haezer, 283a. Supra, Chapter III, footnote 49.) Neither tolerance nor the gentile court was the primary concern but the struggle within the Jewish community in the wake of the Second Crusade.

<sup>112</sup> Eben Haezer, 193c. משמחין ליה עד שיצאנו מיר הגרים...

they were often accepted in Jewish courts.<sup>113</sup>

It would appear, then, that in our period the Jewish community was not as yet isolated from the Christian community. Its dress was the same; the areas in which Jews lived were the same in which Christians lived. Personal, daily contact was common and we can presume that personal relationships were possible. Even within our sources, we can note a much more realistic, much more liberal attitude to the individual Gentile. We have found, e.g., that Christians were associated with Jews in business partnerships. His religion, though conceived of as false, was a misdirected monotheism in the eyes of R. Eliezer's contemporaries rather than the thoroughgoing idolatry of the Talmudic period. On that basis, the medieval rabbis were prepared to take a somewhat more liberal attitude to such matters as 703 or trading Christian objects. At the same time, the clouds of hatred and persecution had already begun to gather. Anti-Jewish riots and massacres had already taken place. True, they had originated from the countryside and not from the cities in which Jews lived. The atmosphere, however, was an increasingly oppressive one, and we find an

<sup>113</sup>M. Frank, Kehillot Ashkenaz U'Bate Dineihem, p. 63. The evidence for the use of Gentile documents in a Jewish court is by no means conclusive in the case of Germany, since there ~~were~~ are no extant references to the practise in the responsa literature. At the same time, there is no reason to doubt the acceptance of the practise. Cf. L. Landman, Chapter VIII, footnote 28.

increasing preoccupation with Jewish defense and with Jewish behavior calculated so as to not provoke the ire of the Christian population. There was concern, too, for the fact that Jews lived in a Christian world, and it was necessary, therefore, to adjust themselves and their traditions to the prevailing standards of that world. At the same time, we note on every page of our text the cultivation of the inner Jewish life that was to sustain so many in the much more difficult days that were to lie ahead.

## CHAPTER VI

### SOCIAL HISTORY

Our sources reflect in part the position of women in medieval society. Rabbenu Gershom had promulgated in the eleventh century his Takkanot prohibiting any person from divorcing his wife against her will or taking a second wife. As has been indicated, some authorities consider Eben Haezer to be the first source to bear reliable witness to the acceptance of Rabbenu Gershom's ordinances.<sup>1</sup> However, monogamy was already in R. Gershom's time part of the accepted pattern of Jewish life in Germany.<sup>2</sup> The prohibition by Rabbenu Gershom, noted by R. Eliezer, of divorcing a woman against her will was intended to be protective of woman's status in

<sup>1</sup>Eben Haezer, 245d, 261c. See supra, Chapter III, footnote 69.

<sup>2</sup>Z. Falk, Jewish Matrimonial Law in the Middle Ages, pp. 16-18. Falk's view is that monogamy found its way into the German community by degrees. Though monogamy was already the pattern in Rabbenu Gershom's time, occasional acts of bigamy took place without provoking opposition. In R. Eliezer's period no other possibility was envisaged. While Falk refuses to grant that R. Eliezer had R. Gershom in mind, he feels that R. Eliezer b. Joel already ascribed the ban on polygamy to R. Gershom's Takkana. Such a refusal seems ill-founded. A young R. Eliezer b. Joel Halevi in all probability derived the tradition he transmitted from his grandfather. Still, Falk's gradualist approach to the acceptance of monogamy seems basically correct. Despite these historical factors, Falk

society.<sup>3</sup>

In our period, husbands were enjoined in the strongest terms against any physical abuse of their wives. There is every reason to believe that physical mistreatment of women was a rarity in Jewish circles while existing as a perennial problem in the Gentile world. The need for proper standards of moral behavior in Jewish families was continually pointed up by the authorities while fear was expressed lest the worst of Gentile practices have an effect upon Jews, too. Jewish husbands were penalized for any harm caused to their wives during the course of family altercations.<sup>4</sup> Jewish women

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(p. 19) correctly holds R. Gershom's ban to be a significant turning point in the life of the German community.

<sup>3</sup>Even in the case of banning the divorce of a woman against her will, Falk refuses to grant that R. Eliezer had R. Gershom in mind. Z. Falk, op. cit., p. 117. That R. Gershom mentioned a ban rather than only a prohibitory ordinance as noted by R. Eliezer seems to us to be merely a quibble. For the resolution of the problem that R. Eliezer did not mention R. Gershom by name, see S. Baron, A Social and Religious History of the Jews, Vol. VI, p. 137. Note also Zeitlin's comment that R. Gershom needed the consent of the community before promulgating his edict. See S. Zeitlin, "Rashi and the Rabbinate," JQR, Vol. 31. See also supra, Chapter III, footnote 68.

<sup>4</sup>R. Meir of Rothenburg was concerned enough about the possibility to condemn it in the strongest terms, while noting the existence of the evil in Gentile

were engaged in business affairs, functioning as storekeepers, merchants, moneylenders, and pawnbrokers.<sup>5</sup> Often they labored at their husband's side, but there were times, too, in which they worked alone, and were the sole source of support for the family.<sup>6</sup> R. Eliezer held that a woman acted in these areas not on her own initiative, but rather as the agent of her husband.<sup>7</sup> She did not have the right to testify or to bear witness before a court of law, although she was at times consulted by the court after the death of her husband with regard to his affairs.<sup>8</sup> A husband could not escape the responsibility of testifying on his wife's behalf. And yet, during the course of our period, the participation of women in economic life was so significant that R. Eliezer insisted on giving women the right to testify in a court of law on matters involving their own financial interest. He was quick to point out that such consideration was not extended to them as a matter of law. Rather, the testimony of women

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homes. (Responsum 81, Prague edition).

... והמכה את אשתו

מקובלנו שיש יותר להחמיר בו מהמכה את חבירו שבחבירו אינו חייב בכבודו ובאשתו חייב בכבודה ודרך הגויים בכך אבל חלילה וחלילה לשום בן ברית מעשות זאת והעושה יש להחרימו ולנדותו ולהלקותו ולעונשו בכל מיני דרי...<sup>5</sup>

<sup>5</sup> Eben Haezer, 83d.

... בזמן הזה שהנשים אפירות פסות

וחנוניות ונושאות ונותנות ולוות ומלוות ופורעות ונפרעות ונפקדות ומפקידות... כל הנשים בזמן הזה אפירות פסות הן בנכסי בעליהן

<sup>6</sup> Ibid., 73c.

<sup>7</sup> Ibid., 83d.

<sup>8</sup> Ibid., 34b.

was in the category of Takkanat HaShuk and was based on the assumption that a woman testifying for herself was important for the proper functioning of the economy.<sup>9</sup>

New economic conditions compelled R. Eliezer to embark on this radically new concept that women were to be treated as equals before the law. He was the first to understand that women could not go out into the marketplace freely and yet not bear legal responsibility for their actions. He was prepared to change what had been till his time a fundamental view of the place of women in the courts and their right to give testimony despite the contrary view of prior authorities. By his own admission, not only was there no precedent in the Talmud itself; there was not a single gaonic source he could quote in support of his view. The only exception was that of R. Kalonymus of Lucca, whose view was compatible with his own.<sup>10</sup> Rabbi Eliezer's influence was such that this new view of the place of women was echoed by later authorities, as women consolidated their position in the economic life of Germany. Only R. Meir b. Baruch sought to limit the ability of women to bear witness, but all other

<sup>9</sup>Ibid., 83d. אפילו היה בדיון שלא להשביעה משום תקנה השוק הרה... להשביעה. See also 191b in which the consequences of a woman's disability in the marketplace were spelled out. תקנה השוק was a category noted in the Talmud, but was never employed with regard to women. (B. Kamma, 115a). The earlier period was one in which women did not play the same significant role they played in our time. See also Z. Falk, op. cit., pp. 144-145. For a lucid comment on Takkanat HaShuk, see Maimonides, Mishne  
<sup>10</sup>Ibid., 84a. Torah, Hilchot Geneva, Ch. 5, Par. 2.

sources supported R. Eliezer's thinking.<sup>11</sup>

Women were often left at home while their husbands travelled for long periods of time in search of trade. While husbands were gone their wives were able to shift for themselves. Often wives would be sent monies from afar in order for the family to be adequately supported while the husband was away.<sup>12</sup> A Takkana of R. Tam limited the period that an individual could absent himself from his home, for prolonged absences were quite common. The husband was enjoined against any absence of a period longer than eighteen months, and he was instructed to remain with his wife for a minimum of six months before setting out on another journey. During the course of his absence from home, he remained under the obligation of providing for the needs of his wife as well as providing properly for the education of his children. The court was utilized as a means of enforcing the Takkana against

<sup>11</sup>L. Finkelstein, Jewish Self-Government in the Middle Ages, p. 378. Finkelstein's position buttresses the comments made here on the uniqueness of R. Eliezer's contribution to the status of women. Finkelstein goes perhaps too far in assessing the importance of R. Gershom's role as the initiator of a movement towards greater rights for women. He is correct, however, in the importance he ascribes to economic developments in influencing the position of women in Jewish society. Note Responsa of R. Meir of Rothenburg (Cremona ed.), par. 35.

<sup>12</sup>Eben Haezer, 202b. In the case under discussion, a woman's husband had left home for a lengthy period of time and during his absence had sent her funds through an intermediary. The intermediary claimed that he was robbed on his way to deliver the money to his friend's wife and she sought to recover the funds her husband had sent her.

any erring individual who was inclined to abandon his wife and family.<sup>13</sup> While women went out more into the world in our period, they did not mix freely with men.<sup>14</sup> R. Eliezer took note of a tendency towards extremism, beyond the demands of Jewish law, in the separation of the sexes. He noted, e.g., the custom of a man not eating with his wife during her menstrual period, as well as the tendency of some women not even to cook or to bake for their husbands, contrary to the more liberal views of the Talmud. Such stringencies were wholly unnecessary, said R. Eliezer, and constituted zeal that was completely misplaced.<sup>15</sup> At the same time complete separation of the sexes existed at worship and at all other public gatherings.<sup>16</sup>

<sup>13</sup>L. Finkelstein, op. cit., pp. 168-169. The length of time an individual could remain away from home varied in different recensions of the Takkana. According to Finkelstein, the reading eighteen months was preferable to the twelve month period indicated in some texts.

<sup>14</sup>

I. Abrahams, (Jewish Life in the Middle Ages, p. 25) did not consider the development of separation of the sexes during prayer to have taken place till the thirteenth century, a view that is rather extreme.

<sup>15</sup>Eben Haezer, 137c, 141b. While R. Eliezer disapproved of this particular stringency, he expressed himself in favor of a tendency to be stringent rather than liberal in areas that dealt with separation of the sexes.

<sup>16</sup>R. Eliezer did not specifically mention at any time the existence of separate galleries for women in the synagogues. The earliest reference to such galleries in the German Jewish community is that of Mordecai (Sab. 311). Despite the claims of some (supra, footnote 14), there is no reason to hold that this constitutes proof of the origin of the separate gallery in the thirteenth century.

The religious needs of the Jewish woman were taken into consideration by the authorities, though the religious life of the community was carried forward by men, not women. If she was desirous of blessing the lulav during the festival of Tabernacles, she was permitted to do so, though she was not under a religious obligation to perform the commandment.<sup>17</sup> Except for incursions into the economic arena by some women, they were by and large sheltered in their home and were pre-occupied with the domestic duties and responsibilities of a wife in Israel. They were not completely illiterate. An attempt was made to give them a rudimentary knowledge of the Hebrew language, and at times even the ability to understand the Bible itself. Emphasis was put particularly on those areas of Jewish law that had special application to the life of women. There were women, albeit few in number, who attained sufficient proficiency to be turned to as a source of authority in Halachic matters. We know, too, that it was not unusual for women in Germany to be proficient in the preparation of Tzitzit and even to manufacture them under the supervision of their husbands.<sup>18</sup> All the same, the main burden of

<sup>17</sup> Eben Haezer, 63c. It is true that R. Eliezer based himself on Talmudic precedent (Eruv, 96b). However, his comment in favor of women fulfilling such a commandment followed one view. There was another, more restrictive view that held for their exclusion from the fulfillment of this particular kind of commandment.

<sup>18</sup> SeMag. Hilchot Tsitsit, par. 26.  
Cf. M. Gudemann, Geschichte des Erziehungswesens und der Kultur der Juden in Frankreich und Deutschland, p. 232.

the education of young girls was in the domestic area.

Jewish women, on the whole, were married before they had the opportunity to study. In contrast, gentile women in general were much more cultured and knowledgeable of the cultural niceties of life.<sup>19</sup> On the other hand, the moral state of Jewish women was beyond reproach. Despite the long absences of their husbands and the arranged nature of their marriages, Jewish women remained loyal to their marriage vows, and prostitution was unknown.<sup>20</sup>

Education was a family responsibility. The obligation to teach a child was clearly that of his father, as provided by Talmudic tradition.<sup>21</sup> Often parents would engage a tutor for their child, occasionally brought from another city and employed on the basis of a yearly contract.<sup>22</sup> He would live with the family and bear responsibility for the education of

<sup>19</sup>In the Christian world, culture and education were understood to be the virtual preoccupation of women and were not considered important enough to be dealt with by men. See K. Weinbold, Die Deutschen Frauen in dem Mittelalter, Vol. II, 99 ff.

<sup>20</sup>In the entire compendium of R. Eliezer there is not a single reference to marital infidelity. Cf. A. Neuman, The Jews in Spain, Vol. II, 3 ff.

<sup>21</sup>Kiddushin, 29a.

<sup>22</sup>Eben Haezer, 204d.

the child until he acquired sufficient knowledge to move on to a school of higher learning. The teacher was in every sense a professional. He was employed for pay and not merely in exchange for board, despite the Talmudic preference for teachers serving without pay. R. Meir of Rothenburg insisted that a teacher must not have any other occupation while he is in the employ of his master.<sup>23</sup> There were certain professional standards that could be demanded of a teacher. Excessive fasting or rising too early for purposes not directly related to the teacher's work could be prevented by the father.<sup>24</sup> Specific verses were copied out of the Bible, and were used by the children as their study texts when they began their study of the Bible through the utilization of the portion of the week.<sup>25</sup>

<sup>23</sup>Responsa of R. Meir of Rothenburg, Prague ed., 667. See also Tosafot, Ket, 63a.

<sup>24</sup>Ibid.

<sup>25</sup>Eben Haezer, 281c. The exact course of study is difficult to ascertain, particularly because its supervision was not delegated to the community. While it consisted primarily of sacred texts, Jews did gain sufficient secular knowledge

Immediately after the child's circumcision, there was a ceremony of symbolic initiation into Torah that took place at the infant's crib.<sup>26</sup> The child began his formal study of Torah at the age of six,<sup>27</sup> when a ceremony of consecration to the study of Torah took place in the synagogue during the festival of Shavuot. He was given at that time a slate covered with honey, boiled eggs, as well as little cakes to symbolize the sweetness of Torah.<sup>28</sup> He began his study of the alphabet, with the help of a long pointer, as often used on the child as on the blackboard. The child proceeded to the study the Bible, beginning with the book of Leviticus and continuing through the other books of the Bible. Study was

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to read and write the language of the country, particularly in those areas that touched on their business dealings. See A. Neuman, The Jews in Spain, Vol. II, 70 ff., for a discussion of parallel developments in the early childhood education of the Spanish Jewish community.

<sup>26</sup>Mahzor Vitry, par. 50. The custom was introduced to symbolize the importance of Torah and apparently related to the ceremony of circumcision. A Humash was put in the infant's crib and ten men stood around it intoning "May this child uphold what is written therein." The text is also quoted in Asaf's collection of source material on the history of education, S. Asaf, L'Toledot HaHinuch B'Yisrael, p. 2.

<sup>27</sup>See Baba Bathra 219. The starting time of six years old was determined in part by the child's nature.

<sup>28</sup>The custom is originally quoted by Eliezer of Worms (Sefer Rokeah, Hilchot Atsenet). It was in effect during our time. Note in this regard the comments of L. Zunz, Zur Geschichte und Literatur, p. 168, and M. Gudemann, op. cit., p. 54. The following is the comment made by R. Eliezer of Worms:

מנהג אבותינו שמושיבין החינוקות ללמוד בשבועות לפי שנתנה בו תורה... וקורא הרב כל אות ואות מן א"ב והחינוק אחריו... ונותן על הלוח מעט דבש ולוחך הנער הדבש שעל האוחיות בלשונו...

aided with the utilization of a particular melody for each of the texts studied as well by swinging motions of the body. The vernacular was used in the elucidation of difficulties. The average student progressed beyond the study of Bible to that of the Mishna and Gemara.<sup>29</sup> Although the role of the teacher was important and respected, most of the time he was not paid well enough by the community to make ends meet; at times he was forced to depend upon individual charity in order to survive.<sup>30</sup> The system of elementary education was eminently successful, for many well-qualified students were produced for the higher schools of Jewish learning.<sup>31</sup> The German Academies had a consummate

<sup>29</sup>Sefer Hasidim, par. 308. Cf. M. Gudemann, op. cit., p. 55.

<sup>30</sup>Note the Takkanot brought into being by Rabbenu Tam in order to improve the financial lot of the teacher. Responsa of R. Meir of Rothenburg (Prague ed.), 158b. Among other provisions, R. Tam allowed the teacher to retain his student's book until his fee was paid.

<sup>31</sup>See supra, Chapter I, passim in which the number and quality of German scholars is extremely impressive in a relatively new Jewish community.

influence upon the culture of the surrounding area, and students, including Rashi in his earlier years, came in large numbers to study.<sup>32</sup> As we have noted, it was common practise for a renowned scholar such as R. Eliezer to have a number of students boarded at his expense while engaged in their studies.

The cultural environment was one in which the acquisition as well as the study of books was of great importance. Books were very expensive and were shared by readers as much as possible.<sup>33</sup> Their return in proper condition often was the subject of disputation and even litigation between lender and borrower.<sup>34</sup> Money was lent with books as collateral. Sales of books were important enough to necessitate the writing of a legal document to substantiate the sale.<sup>35</sup> Wealthy patrons engaged scribes to write volumes for them on a yearly basis.<sup>36</sup> Books needed for teaching were copied most

<sup>32</sup>See supra, Chapter I, footnote 23. Note, however, Zeitlin's theory that Rashi came, not as a young student, but as an established scholar. See S. Zeitlin, "Rashi and the Rabbinate," JQR, Vol. 31.

<sup>33</sup>As an example, a Humash in the possession of one individual cost 3 Zakukim (Eben Haezer, 72a). In contrast, a pearl was worth 2 Zakukim (Eben Haezer, 199b). Note Zunz's comments on the cost of books. (Zur Geschichte und Literatur, p. 212). For an evaluation of the worth of the Zakuk in our period, see infra, Chapter VII.

<sup>34</sup>Eben Haezer, 198c.

<sup>35</sup>Ibid., 80cd.

<sup>36</sup>Ibid., 204d.

frequently. The Humash, for example, was mentioned most frequently among those books copied by a scribe. While prayers were recited from memory, occasional prayers such as S'lihot were committed to writing and produced in sufficient quantities to be utilized in synagogue worship.<sup>37</sup> There was an acute shortage of texts. A book, said R. Eliezer, ought to be lent, with or without a fee.<sup>38</sup> Nevertheless, some people derived considerable financial gain from lending books in their libraries for a fee.<sup>39</sup> Securing adequate texts for the Academies must have been difficult, but the variety of texts quoted by R. Eliezer shows that a wide range of texts were available to the learned.<sup>40</sup> ~~The texts were unvocalized, generally, but~~ A vocalized text of a Humash, ~~evidently used for teaching,~~ commanded a higher price than one that was unvocalized.<sup>41</sup> There were no communal libraries; all libraries were private in character.

<sup>37</sup>Ibid., 299a. קונטרסים של סליחות...  
On the use of prayer books, see infra, Chapter VIII.

<sup>38</sup>Ibid., 299b. ...שספר הוא מן הדברים העשויין להשאיל ולהשכיר...

<sup>39</sup>Sefer Hasidim, par. 868. Cf.

<sup>39</sup>M. Gudemann, op. cit., p. 231.

<sup>40</sup>Eben Haezer, 299a. R. Eliezer referred apparently to a single text containing Baba Kamma, Baba Mezia, and Baba Bathra. See supra, Chapter II, for a listing of the sources used by R. Eliezer.

<sup>41</sup>Ibid., 197b. In this case, the price of the Humash was one Zakuk, unvocalized, and three Zakukim, vocalized.

It is evident from many references to the vernacular in Eben Haezer that the vernacular was known and understood by the Jews of the time. It was utilized not only as an aid in teaching younger children, but also at times to explain relevant material to women who had little knowledge of Hebrew.<sup>42</sup>

R. Eliezer used the vernacular in order to explain words or concepts that were difficult for his readers.<sup>43</sup> However, the word endings were characteristically French rather than German. A suggestion has been made that the Jews of the time, having come from France, retained French as their mother tongue long after their initial settlement.<sup>44</sup>

The Jews of our period had some measure of general education. At a minimum they had to be adequately prepared to deal with the complexities of business affairs; they possessed more than a passing knowledge of the secular world of the time. However, the major concern of their adult educational endeavors became more and more preoccupation with Talmudic literature, at times even to the exclusion of the Bible.<sup>45</sup>

<sup>42</sup>Or Zarua, Pt. 1, par. 186. See also Sefer Hasidim, par. 588.  
Cf. M. Gudemann, op. cit., p. 230.

<sup>43</sup>There are upwards of forty separate references to the vernacular in Eben Haezer.

<sup>44</sup>Note here the long appendix of Gudemann in which he holds strictly to that view. M. Gudemann, op. cit., pp. 273 ff. At the same time it is clear that the Jew managed rather well in the market place. If his mother tongue was indeed French, he certainly had some additional knowledge of German.

<sup>45</sup>See supra, footnote 30. Even in the case of Spain,

R. Eliezer manifested some interest in philosophy and possessed some knowledge, though rather limited, of the classics in philosophy of his time. His view was sufficiently enlightened to deny the literalness of Talmudic anthropomorphism.<sup>46</sup>

He was familiar, too, with Saadia and utilized Saadia's formulations in his work.<sup>47</sup>

In his work, he stressed the self-sufficiency of Talmudic study. At the same time, he did not consider Biblical or even philosophical interest as being beyond the ken of the budding scholar of the Talmud as long as it did not take him too far afield.

Education was a prime factor in determining the status of a family, of particular importance in an age of arranged marriages. Status was determined in other ways as well. If

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there was a tendency to concentrate on Talmudic study despite the greater breadth of view among the intellectuals of Spanish Jewry. At no time were secular studies made a formal part of any curriculum; such secular knowledge as did exist was imparted through a system of private tutors. For further discussion of education in Spain and the contrast with the Ashkenazic communities, see A. Neuman, The Jews in Spain, Vol. II, 64 ff.

<sup>46</sup>Eben Haezer, 88d.

<sup>47</sup>Ibid., 86d. R. Eliezer did not quote Saadia's philosophic work, but his commentary to the Book of Proverbs. R. Eliezer did not know Arabic, but this particular passage is also found in Judah b. Barzillai's commentary to Sefer Yetsirah. Probably R. Eliezer derived his knowledge of Saadia's text from the Hebrew commentary of his Spanish contemporary. See H. Malter, Saadia Gaon, p. 320. See also supra, Chapter I, footnote 110.

the family seat in the synagogue was sold for any reason, it was considered to be a **פגם משפחה**, a family defeat in marriage arrangements.<sup>48</sup> Similarly, if the family was successful in producing a vaunted Talmudic student, its status in the community was considerably improved. The marriage of a member of the family was a matter of deep concern to the entire family. Marriages were arranged, either through a member of the family, or through a professional marriage broker for a fee.<sup>49</sup> The marriage broker's fee was paid before the wedding took place, immediately after the terms had been officially accepted by both sides. The arrangements for the match were solemnized at a gathering of both families when gifts were exchanged. The marriage broker was often a person of status in the community, a scholar of note who engaged in the practice of matchmaking for reasons of charity or for the purpose of supplementing his income. A father had the personal responsibility of arranging a match for his son.<sup>50</sup> In many instances the young couple did not even see one another before they were officially engaged.<sup>51</sup> The arrangements for the future marriage were

<sup>48</sup>Ibid., 191d.

<sup>49</sup>Responsa of R. Meir of Rothenburg, par. 498. R. Meir quoted R. Simcha Or Zarua in affirming the view that matchmakers should receive compensation above and beyond their expenses in fulfilling this important function.

<sup>50</sup>Eben Haezer, 299c.

<sup>51</sup>Eben Haezer, 262c.

considered to be binding on the concerned parties, and ordinarily pledges were deposited with a guarantor should one of the parties default.<sup>52</sup> R. Eliezer was himself a participant in such arrangements, when he acted as the guarantor for the dowry of the daughter of R. Jacob b. Isaac Halevi.<sup>53</sup> Marriages were often arranged well before the age of puberty. Despite the Talmud's opposition to such arrangements, the authorities of the time permitted the early arrangements to be made because of the uncertain economic status of the Jewish community. R. Tam perhaps put it best and it is evident that he was speaking not only for the Jewry of France but that of Germany as well.

...ועכשו שאנו נוהגים לקדש בנורחינו אפי' קטנות משרם  
שבכל יום ויום הגלות מחגבר עלינו ואם יש סיפק ביד אדם  
עכשו לחת לבתו נדוניא שמא לאחר זמן לא יהיה סיפק בידו  
וחשב בחו עגונה לעולם.

... And in our time it has become customary to betrothe the one's daughter even before she is twelve years of age because of our fate in the Exile that is brought home to us more forcefully each succeeding day. For if a man has the capacity to give his daughter a liberal dowry, it may happen that later he will be unable to provide his daughter with a dowry and she may remain unmarried.<sup>54</sup>

<sup>52</sup>J. Mueller, Teshubot Hachme Tsorfat V'Luter, par. 27. The responsum is attributed to Rashi. ...ששירך ראובן על בן אחיו וקיימו דבריהם והניחו חסומה יד ביד הקבלנים על מנה שהחזיר בו יפסיד ערבונו...

<sup>53</sup>Mordecai, Baba Bathra, par. 651. See supra, Chapter I, footnote 13.

<sup>54</sup>Tosafot, Kiddushin, 41a.

Despite the prevalence of early marriages, the young people were not compelled to enter into a marriage that was not to their liking. Although it did not occur very often, a young girl could and did express her dissatisfaction with arrangements made on her behalf by her father. Similarly, a boy sometimes withdrew from marital commitment made for him by his father even though gifts were already exchanged with the family of the girl.<sup>55</sup>

The bride's dowry was an important consideration in marriage. When a dowry could not be provided by the family, as in the case of an orphan, a proper dowry became the responsibility of the entire community.<sup>56</sup> The dowry took different forms. R. Eliezer reported that proceeds of a business were designated as dowry; real estate owned by the father was also set aside for the purpose.<sup>57</sup> The dowry was mentioned in the text of the Ketubah, and it was returned to the wife at the time of dissolution of the marriage, either through the death of the husband or divorce. The Ketubah, though a legal instrument, varied widely in its formulation. There was a tendency to increase artificially the amount of

<sup>55</sup>Eben Haezer, 299c.

<sup>56</sup>See supra, footnote 53. As we have already noted (Chapter I, footnote 184), it is probable that R. Jacob was already dead and R. Eliezer fulfilled for the community the important commandment of providing a dowry for a bride.

<sup>57</sup>Ibid., 36ab. Cf. A. Neuman, op. cit., Vol. II, 27.

the dowry listed in the Ketubah, but with the tacit understanding that the amount to be paid was considerably less than that specified in the document.<sup>58</sup> Exaggeration in the amount of the dowry incorporated in the Ketubah could become all too easily a source of friction in the community, for the authorities were concerned that it would divide the rich from the poor. As a result, they instituted a standard formula for the dowry in the Ketubah. The new formula also established the principle that the dowry for a minor was to be equivalent to that of an adult marriage, a significant step when child marriages had increased considerably.<sup>59</sup> The formula for the dowry provision as found in the Ketubah of R. Eliezer's time is one of the earliest examples of the standardization of the Ketubah. It reads as follows:

... וודא נדוניא דהנעלה ליה בין בכסף בין בזהב בין  
במאני דלבושא ובשמושי דערסא הכל חמדין ליטרין

... and that dowry which she brought in to him in silver or in gold, in garments or in bed linen totalling fifty litres in value.<sup>60</sup>

<sup>58</sup>Ibid., 206c. L. Epstein, The Jewish Marriage Contract, p. 104. See also Tosafot, Yeb., 65b.

<sup>59</sup>Ibid., 206c.

<sup>60</sup>Ibid., 206b. The text is rather close to our own, but is not identical with it. According to Epstein (The Jewish Marriage Contract, p. 102) the first standard dowry is to be found in Mahzor Vitry. It is possible, however, that the text quoted by R. Eliezer predated that of Mahzor Vitry. The new standardization spread quickly in the German and French communities. The text of Mahzor Vitry (par. 543) reads as follows: וודא נדוניא דהנעלה ליה מביח אביה בין בכסף בין בזהב בין בחכשיטין בין בשמושי (דירה) (דירה) בין בשמושי ערסא סך הכל קיבל עליו ר' פלוני בר' פלוני בחמשים ליטרין ממטבע אטורנין מפשיטין טובים...

In addition to the dowry, a generous husband provided for Mattan, known as Tosefet Ketubah in the text of the Ketubah.<sup>61</sup>

R. Eliezer took note of the fact that the German rabbis of an earlier time reduced the Tosefet Ketubah to a standard formula so as not to embarrass the poor.<sup>62</sup> The marriage contract, when it was eventually redeemed by the widow or divorcee, was paid for not from the sale of real property as was the case in the Talmud, but rather out of moveable property, which had become the source of wealth in our period.<sup>63</sup>

Some of the marriage ceremonies of the period still retained the Talmudic practice of having two parts, one the ceremony of Erusin in which the bride was publicly betrothed to her intended husband, without cohabitation taking place. At a later time, often exceeding a year in duration, another ceremony of Nisuin took place in which both were brought under the marriage canopy after which the marriage was consummated. Such a procedure was often helpful in the case of extremely young marriages. Dividing between the two ceremonies and allowing for a lengthy time span between them

<sup>61</sup>L. Epstein, The Jewish Marriage Contract, p. 79.

<sup>62</sup>Eben Haezer, 26lab. ועמדו אבותינו הראשונים בזה המלכות וחשו לבניש וחקנו חוספה אחד לעשיר ולעני שלא לבניש את מי שאין לו...

Note the historical development of Mattan as given by Epstein, The Jewish Marriage Contract, Chapter 5.

<sup>63</sup>Ibid., 295d.

had too many abuses, and so gradually over the course of time the separate ceremonies merged with one another. During our period, both procedures were common.<sup>64</sup> It was not necessary that the marriage be presided over by a rabbi. As long as there were witnesses, the demands of Jewish law were met.<sup>65</sup> The usual way for Kiddushin to take place was through the recital of the marriage formula and the blessings under the Huppa.

A marriage ceremony was an occasion for great rejoicing, not only for the family, but for the entire community. The women of the community were dressed in their finest clothing and displayed their jewelry.<sup>66</sup> Grains of wheat were distributed to the young men as well as the children to throw

<sup>64</sup>The pattern was by no means universal in R. Eliezer's time. In some instances, the ceremonies were merged with one another. See, e.g., Mahzor Vitry, p. 588. In others, a clear separation existed between the two ceremonies. This appears to be the underlying circumstance in the famous case dealt with by R. Eliezer (Eben Haezer, 283a) in which there was a fraudulent betrothal of a young woman and which was solved only after an assemblage of the great authorities of the time had taken place. Cf. A. Neuman, op. cit., Vol. II, 31. Note Falk's long and detailed study of the two ceremonies (op. cit., pp. 85-85) that is compatible with the material presented here.

<sup>65</sup>Falk holds that from the eleventh century onward there came into being a public ceremony of Nisuin in which there was participation of an official personage sufficiently knowledgeable in the law to supervise the proceedings (Z. Falk, op. cit., p. 83). Though it is true that such a custom had come into existence in our time, it was not as yet universal. Note in this regard the interesting parallels drawn by Falk between Jewish and Christian practise.

<sup>66</sup>Eben Haezer, 205b. Jewish women were usually loathe to display their jewelry conspicuously because of the

at the couple when the bride was accepted by the husband from the hands of her father.<sup>67</sup> After the ceremony, a glass was broken, and the wine used in the ceremony was spilled away.<sup>68</sup> There was music and dancing, as all participated with great delight in the celebration. The wedding often took place in a wedding hall set aside for that purpose by the community. The young couple was often forced by circumstances to live for a time in the home of the bride's parents, without payment of rent, while the husband established himself. This procedure became standard practice because of the tender age of most of the couples, though it was definitely contrary to Talmudic thinking.<sup>69</sup> There were some instances of divorce and unhappy marriages.<sup>70</sup> By and large, however, the community was remarkably free from the problem. Divorce, when it did occur, bore with it no stigma

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potential dangers to them. Even in this responsum, the matter under discussion involved the theft of a piece of jewelry during the course of a wedding celebration.

<sup>67</sup>Ibid., 258b. ...ונראה לי דמכאן נהגו בזה המלכות לחלק חטה לבהורים ולתנוקה וזורקין על ראש חתן וכלה בשעה שמקבל הכלה מיד אביה...

<sup>68</sup>Ibid., 96c. R. Eliezer took note of the custom of spilling away the cup of wine, but he apparently did not agree that it was proper or appropriate.

<sup>69</sup>Tosafot, Kiddushin, 12b.

...על זה סומכין החתנים בזמן הזה שדריים בבית חמורם

<sup>70</sup>Eben Haezer, 284b, in which R. Eliezer brought the text of a writ of divorce in use at the time.

and the rabbis in no way castigated those who were obliged to seek divorce.<sup>71</sup> They were preoccupied with the details of writing the writ of divorce to make certain that the divorce would be valid when presented. We have already noted the attempt made to protect women through a ban placed on divorcing a woman against her will.<sup>72</sup> Yet the strain on Jewish married life must have been great with husbands often off on extended trips in search of an adequate living for their families.

Notwithstanding medieval repressions, the atmosphere among Jews was joyous and lighthearted at festivals and holidays. The children played nut games, especially at Passover,<sup>73</sup> and ball games were played in the streets on the holidays.<sup>74</sup> In the case of adults, the game of chess was

<sup>71</sup>This does not imply that the rabbis were unconcerned over the occurrence of divorce. Quite to the contrary, they were shaken by the prospect of divorce and wept over the tragedy that it brought in its wake. Despite this concern, when divorce did occur, it did not carry with it the stigma of social disgrace. Note L. Rabinowitz, Jews of Northern France in the 12th-14th Centuries, pp. 153-156. Rabinowitz goes much too far in asserting the acceptability of divorce.

<sup>72</sup>Falk has noted another reform of our period that is of significance (Z. Falk, op. cit., p. 141). The custom of giving a divorce, in the presence of authority, is extremely old. However, Falk asserts that beginning in our period divorce became actually contingent upon the prior agreement of the community. He sees this as occurring in part because of contact with parallel Christian developments.

<sup>73</sup>Eben Haezer, 164d.

<sup>74</sup>Tosafot, Betsa, 12a. דהיו אשכחן נמי דמשחקין בכדור... שקורין פלוטא' בלעז Though the games referred to originated in France rather than in Germany, such games were played in Germany as well.

well known, and gambling existed. The German rabbis were harsh in their condemnation of gambling. A person who gambled ran the risk of expulsion from the synagogue.<sup>75</sup> Despite the risk, games of chance did occur, particularly those played with dice. Such games were played for money; at times, they were indulged in only for enjoyment.<sup>76</sup> The problem of gambling continued indefinitely, and was a continuous source of perplexity and annoyance to the authorities.<sup>77</sup>

Though the attitude of the German rabbis was not puritanical, they remained concerned with possible promiscuity arising out of contact between the sexes. Dancing occurred at festivals by adults as well as children, although this practice was forbidden by later German authorities. They censured freely those whose standards of public behavior were not circumspect. A woman whose dress was not modest, who spoke too freely with strangers in the market place, or who

<sup>75</sup>Eben Haezer, 226c. מי שהוציאורו הקהל מבית הכנסת... מפני ששחק בקרוביא

Note a quotation of the text in Mordecai, San. 695.  
See also supra, Chapter IV, footnote 14.

<sup>76</sup>Ibid., 224d. See also Mordecai, San. 690.

<sup>77</sup>Note the informative article by L. Landman, "Jewish Attitudes Toward Gambling," Part I--"The Professional and Compulsive Gambler," JQR, Vol. LVII (April, 1967), 1-21, and Part II--"Individual and Communal Efforts to Curb Gambling," JQR, Vol. LVIII (July, 1967), 34-62. Landman proves beyond question that gambling was practised by Jews over the course of the centuries. Moreover, attempts to control gambling on the part of a disapproving community were often unsuccessful.

was too loose in her behavior with the young men of the community would find herself subject to official censure by the community.<sup>78</sup> Though concerned with modesty of dress, the

members of the Jewish community saw no harm in dressing themselves more beautifully when the occasion required.

Note has already been taken of the pains members of the community took with their dress at festivities.<sup>79</sup> Among persons

of wealth, the latest modes of dress were displayed which roused the ire and censure of the preachers of the time.

Extravagant jewelry of worth was used by Jewish women.<sup>80</sup>

Rings were worn by men as well as by women, though the time had long passed when rings were still utilized to seal letters and documents. Earrings, necklaces, and bracelets were precious ornaments worn by Jewish women though they were not displayed conspicuously. They were intended, said the authorities, for the pleasure of their husbands and were not to be shown in the market place.<sup>81</sup>

Living standards were high; there was an abundance of

<sup>78</sup> Eben Haezer, 272a. ...ומראה זרועותיה לבני האדם ומדברת עם כל בני אדם בשוק ומשחקת עם הבחורים ומשמעת קולה על עסקי חשמיש

The quotation of R. Eliezer was based on a Mishna in Ketubot (72a), but R. Eliezer went beyond the Mishanic statement in defining loose or improper behavior on the part of women.

<sup>79</sup> Supra, footnote #66.

<sup>80</sup> Eben Haezer, 82b, 199a, 199c, 205b. The number of instances in which jewelry was owned by Jews could be multiplied. They often converted their wealth into precious stones to make it easier to transport from place to place as well as to hide on their persons in case of an emergency.

<sup>81</sup> Tosafot, Shabbat, 64b.

servants as well as slaves who ministered to the physical needs of Jewish families.<sup>82</sup> Jews were dressed like their neighbors, and one was hard put to distinguish a Jew by his dress. A truly distinctive dress was imposed upon Jews at the Third Lateran Council in 1215. The Council imposed a special badge upon the Jews precisely because Jews were otherwise not distinguishable from non-Jews.<sup>83</sup> There were indeed several other factors that tended to set off the garments of Jews. They were primarily religious in nature, for Judaism ruled on certain aspects of Jewish dress, such as the prohibition against mixing different varieties of material.<sup>84</sup> Their prohibition extended also to bright garments, primarily because they had long considered them to be exciting and tending to lasciviousness.<sup>85</sup> Jewish garments tended to favor those of a darker hue. During times of persecution, Jews

<sup>82</sup>Eben Haezer, 68c, 119b et. al.

<sup>83</sup>S. Grayzel, The Church and the Jews in the 13th Century, p. 65, footnote 112. The issue of how soon the Jews of time abided by the decrees of the Council and how wide-spread they were meant to be is one that is hotly debated by scholars.

<sup>84</sup>Eben Haezer, 84a, 247b.

<sup>85</sup>Sifre, 81. The wearing of brightly hued garments was especially popular among Christians during the course of our period.

laid aside their ordinary garments and disguised themselves.<sup>86</sup>

There was a tendency on the part of Jewish women to be ostentatious in their clothing, a tendency that the rabbis fought, but with little success. They were as much concerned with the seriousness of anti-Jewish reaction to such ostentation as they were with the moral evils of excessive luxury and sumptuousness.<sup>87</sup> Women were compelled to cover their heads at all times, often with a thin veil in the street and with a housecap at home. Through their hair they entwined multicolored threads by which the veil was tied on; such threads known as קרנץ (Kranz) were made of gold and silver and were decorative in nature.<sup>88</sup> Women were insistent on their need to arrange their hair properly, even on the Sabbath. The authorities, therefore, were forced to withdraw

<sup>86</sup>Sanhedrin, 74b. The possibility of disguise in no way contradicts the view that there was no official costume worn by the Jews of the time. The fact that they abstained from wearing a particular type of costume made it possible for them to escape detection at moments of great peril. See also Sefer Hasidim, par. 220.

<sup>87</sup>On the basis of a statement made by R. Eliezer (234a), one is lead to the belief that the problem was not severe in his own time.

<sup>88</sup>Eben Haezer, 147c, 149d.

a firmly held view that such activity was in violation of the Sabbath.<sup>89</sup> Married women of this time kept their hair covered at all times.<sup>89</sup> Though the mode of covering one's head was universal for women, it was not so for men. Most of the time men covered their heads. However, there were times when men did not observe the prohibition of bareheadedness. Particularly when in the company of Gentiles, or when they were transacting the business of the community with the local lord, they felt no need to cover their heads.<sup>90</sup> In neighboring France, there were times in which adult males made a blessing bareheaded as well.<sup>91</sup> In the case of children, there was no insistence on the covering of the head, and, in fact, Jewish children ran around bareheaded most of the time.

One of the best known of the garments worn by German Jews was called a "sargenes," a long white garment often made of silk and beautifully embroidered that flowed ungirdled to

<sup>89</sup>Ibid., 149b. ויהנה להן שיהא שרגנות ואל יהו מזירות...

<sup>90</sup>Ibid., 285d. שאנשים פעמים מכסין ראשם פעמים מגלין...

<sup>91</sup>Or Zarua, par. 43. וראין נראה בעיני מנהג רבוחינו שבצרפת שמברכין בראש מגולה

Cf. I. Abrahams, Jewish Life in the Middle Ages, pp. 279-80; L. Low, Lebensalter, p. 410. A full discussion on the problem of bareheadedness in France is beyond the scope of this work. The only references in Germany to bareheadedness refer to a mode of dress outside of the synagogue and laxity in the case of children with regard to the use of headcoverings inside the synagogue. A preoccupation with headcovering for males is a development that took place after our period.

the feet. The sargenes was mentioned for the first time by R. Eliezer, and identified by him as a garment used only on the Sabbath.<sup>92</sup> The same garment was transformed into the Eastern European "Kittel," and was worn both by men and women as a holiday garment. Only much later was the garment used as a shroud.<sup>93</sup>

Every person sought to own at least two garments, one for daily wear and another for the Sabbath. Naturally, the wealthy possessed more than the minimum. The poor did not possess clothes for the Sabbath, and the one garment was worn in a slightly different manner on the Sabbath.<sup>94</sup> Their clothes consisted of breeches that were tied at the waist and at the bottom of the trousers attached to their shoes.<sup>95</sup> Shoes were made of two layers of leather, one of outer hard leather and the other on the inside of felt or soft leather and were laced together.<sup>96</sup> Shoes were worn almost universally,

<sup>92</sup> Eben Haezer, 149d. Berliner gives the derivation of the word as arising from the old German "sarroc" or shirt. See A. Berliner, op. cit., pp. 131-2.

<sup>93</sup> A. Berliner, op. cit., p. 69.

<sup>94</sup> Eben Haezer, 149d.

<sup>95</sup> Mahzor Vitry, p. 141. Cf.

<sup>95</sup> L. Rabinowitz, Jews of Northern France in the 12th-14th Centuries, p. 65.

<sup>96</sup> Eben Haezer, 85cd, 247b. R. Eliezer pointed up the extreme care that had to be taken lest the inside lining be sewn to the leather with material that would make the shoe improper because of the prohibition of כלאים.

although the poor had to wind rags about their feet in order to make some sort of makeshift shoes.<sup>97</sup> Around their waist, especially while travelling, people would wear money belts.<sup>98</sup> Their outer garment was a long tunic or cloak usually worn without a girdle or a belt. The coats worn during the winter months were made of cloth on the outside and fur on the inside.<sup>99</sup> Hats were of different materials and shapes, with the hat sometimes attached with a strap under the chin and sometimes left totally unattached.<sup>100</sup> The difference between men's clothes and those worn by women was not very marked. Differences were introduced by the pious to prevent a biblical violation against wearing women's clothes.<sup>101</sup> There was a great variety of garments and adornments attached to the clothes. On the Sabbath women would wear a <sup>silver</sup> silver key in a necklace around their necks which could unlock the strongbox containing valuables left at home. Articles of

<sup>97</sup>Ibid., 247b. ...השהא במקומו חינו בדרובן נהיגי במנעל לילך  
but Cf. 84b כמנהג בני אדם עניים שקושרין  
סמרטוטין סביב לרגליהם

<sup>98</sup>Ibid., 190b.

<sup>99</sup>Ibid., 84b. R. Eliezer ruled that such coats were permissible even though the authorities of Provence held that it could not be worn because of the problem of כלאים

<sup>100</sup>Tosafot, Erub, 102b.

<sup>101</sup>In the time of peril, it was deemed permissible for a woman to dress in the garments of a man so as to escape a possible attack upon her. See, e.g., Sefer Hasidim, par. 200.

value had to be safeguarded.<sup>102</sup> Provision was made for the washing of garments, but there is frequent mention of lice in the sources.<sup>103</sup> Standards of cleanliness and attention to personal hygiene were far above the standards in effect within the non-Jewish community.

The diet of the Jews was varied and interesting.<sup>104</sup> Food was available in abundance. A particularly common dish was called "pastide," made of meat covered with dough.<sup>105</sup> At times the dough was baked with fish instead of meat. Usually, meat was broiled over an open flame, or suspended in a kettle over the flame and boiled. Poultry, including duck, chicken, and pheasant were often roasted whole over a fire.<sup>106</sup> Eggs were prepared in a variety of ways; some ate their eggs raw.<sup>107</sup> Meat and poultry were eaten on the Sabbath, and frequently on week-days as well. Fish was a favorite food; the available fish included salmon and herring.<sup>108</sup>

<sup>102</sup>Eben Haezer, 148a.

<sup>103</sup>See, e.g., Tosafot, Shabbat, 12a.

<sup>104</sup>Thirty different varieties of food were noted by R. Eliezer in Eben Haezer.

<sup>105</sup>Eben Haezer, 162b.

<sup>106</sup>Ibid., 112b, 119a.

<sup>107</sup>Ibid., 127a.

<sup>108</sup>Ibid., 127a, 119a.

They also ate vegetables of all kinds, often grown in gardens planted around their homes.<sup>109</sup> A favorite food was "Kumpost" identified by Berliner as Sauerkraut. This particular food was often denied to Jews primarily because it involved non-Jewish cooking in non-Jewish wine.<sup>110</sup> Wine was a staple drink, taken with their meals, on weekdays as well as the Sabbath. The wealthier families had wine cellars; they compared the quality of their wine favorably with the wine of former generations which was often diluted.<sup>111</sup> Drunkenness was not a communal problem, although wine was consumed in quantity. Other beverages were also used, including apple cider and beer. Cider was allowable, on the assumption that the cider was not religiously restricted like wine.<sup>112</sup> Similarly, they used honey without ritual restrictions.<sup>113</sup> Daily food included various baked cakes and bread, cheese, and fruit.

It has already been indicated that the Jews were primarily urban in character. They did not dwell in restricted

<sup>109</sup>Ibid., 162a.

<sup>110</sup>A. Berliner, op. cit., p. 39. Cf. Eben Haezer, 127a. R. Eliezer indicated, however, that "Kumpost" could be consumed in its raw state.

<sup>111</sup>Eben Haezer, 97a.

<sup>112</sup>Ibid., 127a.

<sup>113</sup>Ibid., 162a.

areas but rather with their gentile neighbors.<sup>114</sup> They owned their own houses or rented apartments from Jewish or gentile landlords. The Jewish community sought to protect its members against unscrupulousness on the part of gentile landlords. Should a gentile landlord evict a Jewish tenant unjustly, no Jew was permitted by community enactment to rent the apartment.<sup>115</sup> On the other hand, there was a long standing regulation that no non-Jew should be sold property within specifically Jewish areas.<sup>116</sup>

The houses were generally large, possessing both a spacious attic as well as a cellar.<sup>117</sup> In most instances, the houses were made of wood, but houses of stone were by no means unknown.<sup>118</sup> Often two houses were built side by side,

<sup>114</sup>See supra, Chapter III.

115 L. Finkelstein, Jewish Self Government in the Middle Ages, p. 31. The Takkana was promulgated by Rabbenu Gershom.

...דמשום הכי גדרו הראשונים וגזרו  
 116 Eben Haezer, 42b; לא ימכור בר  
ישראל קרקע במצוי ישראל  
 Although Jews and Gentiles lived next to one another, there was an attempt in an earlier period to prevent non-Jews from buying land in areas held by Jews because of the possible difficulties that might arise between the two communities.

117 Eben Haezer, 158a, 159c. See also I. Abrahams,  
op. cit., p. 148.

118 Ibid., 208b, 207d. Houses were often built of wood in Germany and faced with stone. According to Jacobus, stone houses were introduced into England by Jews. (Quoted in Jacobus, 208b, 207d. See also J. Jacobus, A History of the Jews, Vol. IV, 85. - The stone houses of the Jews in England stimulated hatred of Jews on the part of the non-Jews. - It is possible that the Jews brought the technique of building with stone with them from Southern France and Germany.

sharing a common wall.<sup>119</sup> The houses had sloping roofs and the edge of the roof extended out over the walls, overhanging them.<sup>120</sup> Gutters were suspended from the edge of the roofs to hold the rain water. As the family expanded and as financial conditions permitted, attempts were made to improve the houses. Often another floor was added and the outside was faced with stone.<sup>121</sup> Families lived together at times even after the marriage of one of the children, sometimes through the simple expedient of building additions to the structures and subdividing the house into a number of apartments.<sup>122</sup> There were many families who rented rooms to outsiders.<sup>123</sup> The buildings generally faced into a common courtyard although often there was an opening to the street that allowed for direct entrance from the outside. Within the common courtyard there were often Christian and Jewish families living together without undue disturbance.

<sup>119</sup>Eben Haezer, 208b. Though it is difficult to estimate the number of such twin dwellings, a twin dwelling was the exception rather than the rule.

<sup>120</sup>Tosafot, Erub, 89a, 94b.

<sup>121</sup>Eben Haezer, 208d.

<sup>122</sup>Ibid., 300b.

<sup>123</sup>Ibid., 215d.

The average home was divided into two parts, a so-called winter room on the inside of the house (Bet HaHoref) and an outside room (Bet HaKayyits) that was built on beams that jutted out from the house.<sup>124</sup> Though large houses with many rooms were by no means uncommon,<sup>125</sup> the poorer classes still continued to live in but two rooms with little air and little light. Solid construction of the houses facilitated Jewish self-defense when attacks on Jews took place.

The Jewish community involved itself in the

<sup>124</sup>Eben Haezer, 205b. Cf. A. Berliner, op. cit., p. 34.

<sup>125</sup>Ibid., 216b.

housing arrangements in its neighborhood. The close proximity of their dwellings necessitated supervision by the community to prevent interfering with the privacy of neighbors or with their right to a peaceful existence undisturbed by the irritants of noisy or prying neighbors.<sup>126</sup> The problem was complicated by the fact that dwellings were utilized as places of business as well. The Melamed would teach children brought to his home; their coming and going would constitute a source of disturbance to his neighbors. A blacksmith would disturb the sleep and the peace of his neighbors.<sup>127</sup> Peace had to be made, too, between neighbors who quarreled about drainage problems. It was not unusual for the common courtyard to be flooded during the rainy season, and the attempt of one neighbor to channel the water away resulted in a flooded cellar for the others.<sup>128</sup> Similar difficulty resulted from common drainage pipes that were tampered with by one neighbor and resulted in difficulties for another.<sup>129</sup> Sanitation and drainage was a general problem in the medieval world, and at a later time was the cause of the pestilence that plagued Europe. The streets of the town were narrow and were filled

<sup>126</sup> Ibid., 308d.

<sup>127</sup> Ibid., 209c. Cf. Baba Bathra, 20b. Talmudic regulations were applied directly by R. Eliezer to similar conditions in his own time.

<sup>128</sup> Ibid., 207c. ...היקנתה חפירה גדולה להקורו שם מימי  
חצירך אצל מרתך שלי ומימין נרפלין במרתך שלי...

<sup>129</sup> Ibid., 208c.

with refuse and filth. Water was available at cisterns from which the surrounding homeowners drew their water.<sup>130</sup> Out-houses were to be found close to their homes, chiefly in the courtyard outside.<sup>131</sup> Bathhouses were located nearby where they would bathe at regular intervals. Homes were kept meticulously clean, particularly before the Sabbath and holidays.<sup>132</sup>

There was not much moving about of residences. Often, houses remained in the same family from one generation to another.<sup>133</sup> At times, they were utilized in the family as a daughter's dowry, remaining as the possession of a given family for many years. Houses ordinarily were built by contractors, but many built their houses according to their own specifications.<sup>134</sup> Homes were built for personal occupancy or for sale.<sup>135</sup> In the German cities, considerable building

<sup>130</sup>Ibid., 155d.

<sup>131</sup>Ibid., 148b. R. Eliezer indicated that in an earlier period toilet facilities were out in the fields far removed from the dwellings.

<sup>132</sup>Berliner's treatment of the cleanliness of the Jewish home is apologetic rather than historical. There was, it is true, concern for cleaning the house reasonably well before the Sabbath, as well as the yearly preparation for Passover. The laudatory comments of Berliner in this regard, however, are exaggerated. See A. Berliner, op. cit., p. 35.

<sup>133</sup>Eben Haezer, 198a, 208d.

<sup>134</sup>Tosafot, Aboda Zara, 21b. Eben Haezer, 208b reflects a situation in which two Jews aided one another in building their own homes.

<sup>135</sup>Eben Haezer, 42c. For a discussion of the economic function of the landlord, see infra, Chapter VII.

took place. Hiding places were often built into the walls to be discovered years later. Jewish homes were sometimes attacked and pillaged by mobs intent upon loot. At a time in which the safekeeping of valuables were difficult for all monied classes, such hiding places were not unusual.<sup>136</sup>

The towns were generally small in size and offered a minimum of public services for their inhabitants. The streets were narrow, and the town square, often less than sixteen feet square.<sup>137</sup> Yet, our period was one in which there was a certain luxuriousness in Jewish housing. The period of the Crusades may have been one of persecution. It was also a period in which the Jews lived well, ate well, and enjoyed the fruits of their labor.

<sup>136</sup>Ibid., 198c. Though it is clear from the context that R. Eliezer was speaking of a concrete situation and not an academic one, he based his responsum on B. Metsia, 25b, in which a similar occurrence took place in Talmudic times.

<sup>137</sup>Ibid., 148a. Cf. Tosafot, Shabbat, 64b. Despite this universal quality of extremely narrow streets, note Pirenne's comment on the diversity of Medieval towns, both in the way they were laid out as well as their social and economic characteristics. H. Pirenne, Medieval Cities, p. 95 ff.

## CHAPTER VII

### ECONOMIC HISTORY

The economic life of the Jews of our period partook of the general characteristics of the economic activities that then prevailed in Germany. There were areas in which Jews were prominent, and others in which they participated hardly at all. In all cases, however, their economic existence was not determined by government regulation, or by patterns of anti-Jewish prejudice; it was determined by the predilections of the Jews themselves. Their economic well being was well established. Unlike their brethren in France, the Jews of Germany were primarily urban rather than rural in character. While Jews making their living in agriculture or viticulture were common in France,<sup>1</sup> in Germany it was a rare exception.

<sup>1</sup>It is evident from the plethora of material in the Tosafot literature on the practice of agriculture that the French Jews were intimately aware of the practice of agriculture in practical, non-academic terms. See, e.g., Tosafot, Baba Metsia, 107a; Tosafot Kiddushim, 37a; Tosafot Moed Katan, 10b. et. al.

Our sources contain few references to matters of an agricultural nature that are not theoretical or academic. R. Eliezer stated

...דבזמן הזה שאין לישראל שדות וכרמים  
לחיות מהן...

. . . In our time Jews do not make their living from agriculture or viticulture . . .<sup>2</sup>

They did, however, cultivate small parcels of land for the use of their own families even in the urban areas. It was rare for such produce to be marketed in any significant quantity. The authorities of the times provided that the Ketubah to be collected from movable property rather than from real estate, because of the shift in Jewish holdings.<sup>3</sup>

<sup>2</sup>Eben Haezer, 204b. This particular quotation is an important one for another reason as well, since it came to justify the money-lending activities of Jews.

...מה שכלוין לגרים כדי חייהם הוא ומוחר  
The entire matter of Jewish money lending will be taken up at a later point in this chapter. Cf. A. Berliner, Aus dem Leben der deutschen Juden in Mittelalter, pp. 76 ff., in which the practice of viticulture among German Jews of our period is exaggerated. Note also the comment of Parkes on the gradualness of Jewish alienation from the land. While his basic thesis is correct, his comments are more true of France than Germany. See J. Parkes, The Jews in the Medieval Community, p. 263. Finkelstein relates the alienation of the Jews from the land to the process of feudalism. "The condition that ultimately brought about the conversion of most of the allodial land into feudal domain worked to deprive the Jews of their small farms." L. Finkelstein, Jewish Self Government in the Middle Ages, p. 11.

<sup>3</sup>Eben Haezer, 263d. ...כחובה נמי גביא ממטלטלי בזמן הזה...  
...בזמן הזה אלמנה חופפת ממטלטלין...  
Similarly in the case of a widow (264b) ...  
One of the reasons for the abandonment by Jews of landed property was its liability to expropriation. For other causative factors, see S. Baron, A Social and Religious History of the Jews, Vol. IV, 151 ff.

Jews did not distinguish themselves as farmers; they were prominent as grain and wine merchants. Frankfort am Main, as well as other German cities were centers of wine trade. In these areas Jews were active in bringing wine from the East, and selling both German and French wines in various countries to which they traveled.<sup>4</sup> While engaging mostly in wholesale trade, there were also those who were wine retailers.<sup>5</sup> Jews were also involved in the buying and selling of wheat as wholesale grain merchants.<sup>6</sup>

They owned land, more perhaps for speculative purposes than for cultivation. Their landholding was mostly in urban areas, and at times in rural areas as well. In France and in England of the thirteenth century Jewish landholdings were sufficient to give rise to anti-Jewish sentiment.<sup>7</sup>

<sup>4</sup>Eben Haezer, 202b. Our sources speak of יין ווירקיש (probably יין וורנקיש referring to West European wine in contrast to יין הונגקיש (Hungarian). R. Eliezer considered West European wine to be far superior to the eastern variety. Cf. M. Gudemann, Geschichte des Erziehungswesens und des Kultur der abendländischen Juden während des Mittelalters, Vol. I, 110.

<sup>5</sup>Eben Haezer, 216d. The discussion here hinges on a Mishna in Baba Bathra, 87b. However, the incident by R. Eliezer was based on a real situation rather than an academic one. The Jewish wine retailers often had a stall in an open air market (Eben Haezer, 217b)

<sup>6</sup>Ibid., 5b. The wholesale trade of the Jews in grain was often purely for speculative purposes. They secured wheat from the proprietors of monastic lands in return for capital loans. See A. Berliner, op. cit., p. 76.

<sup>7</sup>S. Grayzel, The Church and the Jews in the 13th Century, p. 36, footnote 3. It was said that during the reign of Phillip Augustus, the Jews owned half of Paris and a third of the property of France, although such comments were highly exaggerated.

In Germany during this period Jewish landholding was not so extensive, but constituted a significant economic force in the country. Most of the land mentioned in our sources was utilized as homes for the owners of the property, or for investment purposes.<sup>8</sup> Often land would be held or bought in joint ownership.<sup>9</sup> Fields were frequently bought and sold, but not for agricultural produce. The trade in land was for purposes of resale, as Jews did not have the feeling that the land they purchased would be owned by them indefinitely. In the words of R. Eliezer

... שבקרקעות אינן מיוחדות לנו  
כי למסקא הן בידינו מן הגוים

. . . The lands are not particularly ours; rather they are put into our hands by the Gentiles for the purposes of taxation.<sup>10</sup>

The taxes referred to by R. Eliezer were local taxes paid directly to the local lord. In addition, the Church attempted to impose tithes upon all lands in the hands of Jews whose prior owners had been Christian. The clergy met with indifferent success in imposing tithes upon the Jews but the

<sup>8</sup>Eben Haezer, 42c, 36a, 208b.

<sup>9</sup>Ibid., 116a.

<sup>10</sup>Ibid., 125a. A similar statement can be found in Tosafot, Aboda Zara, 59a, attributed to Rabbenu Tam. The statement reads as follows: **אומר ר"ה דקרקעות שלנו משועבדות הם לשרים... ולכן אינם שלנו**  
The statement of R. Eliezer was oriented to his own time. However, its wording was based on Baba Bathra, 54b.

pressures from the Church in this regard built up in the course of time. In the time of R. Eliezer, land was held by Jews often without the payment of tithes, but eventually the Church pressure led to the exclusion of Jews from the holding of land other than that upon which their homes were built.<sup>11</sup>

Jewish landowning diminished steadily, and the majority of Jews made their living in wholly different ways. Though Jewish occupations were diversified, most dealt either with commerce or with moneylending. In R. Eliezer's words

בכל ישרבי ישראל דרין זה אצל זה ומחפרנסין  
מאומנו אחת מסחורה ורביח

. . . In all places of Jewish settlement Jews live near one another and support themselves in one particular way, viz., commerce and money lending.<sup>12</sup>

<sup>11</sup>S. Grayzel, op. cit., pp. 36-38. The tithe applied not only to agricultural lands but to all real estate. There is no indication in our text of a tithe that was exacted from the Jews on property that was bought from a non-Jew. At the same time, there were undoubtedly areas of Silesia where Jews still tilled the land where the tithe was exacted for the Church. It met similar success in England of the time. Note Baron's treatment of the problem. S. Baron, A Social and Religious History of the Jews, Vol. IV, 163 ff., as well as G. Caro, Sozial und Wirtschaftsgeschichte der Juden im Mittelalter, pp. 291ff.

<sup>12</sup>Eben Haezer, 297d. R. Eliezer's statement must not be taken to exclude completely all other occupations. From his own text, it is clear that other occupations were followed by Jews. In the overwhelming majority of cases, however, his comment was valid. Abrahams cites a long list of varied Jewish occupations. There are, however, two methodological problems involved in the utilization of the list. It is meant to include Germany, North France, and England. Although conditions were, it is true, roughly similar, there were important distinctions to be made between the countries. The

There were Jewish innkeepers, particularly in areas where major fairs were scheduled. Their clientele was not only Jewish, but Gentile as well.<sup>13</sup> R. Tam indicated that Jews of our period were not laborers.<sup>14</sup> From the many references to the presence of Christian domestics in Jewish homes, it is clear that Jews did not work as cooks or maids.<sup>15</sup> There is no proof that the Jews of Germany distinguished themselves as craftsmen. In contrast with Spain or even with France, there were few potters, bridle-makers, and carpenters, though there were no official restrictions on Jewish occupations. Jews did function as tradesmen in the market places, selling wares of many kinds.<sup>16</sup>

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inclusion of England in the list is not adequately enough handled by the footnote. Some references utilized are unfortunately based on secondary sources. See I. Abrahams, Jewish Life in the Middle Ages, p. 246.

<sup>13</sup>Eben Haezer, 197b. It is probable that such inns were set up originally to care for the needs of the peripatetic Jewish merchants.

<sup>14</sup>Mordecai, Gittin, par. 401. בזמן הזה דאין אנו עסקין במלאכה...

<sup>15</sup>It is difficult to argue from the absence of sources. It is significant, however, that there is not a single case involving a Jewish domestic or laborer recorded in all of the responsa of R. Eliezer. The contrast with Spain where Jews did in fact indulge in all sorts of menial work is instructive. Cf. A. Neuman, The Jews in Spain, Vol. I, 166 ff. Note also S. Baron, A Social and Religious History of the Jews, Vol. IV, 155.

<sup>16</sup>Baron has commented that there were Jewish craftsmen in abundance during the course of our period. Though his examples come from many areas in the world of the time other than Germany, he does include Germany as an area in which Jewish craftsmen lived and worked. By Baron's own admission,

One of the main areas of Jewish economic endeavor was the peripatetic merchant who wandered from place to place in order to sell his wares. Often he went from ~~place to place~~ from town to town with his goods accompanying him.<sup>17</sup> Many were the dangers that faced such a peddler from highwaymen and he had to contend as well with the problem of travel over impassable roads.<sup>18</sup> He carried with him not only the wares that he sold, but also the latest news into areas which often had little contact with the outside world. There were also Jewish merchants, whose businesses were far bigger and more complex. They bought goods in one city and shipped them by boat to another city where they were sold.

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however, such a view cannot be documented. He ascribes the difficulty of documentation to a "lack of interest of contemporary Hebrew writers other than Benjamin in Jewish occupations and the merely incidental and vague references . . . in the gaonic and post gaonic responsa . . ." See S. Baron, A Social and Religious History, Vol. IV, 169. It does not, however, seem possible that in the hundreds of responsas in R. Eliezer's work there was not a single reference to Jewish craftsmen. On the other hand, R. Eliezer noted the limited variety of occupations in his time as we have commented on above. Though there were a few Jewish craftsmen practicing their trade in Germany of the twelfth century, they constituted a distinct minority of the Jewish population. For a contrary view, note the work of I. Schipper, Toledot HaKalkala HeYehudit, Vol. II, 173 ff. Unfortunately, Schipper's work is often misleading and contains a minimum of references to check his conclusions.

<sup>17</sup>Eben Haezer, 199c.

<sup>18</sup>Ibid., 79a. ייחודי אחד שכן קרון לישיב עליו עד  
וורמישא עם חבילתו ויהי בדרך במלון ויפגע בו הגוי וימיתו...  
...

Such shipments were frequent occurrences between Cologne and Mayence as well as between other cities of the Rhine.<sup>19</sup>

The fair was an important instrument of commerce. It afforded the opportunity for the local merchant, as well as for the itinerant merchant, to display their wares. The Jew performed a valuable economic function in securing raw materials that were brought by traders from the East, converting them into goods, and funneling them into the European economy. He was prominent among the army of traders who swarmed into the area of the fairs to display their wares and to sell them profitably before returning to their own homes.<sup>20</sup> In addition, he provided the monies needed by the local aristocracy in order to make their purchases.<sup>21</sup> Often he functioned as a money changer at the fair, providing the necessary liquid capital for the transaction of business.<sup>22</sup>

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Such occurrences appeared frequently in the literature of the time. Note also the responsum of Meshullam b. Kalonymus found in M. Hoffman, Der Geldhandel der deutschen Juden während des Mittelalters, p. 151.

<sup>19</sup>Eben Haezer, 198d.

<sup>20</sup>Eben Haezer, 197c. It is difficult to evaluate the extent to which such transactions were remunerative to Jewish merchants. One has the impression, however, that they were highly profitable to the Jewish entrepreneur. This particular responsum dealt with a quarrel over the profit derived from the Cologne fair between two partners who were seeking to merchandise their goods together.

<sup>21</sup>Ibid., 69a. In this case, a local lord brought two Jews from his retinue along with him to the fair in order to guarantee the necessary capital. See infra, Chapter V, footnote 90.

<sup>22</sup>It has been pointed out that the fairs involved much more than the mere exchange of goods. They became in time

Jews were instrumental in the establishment of fairs of an international character, such as the one in Cologne, as well as the more local fairs.<sup>23</sup> The fairs were of such importance that at times the Emperor himself was in attendance with the result that many of the lesser nobles from the surrounding areas attended as well. Provisions were made for traveling Jewish merchants to be housed temporarily at hostels in the area, living as a colony so that they could fulfill the requirements of Jewish law. The fairs mentioned by our sources include the one at Cologne, widely recognized in the literature, as well as the lesser known fair at Frankfurt.<sup>24</sup> The fairs were often set up at the invitation of a local ruler or church authorities. Those who attended the fairs came under the special protection of the local

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the money market of Europe. Jewish involvement in money changing at the fairs began at a very early period. R. Gershom was involved in money changing at the Cologne fair. See L. Zunz, Zur Geschichte und Literatur, p. 543.

<sup>23</sup>/A. Epstein, Maase HaGeonim, p. 70. See also S. Baron, A Religious and Social History of the Jews, Vol. IV, 175. Jews were active as well in the setting up of the Champagne fairs, though the Champagne fairs are beyond the geographical scope of this work. There is some question as to the relationship between the international fair and the local fair that could more correctly be termed a market, since it involved not much more than the bringing of country products into the towns for sale. As an example of a local fair, see Responsa of R. Meir of Rothenburg, par. 898. Note also the thorough bibliography of sources to be found in Baron (op. cit., p. 324, fn. #30).

<sup>24</sup>Eben Haezer, 155a. The Frankfurt fair was termed יריד של גרים and attracted merchants from many areas. Jews frequented French fairs as well. Note Responsum #233 of Rashi in I. Elfenbein, Teshubot Rashi.

authorities,<sup>25</sup> and any disagreement which developed was adjusted through the application of merchant law, which was accepted by Jew as well as by non-Jew as binding.<sup>26</sup> The proceeds of a fair were taxed by the local church, and there were Jews, therefore, who questioned Jewish participation in the fairs, since it involved Jewish support of the Church. The consensus, however, was that Jewish participation was appropriate.<sup>27</sup>

The Jews functioned often as middle men, buying up raw material, shipping it elsewhere to be manufactured, and then selling the finished product. Shipment took place both over land and on the rivers that provided an even better means of communication and transportation between the main commercial centers.<sup>28</sup> The shipment of goods, even over water, involved considerable risk to the shippers for there were instances in which goods were stolen and/sunk.<sup>29</sup> The buying and selling of goods often took the Jew far away from his home and into

<sup>25</sup>H. Pirenne, An Economic and Social History of Medieval Europe, p. 99.

<sup>26</sup>Eben Haezer, 204a. במשפט הסוחרים

<sup>27</sup>E. Urbach, Baale HaTosafot, p. 290. R. Baruch of Worms commented on the problem in the following fashion:

והינה במקום שאין גובין המכס עד לערב מוחר...

<sup>28</sup>Eben Haezer, 48d. דכל המפליג בסחורה הוא מפליג

<sup>29</sup>Ibid., 197d. See also a responsum of R. Meshullam b. Kalonymus, to be found in M. Hoffman, op. cit., p. 151, par. 28, where it is evident that the dangers of the road were even greater.

foreign areas. Jews dealt in international trade since their settlement in Germany. They settled along the old trade routes and their commercial interests carried them far and wide within the known world.<sup>30</sup> They were well equipped to function in that fashion. The spread of Jewish settlements in many parts of the world made it possible for the Jew to find a friendly face in almost every area into which he penetrated. The utilization of the Hebrew language as the lingua franca of the time made communication possible. In troubled times when the risks of piracy were very great, the willingness of a local Jewish community to come to the aid of its coreligionists was a source of comfort for the peripetetic Jewish trader.<sup>31</sup> In addition to these factors, adjudication of any dispute among Jews was made remarkably easy by the existence of Rabbinic

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There has long been a debate among historians on the extent to which there was intercontinental trade in the period immediately preceding our own. Even Pirenne, who conceives of a virtual cessation of all trade, is prepared to view the Jews as an exception. See H. Pirenne, H. Mohammed and Charlemagne, pp. 255 ff. For the contrary view on trade in our period, see R. S. Lopez, "Mohammed and Charlemagne," Speculum, XVIII, 14-38.

<sup>31</sup> Eben Haezer, 199d. See supra, Chapter IV, footnote 12. It is noteworthy that even a community like Mayence had a fund for ransoming captives, though seldom used. Jewish communities throughout the world functioned in a similar capacity, a fact well known to those who preyed on shipping.

law universally accepted by Jews throughout the world.<sup>32</sup> Jews were often invited to settle in German cities on the basis of their participation in trading operations, and the renewal of their privileges were based upon the continuation of such trade.<sup>33</sup>

Our sources do not give us a clear picture of the extent of Jewish foreign trade. The most important contact for foreign trade was with Bohemia, Hungary, and other eastern border areas. R. Eliezer himself visited Jewish communities in Bohemia on at least one occasion.<sup>34</sup> Jewish traders probably penetrated into Russia, traveling in caravans and camping together at night for fear of attack.<sup>35</sup> They brought

<sup>32</sup>This fact cannot be overestimated. Though there were differences of custom between communities, the ties of Jewish law that bound Jewish communities together were very strong. The notion of such a world-wide community of law comes through clearly in the responsa literature that ranges across countries and down through the centuries. Despite all of the factors noted above that facilitated the entry of the Jew into international trade, it was the contention of some that the Crusades forced the Jew out of international and into petty trade. See M. Gudemann, *op. cit.*, p. 110. Whatever the long range effects of the Crusades, international trade remained an extremely important aspect of Jewish commercial activity through the course of our period.

<sup>33</sup>J. Aronius, *Regesten*, p. 139, par. 315. . . . et res cuiuscunque mercationis vendere . . .

<sup>34</sup>Eben Haezer, 7d. בהיותי בארץ כנען . . . "Canaan" is identified by Ehrenreich in his commentary to Eben Haezer as being Bohemia. A similar identification is made by S. Albeck in his introductory comments to the volume. R. Eliezer never traveled to Russia. Cf. V. Aptowitz, Mabo L'Sefer Rabiah, p. 50. See also, *supra*, Chapter I, footnote 97.

<sup>35</sup>Eben Haezer, 154b. The references in Eben Haezer to Russia are scanty, and their importance has been exaggerated. For a typical example of such exaggerations, see J. Brutzkus,

back furs and skins that were later sold in the West.<sup>36</sup> Trade with Russia did not occur frequently nor did Jewish traders penetrate deeply into the Russian hinterland. Since there was contact, some understanding of Russian culture and religion found its way into the responsa literature. The references by R. Eliezer to the use by Russian Christians of ikons falls into this category. His comment was based not on any first hand knowledge of Russian custom, but rather upon knowledge secured by speaking to those who had traveled themselves, and who reported their observations in a distorted fashion.<sup>37</sup> There was not deep enough contact to provide information in great detail. On the other hand, we have more knowledge of life in Bohemia and Hungary, where there was a settled Jewish community.<sup>38</sup>

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"Der Handel des westeuropäischen Juden mit den alten Kiev," Zeitschrift für die Geschichte der Juden in Deutschland, Vol. III, 97-110. Note also the interesting responsum of R. Meir of Rothenburg (par. 912) interpreted by Agus, (I. Agus, Urban Civilization in Pre-Crusade Europe, pp. 93-97) to refer to Russia. Unfortunately Agus's far reaching statements are based on very scanty evidence. Cf. B. Weinryb, The Beginnings of East European Jewry in Legend and Historiography, pp. 497-499.

<sup>36</sup> Eben Haezer, 7a. Reference is made here again to הולכי דרכי רוסיא a phrase that repeats itself in the other references that deal with Russia. Among the categories of goods returned was that of סחורה, an undifferentiated term that is otherwise not identified.

<sup>37</sup> Eben Haezer, 125a. Of such a quality was the observation noted above (Chapter III, footnote 13) by Benjamin of Tudela who wrote of German Jewry in terms that indicated to some authorities he was probably never there.

<sup>38</sup> Responsa of R. Meir of Rothenburg, par. 935. Contact between Hungary and Germany was common.

Trips of Jewish traders were not always of short duration. Extremely difficult conditions of travel often forced them to extend their absence from home into many months, and absence for well over a year was by no means uncommon.<sup>39</sup> In many instances, they were able to find lodging among members of the Jewish community in the area in which they traded. There were times in which the Jewish trader took his family with him. By and large, however, the perils of the time forced him to leave his family at home.<sup>40</sup>

Prior to 1200, the Jews were limited <sup>participants</sup> in the slave trade with the Slavic countries.<sup>41</sup> With the conversion of the

<sup>39</sup>Eben Haezer, 202b.

<sup>40</sup>As a result of such prolonged absences, the Jewish authorities were forced under the direction of Rabbenu Tam to impose a restriction upon the amount of time a Jew could stay away from his home. See L. Finkelstein, Jewish Self-Government in the Middle Ages, p. 168. R. Eliezer took note in one of his responsa (Eben Haezer, 207d) of a merchant who closed up his home temporarily, taking wife and children along with him in order to evaluate commercial opportunities that were open to him.

<sup>41</sup>G. Caro, Sozial und Wirtschaftsgeschichte der Juden, p. 102 f. The extent to which Jews were involved in the slave trade in an earlier period is very much open to dispute. Church pronouncements frequently denounced this particular area of Jewish activity. For a full discussion of the issues involved, see S. Baron, A Social and Religious History, Vol. IV, 336 f., footnote 59. The main burden of Baron's thinking is that the evidence for extensive Jewish slavetrading in the earlier period is minimal. On the other hand, see supra, Chapter V, footnote 67.

Slavs that source for slaves began to dry up, although there was considerable utilization of slaves by Jews throughout the course of our period.<sup>42</sup> Jewish traders from Germany also dealt extensively with Provence and Narbonne as well as Northern France.<sup>43</sup> The primary function of the Jewish trader was to expedite trade between the cities of Germany. Our sources abound in frequent references to trade between the major trading centers--Mayence, Cologne, Speyer, and Worms. It is in these areas that the most important Jewish contributions were made to the flow of trade and the exchange of goods.

The scale of Jewish business undertaking was considerable for the period. While individual ventures by Jewish traders existed, the most common pattern was that of business partnerships.<sup>44</sup> At times, such partnerships were contracted

<sup>42</sup>For a full discussion of Jewish slaveowning rather than slavetrading, see supra, Chapter V.

<sup>43</sup>Eben Haezer, 172c, 136c, /The commercial as well as the cultural ties between the Jews of Germany and the Jews of France were close and intimate. Extensive travel by members of the German community to France was as much for commercial purposes as it was for any other. For a clarification of R. Eliezer's role in the cultural relationships between the two countries, see Chapter I.

<sup>44</sup>Eben Haezer, 204a. See also, Or Zarua, par. 693. In this particular responsum, as well as in many others, R. Eliezer noted the existence of the individual entrepreneur who utilized his own resources in the buying and selling of goods. The pattern, however, was that of individuals joining together in order to pool their resources. It may well be that the dangers of the road were such that a business partnership was necessary for the safety of the traders. At the same time, it must be recognized that the majority of cases dealt with by R. Eliezer involved disagreements between partners in

for a specific venture and were then dissolved after the completion of the project.<sup>45</sup> In many cases, business partnerships were long term arrangements in which individuals were associated with one another over a lengthy period of time and in many ventures of a similar nature.<sup>46</sup> Traders did not specialize in any particular products. Rather, they were prepared to buy and sell anything depending on the potential advantage accruing to them. One of the business partners was often the procurer of goods, while the other involved himself in seeking out a proper market or taking the goods to a fair for sale. Such partnerships were not always

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an undertaking. It is conceivable that a far greater share of trade was in the hands of individual entrepreneurs. Agus's theory that partnerships were often restricted by a desire to lessen competition is interesting, but there is no evidence in our sources to support it. Cf. I. Agus, Urban Civilization in Pre-Crusade Europe, Vol. I, 82-84.

<sup>45</sup>Eben Haezer, 197c. As in this case, many such temporary arrangements were related to the trading at fairs. See also, 206d in which the term זמן קצוב is used in order to describe the limited aspect of the arrangement. See also, a similar responsum of Rashi found in I. Elfenbein, Teshubot Rashi, par. 233.

<sup>46</sup>Eben Haezer, 198d; Responsa of R. Meir of Rothenburg, par. 901. It is often difficult to assess the quality of business arrangements. Business relationships were shifting, and there was an attempt to take advantage of opportunities as they opened. Some partnerships were of longer duration than others, and there were some merchants who worked closely with one another over a period of years. One must not confuse their business undertakings with the much more sophisticated forms of business organizations that were developed during the early rise of capitalism. Yet, they were probably more complex than envisioned by Pirenne and his school.

limited to two individuals. For a specific undertaking, syndicates of traders grouped themselves to make it possible to broaden the scope of their commercial transactions.<sup>47</sup> Often Jews and non-Jews were closely allied in business.<sup>48</sup> Sometimes the capital needed for investment in a given commercial venture was provided by a silent partner, while the other was involved in the commercial operation.<sup>49</sup> While business operations were primitive in nature, records were kept of sales.<sup>50</sup> The amount of money and goods involved was considerable, despite the primitiveness of the operations. A trading operation was often successful enough to be passed on to a second generation that had been trained in the business. The result was that Jewish traders possessed a continuity of commercial experience often lacking among their

<sup>47</sup>Eben Haezer, 204a.

<sup>48</sup>Supra, Chapter V, footnote 88. Although Eben Haezer involvessolely Christians who had such a relationship with Jews we know of its existence in Moslem areas of the world as well. See S. Baron, A Social and Religious History of the Jews, Vol. IV, 176-177.

<sup>49</sup>Eben Haezer, 207a. Ordinarily, the money invested in the enterprises resulted in the investor sharing half the profits. In this particular case, the ventures resulted in a loss instead. Note also Responsa of Meir of Rothenburg, par. 895. There were times in which an agreement between the two partners provided for a different distribution of profit and loss. During the later period, partnership agreements became more complex.

<sup>50</sup>Eben Haezer, 39d.

competitors.<sup>51</sup> In most instances, business undertakings of Jewish traders yielded handsome profits.<sup>52</sup> The risk involved was great, and there were times when commercial undertakings ended in disaster.<sup>53</sup> Apart from the dangers of the road, there were many instances in which losses were sustained rather than profits made. Often there was no market for goods laboriously gathered and shipped.<sup>54</sup> The potentially great profits to be derived from such undertakings went far to explain why Jews were prepared to undertake the

<sup>51</sup>From the many references in our sources to individuals who were familiar with the business problems of their fathers, some process of training is indicated.

<sup>52</sup>Eben Haezer, 206a. It is difficult to estimate how much actual profit there was in trading operations. The sources ordinarily speak of considerable profit making, and the one quoted here refers to a suggestion by one of the participants in a partnership that the partnership be dissolved and the considerable profit accumulated be divided. Undoubtedly, profit making was adequate enough for those involved in trading to accumulate substantial amounts of money. Berliner held that Jewish money resources were highly exaggerated and that they were forced to turn to non-Jewish lenders to finance their operations. Cf. A. Berliner, Aus dem Leben der deutschen Juden im Mittelalter, pp. 72 ff. Here, as in many other places, Berliner's approach was apologetic. Agus, on the other hand, contends that in an earlier period the profits of traders reached 100-200 per cent of the original investment, a figure that is not wholly substantiated in our sources. Cf. Irving A. Agus, Urban Civilization in Pre-Crusade Europe, Vol. I, 78, p. 88 ff.

<sup>53</sup>Eben Haezer, 197d, 205a; I. Agus, Teshubot Baale HaTosafot, Responsum 1, p. 39 ff. The normal difficulties of shipment were such as to make necessary a high rate of return in order to make the endeavors worthwhile.

<sup>54</sup>Eben Haezer, 207a. The number of business operations in which money was lost was probably considerable.

considerable risks involved. By and large, Jewish traders were able to sustain their commercial undertakings and maintain a high standard of living for themselves and their families.

Merchants utilized written documents in order to take proper note of business arrangements made between them. There was a considerable degree of mutual trust developed so that written documents often were dispensed with, and the word of a businessman was taken as his bond.<sup>55</sup> There were instances in which unethical acts were committed by members of the Jewish community while engaging in trade. Keen competition probably compelled some merchants to utilize improper methods at times to reach their ends. The attitude of the rabbinic authorities to such behavior was extremely negative, whether it was directed at Jews or non-Jews.<sup>56</sup> When disputations arose, the authority of the local Jewish court was binding. Of considerable significance was the fact that the local court's jurisdiction was accepted by the itinerant merchant, no matter what his own place of origin. The Jewish merchant was

<sup>55</sup>Note, e.g., the examples of שטרי של חפזן extant in our period, to be found in A. Gulack, Otsar HaShetarot, p. 246 ff. R. Eliezer transmitted to us a series of such documents that were in wide use, enforceable by Jewish courts of law and facilitating the transfer of money and goods. See Eben Haezer, 70c. On the other hand, there was no insistence on a receipt after a note had been returned (39b).

<sup>56</sup>Eben Haezer, 4cd, 173d, 204d.

sure of having a just trial no matter what the locality in which he found himself.<sup>57</sup> Such a factor was of great importance in stabilizing trade and in creating a proper environment within which the Jewish trader could operate. At a time in which Germany itself was subdivided into many different principalities and had no uniform system of law, the Jewish court system could provide the trader with prompt and just settlement of his claims. It derived its authority not by compulsory edict, but rather by the consent of the litigants. Often such courts were convened at a fair or other similar area where Jews congregated to trade. Although it is true that adjudication occurred within a Jewish framework, court procedures that were followed were in accord with a universally accepted merchant law.<sup>58</sup>

<sup>57</sup>Note the full discussion of the Jewish court system, supra, Chapter IV. Questions directed at R. Eliezer from many parts of Europe indicate that the procedures utilized in R. Eliezer's court were duplicated in large part by similar procedures in the courts of R. Eliezer's contemporaries. Cf. Irving A. Agus, Urban Civilization in Pre-Crusade Europe, Vol. I, loc. cit.

<sup>58</sup>Eben Haezer, 204d. A special code of merchant law was extant for non-Jews as well. A full discussion of the special category into which only merchants belonged is beyond the scope of this work. It is clear that Jews were prepared to accept merchant law as binding upon them even when its categories were far different than their own legal system. The availability of such a recourse to law facilitated exchanges between Jews and non-Jews and encouraged the flow of trade. The acceptance of a universal merchant law where Jewish law could be utilized instead constitutes an interesting commentary to our period. See infra, Chapter V, footnote 106. Note the discussion of the issue in J. Parkes, The Jew in Medieval Germany (pp. 4-6) along with the attendant non-Jewish source material.

Jewish traders were able to utilize many sources of capital for their trading enterprises. To some extent monies were made available to them through gentile money-lenders who abounded at the time.<sup>59</sup> Monies were also available for investment through profits made in other undertakings. However, most investment funds came from profits made from trading operations which were reinvested in other ventures.<sup>60</sup> The availability of money would have been of no value, however, if there had not been sufficient imagination and drive on the part of traders to convert potential markets into real ones.

One of the important factors in aiding Jewish traders to maintain their positions was the institution of the Ma'arufia. Although the Ma'arufia did not originate in R. Eliezer's time, it was then already in existence.<sup>61</sup>

<sup>59</sup>J. Parkes, The Jew in the Medieval Community, p. 327. The popular view that the Jews were the only money-lenders during the course of the Middle Ages does not stand up against the evidence that Jews often were compelled to turn to non-Jews as sources for their own capital. Cf. A. Berliner, op. cit., p. 72. A full discussion of Jewish money-lending will follow in this chapter.

<sup>60</sup>Responsa of R. Meir of Rothenburg, par. 904.

<sup>61</sup>S. Baron, A Social and Religious History of the Jews, Vol. IV, 185. The spelling of the term shows some variation and occurs often as Ma'arufia, such as in our sources, or in other sources as Mahrufia. Baron makes no attempt to identify the source of the term. Eidelberg identifies it as having an Arabic root although the precise fashion in which it passed from Arab lands into usage in Western Europe is unclear. Note the confused and uneven article by Eidelberg. I. Eidelberg, "Ma'arufia in Rabbenu Gershom's Responsa," Historia Judaica, Vol. XV, 59-66.

The first reference we have to the Ma'arufia is in the tenth century, and it was known to R. Meshullam b. Kalonymus. The Ma'arufia aided the first Jews in the community to establish themselves economically. The arrangement had a continuous history that extended through our period.<sup>62</sup> Most often it functioned as an economic relationship of an exclusive nature between the Jews and the local gentry in which the Jews possessed monopolistic rights over the business of the local lord.<sup>63</sup> This exclusive prerogative was structured in such a way as to prevent a competitor from taking any business away from the individual possessing the monopoly. To attempt such an act would be to expose an individual to the penalty of Herem. The Ma'arufia was a particular source of solicitous concern for the Jew. In return for the favors of the Ma'arufia, the Jew saw to his financial needs, helped him borrow money,<sup>64</sup> and even bought him gifts to keep in his good graces.<sup>65</sup> Although there were individuals from many different

<sup>62</sup> J. Mueller, Teshubot Geone Mizrah V'Maarav, par. 174. שאילה זו מן מעריפה שהיה לי עקב. This particular responsum of Meshullam belongs to a period earlier than our own and is an indication of the fact that the institution of the Ma'arufia goes back to the earliest beginnings of German Jewish history.

Eben Haezer, 70c. Cf.

<sup>63</sup> A. Berliner, op. cit., p. 75.

<sup>64</sup> Eben Haezer, 71d. In this responsum the Jew brought his Ma'arufia to a money lender and guaranteed any loss the money-lender might have in making the loan.

<sup>65</sup> Eben Haezer, 205b. This is the interpretation that should be put on this particular responsum. It is possible

walks of life who were designated as a Ma'arufia, in our sources such an individual was always a member of the local gentry. Most often, he was an ecclesiastical lord who utilized the local Jewish population in order to market produce or goods of ecclesiastical estates.<sup>66</sup> Jews functioned not only as business managers of the commercial affairs of a bishopric; there were times when they functioned as administrators of the internal affairs of a bishop's estate.

Trade with the Ma'arufia assumed many forms; in most instances the Ma'arufia sold to the individual Jew his agricultural products and in return the Jew extended credit so that new crops could be put in. Particularly in a later period, the Ma'arufia was utilized for the good of rabbis and scholars who were able to benefit from a monopolistic arrangement that guaranteed them a relatively secure living.<sup>67</sup> There is no indication that R. Eliezer ever benefitted from such an arrangement himself or that the Ma'arufia arrangement

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but not likely that the Jewish trader was purchasing garments at the instruction of the local lord. In any event, one factor is clear. The Jew was dependent on the good graces of the lord who was often erratic and tyrannical in his judgments.

<sup>66</sup>M. Hoffman, Der Geldhandel der deutschen Juden während des Mittelalters, p. 152, par. 32. Responsum of Meshullam b. Kalonymus.

<sup>67</sup>S. Baron, loc. cit. See also a responsum of R. Gershom in which the institution of the Ma'arufia was applied to a teacher before the professional Rabbinate had become a fixed institution. M. Hoffman, op. cit., p. 139, par. 13.

was specifically oriented to the scholars of his time. A Ma'arufia could be passed from generation to generation. It could be shared by several different individuals who divided up the proceeds from a given business.<sup>68</sup> The functioning of the Ma'arufia was by no means universal. It varied from community to community as did the means used to enforce its application.<sup>69</sup> The Ma'arufia fostered the development of Jewish economic power without the necessarily divisive effects of competition for the same accounts.

Though traders predominated among the members of the Jewish community, they made their living in many other ways as well. Many Jews were landlords who rented apartments or whole buildings and derived sufficient profit from their undertakings so as to invest them elsewhere. The extent of their holdings varied from the rental of one apartment in a building in which the landlord himself lived, to one who owned a number of buildings and whose income from rentals was considerable. Rentals were often made for long periods

<sup>68</sup>M. Hoffman, op. cit., p. 154, par. 34.

<sup>69</sup>It is Agus's thesis that the key to the functioning of the Ma'arufia is to be found in the religious sentiments of the Jew that prevented him from interfering in the commercial negotiations of a fellow Jew. Though this particular motivation of the Jew cannot be discounted, it is doubtful whether it had the effect attributed to it by Agus, any more than the later Christian monopolies had as their base the religious sentiment of their participants. See I. Agus, Urban Civilization in Pre-Crusade Europe, Vol. I, 189.

of time, with a two year lease common, but leases for as much as ten years were known.<sup>70</sup> Jewish landlords in most instances rented to Jews, but on occasion, they rented to non-Jews as well.<sup>71</sup> Houses were constructed by the landlord and he rented apartments with maintenance expenses carried by the tenant.<sup>72</sup> In some instances, it was apartments within larger buildings which were rented; at other times, an entire building was involved.<sup>73</sup> The lessor had the right to sub-lease the apartment, only with the consent of the owner of the apartment.<sup>74</sup> A landlord often had commercial interests in other areas and utilized his available surplus for dealing in real estate. Though Jewish wealth was measured primarily in moveable property, Jews possessed considerable assets in urban houses. This wealth was passed down from

<sup>70</sup>Eben Haezer, 216a.

<sup>71</sup>Supra, Chapter V. See also, J. Mueller, Teshubot Geone Mizrah V'Maarav, par. 158. It is evident from this responsum that there were areas in which Jews lived next to non-Jews and areas where they did not, with neighbors having the right to exclude non-Jews if they so desired. Not only apartments were rented but courtyards as well.

<sup>72</sup>Eben Haezer, 206a. ידבר שאין מעשה אומן השוכר מתקנו בעצמו The responsum of R. Eliezer stipulated exactly which maintenance costs were to be carried by the individual who rents the house and which costs were to be carried by the landlord. All repairs that necessitated the work of a trained craftsman were to be dealt with by the landlord; all minor repairs that could be done by the tenant himself were not the responsibility of the landlord.

<sup>73</sup>Eben Haezer, 215d; מי שיש לו בית... יכול לחלקו לשנים ולג'

<sup>74</sup>Eben Haezer, 198cd. ולהכניס בהן דיורין והשכיר אותו בית שהיה מושכר לו לשמרון

generation to generation and remained within a given family,<sup>75</sup> constituting an excellent source for capital needed in commercial transactions. Jews participated in the buying and selling of houses. Documents were prepared that provided not only for the sale of the house, but also for all the furnishings as well.<sup>76</sup> The ownership of a house was often tied in with the running of a business that operated from the same place.<sup>77</sup>

Jews were intimately involved in the money market of Germany, functioning both as money changers and money lenders. They became involved in money-lending activities primarily as a result of their commercial activity. They were one of the few groups who had a ready supply of cash available, and were already dealing in credit transactions. Their movement into money-lending activities was, therefore, quite natural. In the minds of some historians, the activity of Jews as money lenders bears with it some measure of opprobrium for they have accepted unknowingly the canard that Jews functioned as parasites in the economic world of the

<sup>75</sup>Eben Haezer, 208d. See also a responsum of Meshullam b. Kalonymus found in M. Hoffman, op. cit., par. 30. Such houses were often used as part of a dowry. See supra, Chapter VI, footnote 57. Most often, the holdings in houses were utilized for commercial profit rather than simply used as dwellings for the landlord.

<sup>76</sup>Eben Haezer, 116a. נהגו לכתוב בשטר בית וחדר ועליו פתחים וחלונות וכל חמשתו

<sup>77</sup>Ibid., 297d. ראובן ושמעון הדריין בעיר אחת זה במבוי אחד וזה במבוי אחד... ושניהם אימנותם שיה להחפרנס ממנה

medieval period. Therefore, they found themselves apologizing by claiming that Jews were forced into money-lending activity.<sup>78</sup> Though this may be true of a later period, Jews gravitated into money-lending in our period, purely as a result of economic developments wholly beyond their own control, and beyond the control of the secular authorities as well. As we have noted, Jews of our period had the ability to move into many areas of economic endeavor and did not hesitate to do so. The lending of money was not an exclusively Jewish preoccupation. Quite to the contrary, non-Jewish money lenders outnumbered the Jews who lent money on interest and there were a great many instances in which Jews were forced to turn to non-Jews in order to finance a particular venture.<sup>79</sup> Some of the vilification directed at the Jews because of their money-lending activity was directed with equal vindictiveness

<sup>78</sup>See, e.g., O. Stobbe, Die Juden in Deutschland während des Mittelalters, pp. 193 ff.

<sup>79</sup>J. Parkes, The Jew in the Medieval Community, pp. 327 ff. The existence of Gentile money lenders and their contribution to the flow of capital has been clearly established. Some authorities have gone so far as to discount almost all Jewish money-lending activity in the early period. Agus, e.g., holds that Jews of the immediate pre-Crusade period were not professional money lenders, that they turned to non-Jewish money lenders to secure the funds that they needed. He holds, too, that whenever they became involved in money-lending activity, it is as an outgrowth of their commercial undertakings. Such conclusions are arbitrary interpretations of the sources and are belied by the materials we possess that indicate a long term involvement in professional money-lending activities. See I. Agus, Urban Civilization in Pre-Crusade Europe, Vol. I, Chapter V.

against non-Jews as well. There were instances in which non-Jews were expelled from a community because of the fact that they functioned as money lenders.<sup>80</sup> The centers of money-lending activity up to the eleventh century were in the Church itself or its monasteries. Even afterwards, individual gentiles engaged in extensive money-lending operations despite the violent opposition of the Church. Subterfuge of many varieties was used, including the depositing of money in the hands of Jews, who lent it out on interest and returned a portion of the profits to the gentile suppliers of capital.<sup>81</sup>

Money-lending did represent a significant area of Jewish economic activity. The main suppliers of capital in our period were the great merchants, among whom the Jews figured prominently. The charter that they received at the hands of Henry IV specifically referred to them as money changers, and their entry into many cities and towns was to a large extent based upon their ability to make available the large supply of capital necessary for economic development in Germany at the time.<sup>82</sup> Even more important, the Jews themselves considered money-lending to be at the very center of their economic life, and fundamental to their

<sup>80</sup>B. Höniger, "Zur Geschichte der Juden Deutschlands im Früheren Mittelalter" in Zeitschrift für die Geschichte der Juden in Deutschland, Vol. I (1887).

<sup>81</sup>S. Grayzel, The Church and the Jews in the 13th Century, p. 45.

<sup>82</sup>Parkes has pointed out that there was some shift in emphasis after the period of the First Crusade to money-

survival.<sup>83</sup> Though the Jews were realistic in understanding the crucial role played by their money-lending function, they were not always happy in having this particular economic function devolve upon them. There were authorities who were highly critical of Jewish involvement in money-lending activities, holding that an individual should involve himself in lending money only if he has no other way in which to make a living.<sup>84</sup> The fact is that Jews of our period did continue to involve themselves in money-lending activities, even though other fields of endeavor remained open to them.

The most fruitful object for their money-lending activity was the local lord, whether lay or ecclesiastical.<sup>85</sup> It was the local lord who had the greatest need for funds to make the purchases he needed and it was only natural that he

lending from money-changing. See J. Parkes, op. cit., p. 340.

<sup>83</sup> Eben Haezer, 204b. דבזמן הזה...מה שמלוין לגרים כדי חיייהם הוא ומוחר Note the similar reference in the Tosafot, B. Metsia, 71b. לפי שיש עלינו מס מלך ושרים והכל הרי כדי חיינו

<sup>84</sup> The opposition to money-lending by Jewish authorities was based on many factors. אפי' לגוי אסור להלוות See, e.g., Sefer Hasidim, par. 532. Note also, J. Parkes, loc. cit. אלא כדי חיינו

<sup>85</sup> See, e.g., Eben Haezer, 69ab. The frequent occurrence of references to money-lending to nobles tends to support Schipper's thesis in part. Schipper held that in the early days Jews lent money primarily to nobles on a large scale and only later began to lend money to the masses of people in small loans. However, there are many references to such small scale lending as well. See I. Schipper, Toledot HaKalkala HaYehudit (trans. from Yiddish), p. 173.

turned to Jews who lived in the community by his sufferance. The lord, whether lay or ecclesiastical, would have the Jews readily available at his court so that he could gratify his desire for goods or the wherewithal to conquest. At times, a syndicate of Jews combined together to provide the financial resources that were needed.<sup>86</sup> The Jewish money-lender was often to be found in the retinue of the lord at the local fair so that purchases could be made on the spot.<sup>87</sup> The money involved in a single loan was often considerable, particularly when more than one money-lender was utilized. There were times when not even a combination of money-lenders were adequate to meet the capital needs of the lord and in that situation, the entire community was called upon to make the loan.<sup>88</sup> There were times in which foreclosures took place on loans that were not repaid. In England particularly, Jews profited greatly from such foreclosures with subsequently dire consequences in the period preceding the Expulsion.<sup>89</sup> The risks involved in money-lending were very great, for there was a good possibility that the money loaned would be lost.

<sup>86</sup>Eben Haezer, 69a. והלכו שלשתן... ונצרך ההגמון לכסף וביקש משלשתן להלוות לו

<sup>87</sup>See supra, footnote 21.

<sup>88</sup>Eben Haezer, 70b. מלוין היו הקהל להגמון כסף...

<sup>89</sup>Joseph Jacobs, The Jews in Angevin England, p. XVII. The anti-Jewish rioting and pillaging of twelfth century in England was primarily for the purpose of finding and destroying records of indebtedness.

As a result, the rate of interest was high. The term "usury" that was frequently used by the Church in depreciating Jews is deceiving, for the Church considered usury to be an interest charge, whether large or small.<sup>90</sup> In one responsum, R. Eliezer referred to the interest rate as being twenty-five per cent.<sup>91</sup>

There were other groups besides the nobility to which Jews lent money. First and foremost, they lent money to each other.<sup>92</sup> In most instances, such funds were lent without interest. At other times, however, Jewish money-lenders were not averse to charging interest to their fellow Jews through a non-Jewish intermediary.<sup>93</sup> This particular circumvention of the law was reprehensible in the eyes of some authorities, and R. Eliezer, in particular, was vitriolic in his denunciation of such flagrant abuses of Jewish law.<sup>94</sup> In a time

<sup>90</sup>S. Grayzel, op. cit., p. 44, footnote 15.

<sup>91</sup>Eben Haezer, 71d.

<sup>92</sup>Ibid., 42c. Most of the references to money-lending in R. Eliezer's work involved the transfer of funds between Jews.

<sup>93</sup>Mordecai, Baba Metsia, par. 338.

<sup>94</sup>Eben Haezer, 204c. Our sources established beyond question that Jewish money-lenders attempted to circumvent the limitation on charging interest to a fellow Jew. The complexities of the business world of the time were utilized to disguise the infringement of Jewish law. While there were those who were undoubtedly loyal in every way to the teachings of their faith, the facts indicate that when a profit was to be made there were those who were prepared to set them aside. In contrast, note the rather naive view of Irving Agus. (Urban Civilization in Pre-Crusade Europe, Vol. I, 339)

before the development of banking institutions, Jews became traveling bankers just as they were traveling merchants. They made themselves available at the local fairs in order to lend money to those who had come to make purchases but who found themselves without funds.<sup>95</sup> Similarly, it was common to find them functioning as petty pawnbrokers, taking pawns as collateral against loans made on a relatively small amount of money.<sup>96</sup> During the times in which they traveled the roads on other business, they often found it necessary to leave them behind in the care of others for safekeeping.<sup>97</sup> Among the pawns that were left in the hands of Jews were church vestments brought in to the Jewish pawnbrokers by an individual priest so as to meet his own personal needs. We have noted above the great concern evidenced by the Jewish community over the dangers of such an undertaking. For some authorities, the taking of such pawns was entirely proper.<sup>98</sup> Whatever the dangers, the necessity for a Jew to earn a living were such as to overcome fear of its consequences. There were many non-Jewish pawnbrokers, and Jews would on occasion go to a non-Jewish pawnbroker for a loan to meet his

<sup>95</sup> Eben Haezer, 69a.

<sup>96</sup> Ibid., 71c. See also J. Mueller, Teshubot Geone Mizrah V'Maarav, par. 170.

<sup>97</sup> Ibid., 199c.

<sup>98</sup> Tosafot, Aboda Zara, 50a. Note also, Sefer Yerei'im, par. 73, in which R. Eliezer of Metz criticized the practise. Cf. supra, Chapter V, footnote 32.

needs.<sup>99</sup> The pawnbroker, in most instances, used his own capital. There were times in which the money he supplied was not his own but rather came from silent partners who divided the profits with him.

The importance of the Jews in the economic life of Germany is underscored by the extent to which they were involved, not only with the lending of money but with providing currency. The period was one in which there was no uniform currency. Each municipality had different coinage. An individual could mint his own coins with proper permission from the government if he had the silver to do so.<sup>100</sup> The coins that did exist were in short supply. The Jew functioned as a buyer and seller of money,<sup>101</sup> as well as a money-changer, taking silver bullion and exchanging it for coinage. They bought silver in one place and transported it to another where it was sold at a higher price.<sup>102</sup> The basic unit of coinage noted by R. Eliezer was a Zakuk, although a half Zakuk and quarter Zakuk were also known.<sup>103</sup> The term

<sup>99</sup> Eben Haezer, 82a. משכנתי משכון ביד גוי... ואין המשכון אצלו אלא לאחריות חרבי

<sup>100</sup> Alfonso Dapsch, The Economic and Social Foundations of European Civilization, p. 370 f.

<sup>101</sup> Eben Haezer, 202b. הקונה זקוק של כסף. The coins were handled exactly as any other item of merchandise. They were bought for a minimum amount of silver and sold for a maximum.

<sup>102</sup> Sefer HaPardes, par. 269; A. Epstein and J. Freiman, Maase HaGeonim, p. 70. See also, J. Aronius, Regesten, par. 149.

<sup>103</sup> L. Zunz, Zur Geschichte und Literatur, p. 543; Eben Haezer, 295c, et. passim.

occurred only in Jewish sources and is Hebraic in origin. It probably comes from a source that means pure, i.e., containing less dross than other forms of coinage. The Zakuk appeared often in Jewish legal documents of the Medieval period.<sup>104</sup> It was not uniform in all areas of Germany. Different varieties of the Zakuk were in use, each containing a somewhat different amount of silver.<sup>105</sup> The Zakuk was roughly equivalent to the Mark that contained in R. Eliezer's times eight ounces of silver in Germany; in France it was worth somewhat less.<sup>106</sup> The Mark had been introduced in the early eleventh century with a higher degree of purity than minted coins.<sup>107</sup>

The purchasing power of the Zakuk was considerable. A precious stone was noted as being worth a Zakuk, a ring worth a Zakuk and a half.<sup>108</sup> A Zakuk was lent to a local

<sup>104</sup>Note, e.g., the Ketubah, discussed supra, Chapter VI.

<sup>105</sup>Eben Haezer, 42c. (Worms) זקוק וורמיש

<sup>106</sup>Moses Hoffman. Der Geldhandel der deutschen Juden während des Mittelalters bis zum Jahre 1350, p. 127, footnote 1. Hoffman notes that the French mark contained only five ounces of silver. An ounce of silver is known in the sources as ארקה . Eben Haezer, 202b, et al; L. Zunz, op. cit., p. 543. Zunz holds that ארקה is a corruption of ארנקיה from the Greek οὔρκια.

<sup>107</sup>I. Agus, Urban Civilization in Pre-Crusade Europe, Vol. I, 287.

<sup>108</sup>Eben Haezer, 36a. ראבן יגרוניא שוה זקוק וטבעת שוה זקוק וחצי

lord.<sup>109</sup> A pearl was sold in the market for two Z'kukim, having gone up in price in a relatively short time from one Zakuk.<sup>110</sup> A house could be rented for half a Zakuk per year,<sup>111</sup> while an unvocalized Humash cost one Zakuk and a vocalized Humash two Z'kukim.<sup>112</sup> A Zakuk has been estimated at approximately two hundred dollars, measured by the contemporary buying power of the dollar.<sup>113</sup> The business investments of Jews amounted to a considerable amount of money for the time. Investments of ten Z'kukim and eighteen Z'kukim were common.<sup>114</sup> There were other forms of currency in use among the Jews of the time. While the primary standard was silver, gold pieces were known and were in use, though not as widely as the silver Zakuk.<sup>115</sup> Smaller units of currency were also in circulation. One litra contained

<sup>109</sup>Ibid., 69a.

<sup>110</sup>Ibid., 199ab.

<sup>111</sup>Ibid., 202a.

<sup>112</sup>Ibid., 197b.

<sup>113</sup>I. Agus, Urban Civilization in Pre-Crusade Europe, Vol. I, 287. Agus's estimate seems reasonable, although there is some question as to whether the estimate is as accurate as he assumes it to be. Note the excellent survey on numismatics that includes our period and that is still valuable to be found in L. Zunz, op. cit., pp. 535-563.

<sup>114</sup>Eben Haezer, 204a, 36a.

<sup>115</sup>Ibid., 196c. ז'קוקים (gilden). See also L. Zunz, loc. cit.

240 Peshittim (Pfennig).<sup>116</sup> Vacillations in currency value permitted Jewish money changers to profit handsomely, while performing a useful purpose in making money available for a functioning market.

The Jews in Germany, then, constituted a vigorous element in the German economy. Their work as traders, merchants, and bankers was significant in facilitating the flow of money and goods. Although Jews could be found in other areas, their primary concentration was in commerce. The net result of their economic activity was a high standard of living for themselves and economic benefit for Germany as a whole.

<sup>116</sup>L. Zunz, op. cit., p. 561. One ounce of silver was an equivalent of twenty Pfennig in R. Gershom's times. There was, however, a great deal of fluctuation in currency value depending upon place and time.

## CHAPTER VIII

### RELIGIOUS LIFE

The religious life of the Jews in Germany was in the center of their consciousness at all times, although they were not ascetic, nor removed from the affairs of the community. They enjoyed a high standard of living, and the economic and material benefits that accrued to them. At the same time, their lives were filled with concern for the performance of God's will as they understood it.<sup>1</sup>

We have already noted the fact that the synagogue was the most vital institution in the Jewish community. This was reflected not only in the synagogue as a religious institution but also as the social and juridical center. It was thronged with individuals both morning and evening, who came to participate in Divine Worship. Participation in synagogue services was not at all confined to the Sabbath and festivals. With the exception of those workers whose duties demanded of them that they begin work very early in

<sup>1</sup>A. Berliner, Aus dem Leben der deutschen Juden in Mittelalter, p. 4.

the morning, the synagogues were ordinarily filled with worshippers on the weekday as well. This was particularly true of Mondays and Thursdays, when the Torah was read publicly.<sup>2</sup> Rosh Hodesh services were similarly well attended.<sup>3</sup> A young boy could be counted in order to complete the seven called to the Torah but not in order to fulfill the quorum of the ten needed for public worship.<sup>4</sup> Religious influences were dominant in the home, and constituted the most important focus of activity within the family. Unlike Spain of the period, where there existed a greater degree of liberality, the Jews of Germany possessed a Jewish community more homogenous and more orthodox in its view of religion.

The synagogue building was not the ornate structure often built by their Christian counterparts. The churches of the time had become extremely sumptuous in character, and

<sup>2</sup> Sefer Mitzvot Gadol, Pt. 1, par. 191. רועל זה אומר... רבינו חם במה דברים אמורים לבני מלאכה שאין מצויין בביה הכנסה כי אם ביום השבת אבל אנו כך מצויין רבים בשני וחמשי כמו בשבת... אבל בשני ובחמשי... עכשו באין Cf. Mordecai Gittin, par. 462 רבים לביהכ"נ See also, supra, Chapter IV.

<sup>3</sup> Eben Haezer, 87b. It is evident from R. Eliezer's comments that attendance at Rosh Hodesh services was substantial though it did not involve the entire community.

<sup>4</sup> Eben Haezer, 97a, Based on Parachot, Palestinian Talmud, Chapter 7, Halakha 3

brought down upon themselves the ire of church reformers who felt they distracted worshippers. There was at least one instance of record in which stained glass windows were used in synagogues.<sup>5</sup> The synagogues of the time were aesthetically plain, but hardly as austere as those of the early modern period in Eastern Europe. There was some decoration on the walls, though a strict prohibition existed against the depicting of a human figure. The building had a wooden floor,<sup>6</sup> and an Almemar in the center.<sup>7</sup> *and an ark on the wall where the scrolls were kept.*

The synagogue service generated both warmth and piety on the part of those who participated in it. The liturgy had been well established for some time. All fundamentals both as to form and content had been agreed upon during the course

<sup>5</sup>Mordecai, Aboda Zara, par. 840; Responsa of R. Meir of Rothenburg, par. 610. Krautheimer, Richard. Mittelalterliche Synagogen, pp. 116 ff. The stained glass windows at Cologne depicted lions and snakes, but R. Eliakim (R. Eliezer's father-in-law) ordered them removed. On the other hand, R. Ephraim b. Isaac, a pupil of R. Tam, permitted paintings of birds and horses in the synagogues in Regensburg. This was indicated in reply to a question submitted to him by R. Joel, R. Eliezer's son-in-law. Our period was one in which there was no clear cut prohibition on artistic embellishment of synagogues and with much variation on how much was permitted. For a fuller treatment of the problem, see S. Baron, The Jewish Community, Vol. II, 137-139, as well as footnote 15. See also, supra, Chapter IV, footnote 19.

<sup>6</sup>Tosafot, Megillah, 22b.

<sup>7</sup>Eben Haezer, 176c, based on Meg. 26b.

of the gaonic period, although many details were still open for spirited discussion.<sup>8</sup> The liturgy possessed some measure of flexibility and original piyyutim were composed as the situation demanded it and integrated into the service. Such original compositions were most often sung for a specific purpose or for a particular holiday or fast day. R. Eliezer, though known primarily as a halachist, distinguished himself as well as a composer of such liturgical pieces.<sup>9</sup> There was conflict between those who sought for liturgical renewal and those who opposed additions to the liturgy.<sup>10</sup> Our period was one in which there came into being a proliferation of local minhagim in the liturgical area, varying widely from place to place. Such minhagim were clearly reflected in our sources and constituted a significant expression of liturgical

<sup>8</sup> See, e.g., the energetic discussion of some aspects of the Yom Kippur liturgy in Eben Haezer, 169a.

<sup>9</sup> A. Haberman, Sefer Gezerot Ashkenaz V'Tsorfat, pp. 84-88. The liturgical poem composed by R. Eliezer was intended for inclusion in the synagogue services. For a fuller description of R. Eliezer's contributions in this regard, see supra, Chapter I, as well as E. Landshut, Amada HaAvoda, pp. 20-23, and I. Davidson, Otsar HaShira V'HaPiyyut, p. 364.

<sup>10</sup> Note the comment of Amram Gaon that was typical of the gaonic view and that persevered into our period.  
 אין אנו משנים ממה שאמרו חכמים בחלמוד בין ביום (טוב בין בשבת)  
 ואי (מיק) לעינין לאחר דאמר חזן מאי דלא דמי למטבע שטבעו חכמים  
 מסלקינן ליה

B. M. Levine, Otsar HaGaonim, Vol. I, Berachot, p. 70.

vitality. Of even greater significance, variations in custom within the German communities were often used in later generations as a basis for liturgical norms. At a later time, Jews who settled in a new community would divide themselves up into congregations on the basis of the local minhag to which they had accustomed themselves.

Creative innovation in liturgy was aided immeasurably by the fact that in our period there were few prayer books in the hands of worshippers. The precentor was, therefore, at much greater liberty in adding to the liturgy with the consent of a local authority.<sup>11</sup> The later invention of the printing press and the ready availability of a set series of prayers put serious impediments in the path of those for whom creative prayer was a significant value.<sup>12</sup> The early prayer books were not prayer books at all in the strictest sense of the term. Both Seder Rav Amram to which R. Eliezer made frequent references, as well as Mahzor Vitry and Siddur Rashi of our period should more properly be considered source books for the intellectual leadership who were in charge of prayer.<sup>12</sup> The cost of such prayer compilations was extremely high and although a copy was kept in the synagogues for reference, it was never available to the average worshipper. The worshipper

<sup>11</sup> See, e.g., infra, footnote #13. Vol. 1, p. 183.

<sup>12</sup> R. Eliezer utilized Seder R. Amram in exactly that fashion. Note Eben Haezer, 177a, 183a, et al.

was forced to rely on his memory as well as the direction he was able to receive from the precentor.<sup>13</sup> Prayer books of an extremely specialized and limited nature, such as Selihot, were occasionally available, but even these compilations were extremely expensive.<sup>14</sup>

The existence of a valid tradition from gaonic times was assured. The problem most often faced by the leaders of the community was determining which one among a variety of local traditions was the most valid one for them. They leaned very heavily on the pioneering work of Amram Gaon in the rescension of the prayer book. R. Eliezer was an important figure in determining the validity of liturgical traditions for his time and devoted a good part of Eben Haezer to a consideration of the problem. He was for the Jews of his own community perhaps the prime interpreter of what constituted acceptable minhag.

<sup>13</sup>There is some question as to whether the precentor himself had a text in front of him. Such is the interpretation that could easily have been put upon a responsum of Rashi. See I. Elfenbein, Teshubot Rashi, p. 76, par. 65. Without question, there were no prayer books in the hands of the congregation itself. Note in this regard the question directed at R. Eliezer by R. Samuel, his son-in-law (Eben Haezer, 30d), contrasting a well established Talmudic principle with the liturgical custom of his time.

...דברים שבכתב אי אחא רשאי לאומרן בע"פ והאיך אנו קורין פ'  
קרבנות וק"ש בכל יום ופסוקי דזמרא

<sup>14</sup>A considerable amount of money could be borrowed on the security of published pamphlets of penitential prayers. Eben Haezer, 299a.

One of the most important centers for the development and transmission of liturgical variations was the Yeshibot. The authority of the Yeshibot was often referred to by R. Eliezer in an attempt to secure acceptance for a given course he was himself recommending.<sup>15</sup> In general, the rabbis tended to discourage variations in the liturgy and to seek for an increasing degree of uniformity in prayer. There were times when a proper Torah scroll was not available and the leaders of the congregation had to be content with reading from a Humash instead of a scroll.<sup>16</sup> In most instances, congregations possessed more than one scroll.<sup>17</sup> The readings from

<sup>15</sup>Eben Haezer, 182a, 183a. It is evident that the procedures followed in the Yeshibot were influential in shaping the thinking of members of the community. In referring to established pattern of Minhag, R. Eliezer pointed them out as an important source of authority and their consent to a given course of action a singularly important one. J. Mueller, Hillufai Minhagim, p. 2. R. Eliezer had the status of prime interpreter of Minhagim for his time, as well as exerting influence on later generations.

<sup>16</sup>I. Elfenbein, Teshubot Rashi, par. 276, p. 312. Note particularly footnote 2, p. 313. Our sources reflect a lack of proper Torah scrolls in the small towns where Jewish inhabitants were not numerous.

<sup>17</sup>All of our sources that deal with the lack of proper scrolls come from France where the pattern of Jewish settlement was, as we have noted, widespread and highly rural. The same problem asserted itself in the rural communities known to Maimonides (Responsa of Maimonides, par. 8). On the other hand, R. Eliezer noted in many places the talmudic concern that there be two Torah scrolls rather than one, in order not to trouble the congregation by rolling one Torah in their presence. Note Eben Haezer, 31a. At the same time, R. Eliezer objected to the use of a Humash since it could not be rolled as a scroll of the law. Eben Haezer, 281c.

the Torah as well as the Haftorah had been well established long before our period. However, there were still areas of flexibility when more than one Haftorah reading was possible. On the Sabbath of Hanukah, which was also the beginning of the New Month, more than one custom was practised, and R. Eliezer was forced to lean heavily on the work of Amram Gaon in determining the correct practise.<sup>18</sup>

The order of readers from the Torah had been established in the Talmudic period. Without interfering with that procedure unnecessarily, R. Eliezer felt that an outstanding scholar had the right to be called first to the Torah, whether he was or was not a Kohen.<sup>19</sup> In the medieval synagogue, the Torah was read by the precentor rather than the individual called for an Aliyah in order to avoid embarrassment. Those who were called to the Torah remained in their places on the pedestal while the Torah was read. After all had completed their reading, the most important among them arose to roll the Torah.<sup>20</sup> Disagreements still took place with regard to the portion of the Torah to be read. In the

<sup>18</sup>Eben Haezer, 177a. R. Eliezer brought the entire text of R. Amram in order to clarify his ruling.  
ולא הזכיר בו כלל השמים כסאי אלא כך כתב בו שבת של חנכה קורין  
בנירוח דזכריה רני ושמחי... ושנייה קורין ויעש חירום במלכם

<sup>19</sup>Ibid., 281c.  
... מופלג בחכמה שאפי' כהנים חלמידי חכמים כפופין לו.

<sup>20</sup>Ibid., 177a. This particular custom was practiced in Narbonne.

case of a fast day that fell on a week day, R. Eliezer decided that the portion of the week ordinarily read on that day would not be read. In its stead, the reading for the fast day was utilized in the morning and the portion of the week was ignored.<sup>21</sup> Similarly, certain variations existed in the reading of the Torah during the course of the Festival of Sukkot. R. Eliezer noted many different minhagim in determining which portion was to be read, including one cited in the name of Rashi.<sup>22</sup> He commented as well on the liturgical differences between Rosh Hashanah and the festivals, distinctions that were quoted by other authorities.<sup>23</sup> Often the debate on liturgical procedure became rather heated. R. Eliezer told of his father-in-law becoming involved in a spirited discussion during the course of services over proper procedures to be used in blowing the Shofar.<sup>24</sup> At times, such altercations over liturgical procedures in the synagogue divided congregations into factions at war with one another. The existence, however, of a renowned authority whose task it was to interpret the demands of the tradition mitigated the extension of possible controversy.

<sup>21</sup>Ibid., 37a. The discussion was based on Meg, 30b.

<sup>22</sup>Ibid., 171c. Note also Mahzor Vitry, par. 380.

<sup>23</sup>Mahzor Vitry, par. 228.

<sup>24</sup>Eben Haezer, 49cd. See supra, Chapter I, footnote

While such variations were often the subject for concern, it is evident there was broad agreement and near unanimity of view in most areas of the liturgy. The custom of reciting the declaration<sup>of</sup> Kol Nidre had come into existence in the gaonic period although some opposition to it was noted at the time.<sup>25</sup> It was already well established in our period and was considered to be a fixed part of the Yom Kippur service. Kol Nidre was recited three times and it was concluded by a public declaration annulling the vows of the congregation. Such procedures were accepted not only in the West, but in Bohemia and Hungary as well.<sup>26</sup> There is an indication in our sources that the Habdalah said between the Sabbath and the week day was identical with that set down in the gaonic period.<sup>27</sup> Opportunities were sought for the expression of prayer in an unhurried and meaningful fashion. Although our sources reflect a preoccupation with the exact

<sup>25</sup>Opposition to the recitation of Kol Nidre was grounded in the rejection of the magical fear of vows that were broken unwittingly. All the same, the custom spread as we have noted not only to Europe but to many other areas of the world as well. Note Teshubot HaGaonim, Lyck edition, par. 99. See also the comments of S. Baron, A Social and Religious History of the Jews, Vol. VII, p. 78.

<sup>26</sup>Eben Haezer, 156b. While traveling in the East, R. Eliezer spent the High Holy Days away from his family and noted the customs of the places that he visited. See supra, Chapter I.

<sup>27</sup>Ibid., 164c. ומצאתי בסדר רב עמרם גאון ההבדלה כמו  
שאנו אומרים ארחה

See Seder Rav Amram, pp. 31-33.

form and ritual of prayer concern was also expressed for the spiritual intent of the worshipper.<sup>28</sup> Incidents of illness or other misfortunes that occurred were noted in the liturgy.<sup>29</sup>

This was a period, then, in which patterns of liturgical custom were still being developed based upon a prior model in the gaonic literature, an historical process in which scholars such as R. Eliezer played a leading role.

Changing economic and social conditions brought in their wake changes in religious practice as well. In ancient times, it was the accepted custom to wear garments that contained four corners to which fringes were attached. Our period was one in which the mode of dress had changed completely.<sup>30</sup> The majority of the Jewish community no longer wore fringes on their outer garments,<sup>31</sup> nor did they develop

<sup>28</sup>Eben Haezer, 97a. ילא יזרוק הברכה מפיו במהירות אלא...  
ימשוך בה כדי שיכוון לבו בה...

<sup>29</sup>Ibid., 177b. כמו שאנו עושין שמבקשין רחמים על החולה  
שיחמנה המלך

<sup>30</sup>See supra, Chapter VI, for a detailed description of the costumes of our period. In the East, however, wrap around clothing remained the pattern, and we do have records of Eastern Jews of our period utilizing fringes on the corners of their garments. See L. Grunhut, Travels of R. Petachia, p. 15. The authorities of our period were conscious of distinctions between the dress of the ancients and that of their own time.

<sup>31</sup>Eben Haezer, 30c. The comment is based on a question directed at R. Eliezer by his son-in-law. The same question is mirrored not only among German authorities but in the French authorities as well. Note, e.g., Tosafot, Baba Bathra, 74a.

an undergarment to which fringes were attached as is the custom today.<sup>32</sup> The change in clothing induced the authorities of the period to counsel that a Tallit be secured and utilized to display the fringes, probably only during the period of prayer.<sup>33</sup> Even so, the commandment of displaying the fringes was not complied with universally. There were many who did not secure for themselves such a Tallit, for varying reasons.<sup>34</sup> At the death of an individual, he was buried with the fringes removed from his Tallit, and the comment of the Tosafot on the custom is instructive.

דבימי חכמים שכולן היו לובשים ציצית אם לא היה להם גם במוחם לעג גדול היה שדומה כמו שהיו אומרים הואיל ומת אין צריך עוד ציצית אבל עכשו שאין הכל לובשים ציצית בחייהם אם ישימו ציצית לכולן הוא יותר לעג לרש שבחיו לא קיים ובמותו קיים

<sup>32</sup>The earliest reference we possess to the Tallit Katan is to be found in the Responsa of R. Hayyim, Or Zarua, par. 1. שיש בני אדם שלובשים טלית קטנה ומברכים עליה. והולכים לבית הכנסה וללובשים הגדולה ומברכים עליה אע"פ שעדיין הוא מעוטף בקטנה...

R. Hayyim lived a century after R. Eliezer. It is evident that details surrounding the wearing of the Tallit Katan were not yet clarified, nor was it universal.

<sup>33</sup>It is difficult to ascertain whether the Tallit mentioned in our sources was in truth a garment worn for the purposes of prayer or whether originally it was viewed as a means of fulfilling the commandment of fringes. Whether the shift to our current practice occurred in one stage or two, it is clear that our period was one in which the major part of that change took place. Note Tosafot, Sab, 32b.

<sup>34</sup>Tosafot, Erachin, 2b.

...ואם לא יוכל לקנות טלית אינן חייבין

the sages

In the time of /s the wearing of fringes was universal. If fringes were not worn at death it could be interpreted as an act of mocking at the dead who no longer are under the obligation of observing the commandment of fringes. Now, however, the wearing of fringes is not at all universal. If they were to be worn by all the dead, mockery of the dead would be increased, he seems to be fulfilling in death commandments he did not fulfill in life.<sup>35</sup>

Modes of attaching fringes to garments were standard.

Yet, R. Eliezer did attest to some measure of variation in a Tallit he observed that had been brought from Lombardy.<sup>36</sup>

It is evident that our period was one of transition. The older pattern of observance had passed, and a new pattern had not as yet manifested itself.

A similar pattern can be noted in the observance of Tefillin. Originally, Tefillin, or phylacteries, were worn by the Jew for the entire day. As is evident from our sources, the Jew had to be careful lest they be subject to impurity during the course of the day. In our period, the Tefillin were removed at the noon hour and the Jew was free to function during the course of the rest of the day entirely without the encumbrance of phylacteries.<sup>37</sup> There is some question as to the scrupulousness with which Jews of our period observed the commandment of Tefillin altogether.<sup>38</sup>

<sup>35</sup>Tosafot, Niddah, 61b.

<sup>36</sup>Eben Haezer, 147a.

<sup>37</sup>Tosafot, Ber, 44b.

<sup>38</sup>The extent to which the commandment was ignored is open to debate. Note the extreme position held by Rabinowitz. The Social Life of the Jews of Northern France, p. 177.

Moses of Coucy, for one, testified that the observance of Tefillin was weak at times among certain Jews especially in Spain.

Similarly, questions directed at R. Tam displayed basic lack of understanding of the fundamentals of Tefillin, and the manner in which it was to be worn.<sup>40</sup> In a similar vein, the commandment of affixing Mezuzot to their doorposts was periodically ignored.<sup>41</sup> We have already noted the fact that the Jews of the period did not utilize a head covering as a specifically Jewish mode of dress.<sup>42</sup> Our period was one in which those commandments that most set the Jew outwardly apart were those that were least observed.

The existence of a local Minhag was an important phenomenon in Jewish religious life in many areas other than the liturgical which we have discussed. Though the Gaonim of the East sought to rule over the European Jewish community from the seventh through the eleventh centuries, they found it extremely difficult to check the proliferation of local

<sup>39</sup> SeMaG, 76c. ...ראם האמר מאחר שחפילין אורח ועדות כמו מילה ושבת מדוע היתה רפוייה ביד ישראל...

על מקום הנוח תפילין של יד...כי ראיתי

<sup>40</sup> Sefer Hayyashar, par. 58, No. 1. מרבתי שמניחין אותה בגובה הזרוע...ומהן מניחין אותו למטה מפרק האמצי

<sup>41</sup> I. Agus, Rabbi Meir of Rothenburg, Vol. I, 264, Responsum 213. Care must be taken not to exaggerate the degree to which a particular commandment was violated. It is clear, though, that the observance of this commandment was far from universal.

<sup>42</sup> See supra, Chapter VI, footnotes 90-91.

custom. Over the course of the years, they tended to become increasingly intolerant of religious diversity, though with the increasing feudalization of Christian Europe the Jews found themselves sharing with their Christian neighbors a reverence for local custom.<sup>43</sup> Distinctions must be made, however, between divergences noted in Germany and those observed in France during our period. The variations in custom among the German Jews were substantial enough to introduce differences even in Kashrut observance from city to city.<sup>44</sup> There was no overriding personality who could by dint of his superior scholarship impose one pattern of observance on all communities. French Jews were, however, under the overriding influence of Rashi and his school. As Rabbenu Tam noted in response to a question directed at him

ובקשה מכם אל תעשו מלכותנו אגודות אגודות כי מימי ר  
שלמה אנו שותים ודבורים שאין ממש אל תקדיחו את מקומו

Please do not splinter our kingdom into small groups, for we drink from the waters of Rashi. Do not erode his position with words of no substance.<sup>45</sup>

<sup>43</sup>S. Baron, A Social and Religious History of the Jews, Vol. VII, 121. Cf. I. Abrahams, Jewish Life in the Middle Ages, p. 36. Note should also be taken of the important influences exerted by Palestinian usages as noted by Zeitlin ("Rashi and the Rabbinat," JQR, Vol. 31). See supra, footnote 58.

<sup>44</sup>Eben Haezer, 237b. In this case the Jews of Mayence were more stringent in their views than the Jews of Worms. They were permitted the more lenient view while in temporary residence in Worms. **...ואם כשמודיעין לו היחה דעתו נוטה אחרי חכמי וורמישא מותר הוא לנהוג עמהן אע"פ שאסור במקומו**

Note also Eben Haezer, 102d.

<sup>45</sup>Sefer Hayvashar, par. 45, No. 6.

The proliferation of local custom had many significant by-products. Jewish life gained much more than it lost by allowing significant additional freedoms to the individual and by the coexistence of variegated smaller groups within the total structure of Judaism. R. Eliezer justified differences in custom and affirmed the equality of different customs that came to his attention as long as they came from a source he felt he could trust.<sup>46</sup> At all times he insisted that the custom practiced by Jews arise out of the circle of knowledgeable leaders in a given community.<sup>47</sup>

Observance of Jewish ritual law was nearly universal. The Sabbath and the holidays were days of particular joy, in which the entire community were gathered for worship in the synagogue.<sup>48</sup> On Friday afternoon the children were sent scurrying home to inform their mothers that the time had come to light the Sabbath candles.<sup>49</sup> Concern

<sup>46</sup>E.g., Eben Haezer, 176a.

<sup>47</sup>Ibid., 181d.

וכן היו בקיאי הדעת שבמגנצא נוהגין...

<sup>48</sup>Ibid., 87b.

...במועדות שאינן ימי מלאכה כל העם בבה"כ

<sup>49</sup>Eben Haezer, 146b. The custom apparently of gaonic origin was practiced in R. Eliezer's time.

for the proper observance of the lighting of Sabbath candles was reflected in the earlier gaonic enactment that the appropriate Mishna be recited during the evening service.

Though such a recital could hardly be effective with regard to candles lit on that Friday evening, it would constitute an effective reminder for the following week.<sup>50</sup>

Observance of the Sabbath was strict and attempts made to liberalize restrictions on distances walked during the Sabbath were sharply condemned by R. Eliezer. Such liberal interpretations were common with the few Jews who lived in isolation from the main urban areas and sought to gather together on the Sabbath for worship as well as for socializing.<sup>51</sup> The demands of commerce created their own pressures. Traders were permitted to establish residence before the Sabbath on the river boats that plied the Rhine, though such

<sup>50</sup>Ibid. The reason for the introduction of such material into the liturgy is given by R. Eliezer without comment on its forced reasoning.

<sup>51</sup>Eben Haezer, 154c. The liberal interpretation involved the consideration of vines and fences strung out between the rural villages as an Erub so that a large area could be construed as one city. This particular view was firmly and summarily rejected by R. Eliezer. Cf. Or Zarua, par. 162. R. Isaac of Vienna referred to an identical difference of view. In his opinion, however, the individual who summarily dismissed the more liberal interpretation was R. Samuel bar Natronai of Bonn who was in reality R. Eliezer's son-in-law. There is little doubt that R. Samuel derived his view from his father-in-law and that R. Isaac was unfamiliar with R. Eliezer's original statement.

a procedure constituted a significant new departure from prior Talmudic norms.<sup>52</sup> The economic dependence of the Jewish community on the Rhine trade insinuated itself at every turn. Problems were created for the Jewish trader when his boat docked on the Sabbath and he had to be concerned with disembarkation without violating the Sabbath.<sup>53</sup> Wherever the Jew traveled, he was able to carry with him successfully concern for the Sabbath and its institutions. Jews traveled together on their journeys not only in order to insure their safety but also to facilitate the proper observance of Sabbaths and Festivals.<sup>54</sup> Non-Jews were allowed to perform

<sup>52</sup>Tosafot, Erubin, 43a. Note also Eben Haezer, 47cd. The decision to permit such sailings to take place was far from unanimous and R. Eliezer was forced to differentiate between conditions existing in his time and the earlier Talmudic period. Even more important his own reservations were overcome by the fact that the custom had already taken root due primarily to economic circumstances. Note the interesting and important comment. (Eben Haezer, 48d)

ומצאתי דמה שמפליגין בע"ש משום דכל המפליג בסחורה הוא מפליג והוא דבר מצוה

R. Samuel ben Meir was prepared at one time to allow the possibility of travel on the Sabbath in a carriage driven by a non-Jew but found himself forced to abandon that position. See Tosafot, Erubin, 43a.

<sup>53</sup>Eben Haezer, 157b. There was some difference of view on the problems of disembarkation during an earlier period in the settlement of the city. R. Eliezer identified himself with the more liberal view.

...ומקצתן אטרו...ויש מן החכמים שהתירוהו...ורואה אני אה דבריהם

<sup>54</sup>We have noted above the fact that Jews traveling to the East often did so in caravans for their protection. (See supra, Chapter VII) Every attempt was made by the traveling group to constitute itself a religious community and to observe the demands of its tradition. (Eben Haezer, 154b)

labors not permitted to Jews.<sup>55</sup> Observance of the Sabbath involved the community as well as the individual for the community gathered as a congregation to usher in the Sabbath.<sup>56</sup> The observance of the Sabbath reflected, too, differences in local custom prevalent in R. Eliezer's time. He noted differences between Babylonian and Palestinian usage with regard to the number of matsot used on the table for a Pesah Sabbath meal.<sup>57</sup> The Jewish community was wealthy enough so that they rarely had the problem of a lack of funds for wine or spices. Yet, the elders of Mayence, upon consultation with the Jerusalem authorities, permitted the use of myrtle as a substitute for spices, suggesting that our period was one in which commerce with the East was still limited. The Jerusalem community continued as a potent force within the world Jewish community of the time. Their advice was solicited and taken in religious matters constituting an extremely important influence on the development of Jewish law in

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Similarly, when attending a local fair, they congregated in a community that made the observance of the Sabbath possible (158a).

<sup>55</sup>Tosafot, Keritot, 9a. The authorities were careful to note the limited nature of the work permissible for gentiles to do in Jewish homes, viz., work done primarily for themselves. Note the similarity of the concern expressed in Eben Haezer, 150a.

<sup>56</sup>Eben Haezer, 95d.

<sup>57</sup>Ibid., 166c. The language used here by R. Eliezer is important. The impression that is given is that R. Eliezer saw with his own eyes both Babylonian and Palestinian usages practised.

Ashkenazic lands.<sup>58</sup> The custom of looking at one's fingernails by the light of a Habdalah candle had become widespread. R. Eliezer gave as its rationale the need to demonstrate that the light was sufficiently strong to distinguish between the flesh and the fingernail.<sup>59</sup> When the ceremony of Habdalah was performed in the synagogue, the Habdalah taper was first lit by the Shamash and only afterwards was the blessing of Habdalah made over wine because of concern for the dignity of the congregation, lest they be forced to sit in darkness while

<sup>58</sup>Ibid., 174a. R. Meshullam of Mayence sent still another quote of a liturgical character to Jerusalem, although the text there (Eben Haezer, 156a) is somewhat more questionable. Both footnote 57 and this reference point up one extremely significant issue for our period, viz., the sources from which the authorities of the German community drew for their guidance in matters of Jewish custom and usage. Zeitlin's thesis is that the influence on the Franco-German community was primarily from the Palestinian center, while the influence on Spain was primarily Babylonian (S. Zeitlin, "Rashi and the Rabbinat," JQR, Vol. 31). That position is strengthened in part by the information supplied by R. Eliezer. Contact was maintained between the German centers and Palestine. Moreover, we have noted early influences of Palestine through the mediation of the Italian Kalonymides (supra, Chapter I, footnote 23). At the same time, it is clear that in our period, at least there were many Babylonian, as well as Palestinian influences; the initial thrust of Palestinian influence was somewhat vitiated by later concentration on Babylonian interpretation. One example of such a change is the intense study by Western authorities of the liturgical work of Amram Gaon, as well as the great influence of Hai Gaon (supra, Chapter II). It is evident that over the course of time there developed an interest in and a study of Babylonian sources that was eventually to overshadow the Palestinian sources from which the German community originally drew such sustenance. That process had already begun to take place in R. Eliezer's period. See also, supra, Chapter IV, footnote 56.

<sup>59</sup>Eben Haezer, 97b. Note the discussion in Ber, 53b, as well as the comments made in Or Zarua, Part II, par. 93, in which the reason for the custom is substantially the same as that given by R. Eliezer.

the blessing of Habdalah was spoken.<sup>60</sup>

Though observance of the Sabbath was of great importance to the medieval Jew, there were a number of instances in which rigorous Sabbath observances were set aside, primarily because they were very difficult to enforce. Though Rabbinic legislation expressly forbade the combing of hair and the sweeping of a house on the Sabbath, both acts were allowed by R. Eliezer.<sup>61</sup> Of even greater import was the permission to extinguish a fire on the Sabbath particularly because of the danger of attack from gentiles. Of course, if there was at any time danger to life or limb, the desecration of the Sabbath to save human life was deemed wholly proper.<sup>62</sup> A somewhat more difficult issue was presented with the problem of healing on the Sabbath, when danger to life did not exist. Here, too, every attempt

<sup>60</sup>Eben Haezer, 153c. Though R. Eliezer did not stipulate the origin of the custom, it is clear that it had already become accepted practice in the gaonic period. See Sab, 81b.

גדול כבוד הבריות שדוחה לא תעשה שבתורה

<sup>61</sup>Eben Haezer, 149b. The phrase used by R. Eliezer to describe the problem was שיהיו שוגגות ואל יחיו מזידות. There were areas of concern where it was impossible for the rabbis to impose their will. Where a liberal rather than a conservative point of view was available without doing violence to accepted patterns of interpretation, R. Eliezer did not hesitate to adopt the more liberal view. Here note the discussion in Sab, 95a on which R. Eliezer based his reasoning. See also supra, Chapter I, footnote 248.

<sup>62</sup>Eben Haezer, 150a. Of historical interest was the indication that the mere presence of non-Jews during the period of a fire constituted a clear and present danger for the Jews involved and was an important ingredient in determining that the Sabbath may properly be violated. Note D. Shohet, The Jewish Court in the Middle Ages, p. 12. When actual danger to human life existed, there was never any question as to the steps that had to be taken.

was made to exploit the elements of the Talmudic traditions that were conducive to liberal interpretation.<sup>63</sup> The Jew spent the Sabbath day mostly in his own home in study and prayer. It was a day for conviviality and visiting with friends. It was not at all unusual for a Jew to visit with his Christian neighbors.<sup>64</sup>

The religious life of the Jew was enriched by special observances connected with the festivals that occurred during the year. The festivals were celebrated with great joy. By and large, travelers sought to return home in order to spend the holidays with their families.<sup>65</sup> Often, however, extended trips prevented them from returning home on time and so they were forced to spend holiday periods in far off places. The penitential period that began the year was a significant one, enriched by creative liturgical expression. During the entire penitential period beginning with the first of Ellul, the Shofar was sounded,<sup>66</sup> a custom that R. Eliezer explained as referring to the ascension of Moses on Sinai. The period

<sup>63</sup>The question of whether an individual who cut his finger on the Sabbath could bandage it was ruled on positively by R. Eliezer, based on a rather broadened view of Erub, 103b. See Eben Haezer, 159b.

<sup>64</sup>Eben Haezer, 155d.

<sup>65</sup>Ibid., 157c.

<sup>66</sup>Ibid., 54a.

of forty days between the first of Ellul and Yom Kippur was paralleled in his view by the period of forty days Moses spent on Sinai.<sup>67</sup> Rosh Hashanah was a day in which the synagogue was crowded with worshippers who had come in from outlying areas.<sup>68</sup> At issue among scholars was question of whether Rosh Hashanah and Yom Kippur were to be considered among the Festivals. Such indeed was the determination of R. Eliezer who ruled that both **השיאנו** and **שהחיינו** should be part of the High Holy Day liturgy.<sup>69</sup> The order of sounding the ram's horn, sometimes in dispute, was largely decided by our time.<sup>70</sup> Yom Kippur was a day that was observed with great solemnity. As on Rosh Hashanah, the Jews who were scattered on the outskirts of the town came streaming into the

<sup>67</sup>Ibid. He based himself on Pirke de R. Eliezer.

<sup>68</sup>Or Zarua, par. 10.

<sup>69</sup>Eben Haezer, 156a. The contributions of R. Eliezer were duly noted in Mahzor Vitry, par. 328. At the same time, R. Eliezer also commented on more minor matters in the liturgy such as the reading of **המלך המושט** on Rosh Hashanah, and the calculation of four verses to be quoted in each of the three sections of the Rosh Hashanah Amida (Eben Haezer, 178b).

<sup>70</sup>Some differences of view are found in the Tosafot on Rosh Hashanah, 33b. We have already noted above the furor that was created in the synagogue of R. Eliezer's father-in-law as a result of a disagreement on the order of blowing the Shofar. See supra, Chapter I, footnote 17. The disagreement prompted R. Eliezer to discuss at length (Eben Haezer, 49d ff.) the proper procedures to be used in the blowing of a Shofar, based upon gaonic precedent. Cf. Seder Rav Amram, p. 45.

city.<sup>71</sup> The observance of the fast was rigid, and there were those who sought to impose the obligation to fast upon children of a tender age well before such children were obligated to fast.<sup>72</sup> R. Eliezer concurred in the loosening of the prohibition on washing during Yom Kippur. This was particularly difficult for one confronted with the mud and filth of the medieval city.<sup>73</sup> On Yom Kippur, the custom had spread of bringing a cock to be slain as a Kappara for the sins of the family and community.<sup>74</sup> The practice of Kapparot had taken different forms in different times. Instead of a cock, there were some who took a basket in which beans had sprouted, swung it around themselves seven times and then threw the

<sup>71</sup>Or Zarua, loc. cit.

<sup>72</sup>Sefer Hayyashar, p. 108, par. 51, 2. R. Eliezer took a rather dim view of pietists who gloried on the stringency of their rulings. As a rule, the age was not yet one characterized by excesses of pietism.

<sup>73</sup>Yoma, 77b. Cf. Eben Haezer, 169b. R. Eliezer took pains to extend his liberal interpretation of the talmudic statement; if there was need for an individual to wash himself in order to meet the needs of either old or young, it was considered to be the equivalent of walking through muddy streets.

<sup>74</sup>Mahzor Vitry, par. 339. R. Eliezer never once commented on the existence of the custom in his community. The first reference to the custom in Germany is Mordecai (Yoma, 723) who reported that the custom was widespread and that it was practised before Rosh Hashanah, as well as before Yom Kippur. In the work of an author closer to our own period, viz., R. Eliezer of Metz (Sefer Yereim) we can find no references to the custom. Though beyond the scope of our work, it is worthy of note that the great rabbis of a later generation argued unsuccessfully against the spread of the custom which eventually took hold in Germany and Eastern Europe as well.

bundle into a river. While most sources speak of the custom of Kapparot as developing around Yom Kippur, others refer the custom to Rosh Hashanah.<sup>75</sup> Worshippers brought candles to the synagogue on the holiday, and the most pious sought to humble and even to humiliate themselves by submitting to penitential flagellation and repeating the Confessional.<sup>76</sup> It was also the accepted custom to go to the ritual bath in the afternoon before the holiday. After the fast was over, it was customary that it be broken with dairy foods, not with meat.

Each of the festivals were celebrated with great joy and beauty. On Sukkot, most Jewish homes possessed a Sukkah of its own, and it was customary during the course of the holiday for families to visit in each other's booths. Those who had no Sukkah were thereby able to fulfill the commandment.<sup>77</sup> It was customary that the entire family slept outside

<sup>75</sup>Note Rashi's comment on Sab, 81b, referring this custom to a gaonic tradition. Of particular interest is the fact that the custom developed around Rosh Hashanah, rather than Yom Kippur. It is, however, doubtful whether the custom of Kapparot was observed in this manner during the course of our period. Rather, a fowl was used instead.

<sup>76</sup>Responsa of Meir of Rothenburg, par. 153. Mahzor Vitry, par. 344. There is no reference to the practice of self-flagellation in Eben Haezer.

<sup>77</sup>It is impossible to ascertain what proportion of the community had booths of their own. A family Sukkah was the rule, however, rather than the exception. Note Eben Haezer, 180b.

in the Sukkah including very young children.<sup>78</sup> In situations where there were real dangers due to marauding robbers in the vicinity or anti-Jewish attacks, the responsibility to sleep in the Sukkah was waived. Such dangers were by no means universal, and the pattern of sleeping in Sukkot was maintained.<sup>79</sup> Palm branches, as well as citrons, were difficult to find, but a sufficient number were available so as to provide some men in the congregation with palm branches that were carried in procession around the Bimah. At the conclusion of the processional, it was the custom in Mayence that the palm branches were brought before the ark and there all the male children were given the opportunity to say the blessing over the palms.<sup>80</sup> In the years that palm branches were not to be found, the procession around the synagogue took place anyway.<sup>81</sup> Willows were always plentiful and the proper observance of the seventh day of the festival always took place

<sup>78</sup>Ibid. The determination of whether a child was old enough was based upon the criteria set up in Sukkah, 28b.

<sup>79</sup>Eben Haezer, loc. cit.

<sup>80</sup>Ibid., 181d. A citron was even more difficult to obtain than a palm branch, and hence one citron was often shared by an entire community.

<sup>81</sup>Eben Haezer, 181b. From the context of R. Eliezer's comments, it is clear that the absence of palms and citrons for the processional was all too common. Despite the position taken by the gaonim who refused to allow the procession to take place without participants bearing palms, R. Eliezer ruled otherwise because of the conditions of his time.

without any difficulty. The community sought to compensate for the deficiencies of its palm branches and citrons by adding to the required number of willow branches.<sup>82</sup> Utilizing a talmudic precedent, women were permitted the privilege of reciting the required blessings over the palms, as well as the blessings for booths.<sup>83</sup>

The minor fast days were observed as well, although no attempt was made in our time to be excessively pious during the course of the fast days. Although the proper rites were observed there was no excessive morbidity. While abstaining from food, people went about their business as on every other day.<sup>84</sup> There was some observance of the prohibition on eating meat or drinking wine during the three weeks preceeding the ninth day of Ab.<sup>85</sup> That particular fast day, as is common in Jewish tradition, was observed more

<sup>82</sup> Tosafot, Men. 38a. ערבי שמים ונוהגים להשים הרבה בלולב. Note also Eben Haezer, loc. cit.

<sup>83</sup> See Erub, 96ab. R. Eliezer referred to the extension of such privileges to women as including the blessings for the Sukkah, as well as the blessings for the palms. Note Eben Haezer, 63c. The larger discussion on the place of women in the religious life of the community may be found in Chapter V.

<sup>84</sup> Eben Haezer, 47a. Excluded from this category was the ninth day of Ab that had a very special significance in the Jewish liturgical year. R. Eliezer based himself on the Talmudic precedent of Taanit, 11b, but it is important that he sought in no way to broaden the scope of the minor fast days.

<sup>85</sup> Eben Haezer, 182b. From the use of the phrase ואיכה דנהגו one is lead to assume that the practice was not universal.

stringently than any other. Even here the stringencies were by no means overwhelming. It was customary to partake of a simple meal on the eve of a fast. However, there was no compulsion that one must abstain from the eating of meat at such a time.<sup>86</sup> There was little of the asceticism that was to be so characteristic of a later period in German-Jewish history. Individual self-imposed fasts were not unknown, but they were the exception rather than the rule.<sup>87</sup> Communal fasts were established for particular community purposes but these, too, represented the exception rather than the rule for a community concerned with the joyous, rather than with the more lugubrious aspects of life. Although the tone of Christian life of the period was one of pietistic concern and preoccupation with the penitential act, excessive fasting of the Jew was considered to be sinful and wholly out of keeping with the demands that Judaism made upon men.<sup>88</sup>

<sup>86</sup>Eben Haezer, 182d. אכל איסור אין בו

<sup>87</sup>Tosafot, Baba Kama, 82a, in which reference is made to fasting on Mondays and Thursdays, as well as Tosafot, Kiddushin, 81a, dealing with fasting after Passover and Sukkot. Cf. Eben Haezer, 182a, as well as Taanit, 12ab. In no sense, however, was fasting construed as a model of human behavior.

<sup>88</sup>Sefer Hasidim, par. 52. Sefer Hasidim comes from a period later than our own, and is distinguished by a measure of pietism, as well as mysticism. Despite that fact, the author of Sefer Hasidim goes out of his way to discourage any excessive fasting or mortification of the flesh as practiced by the Christianity of his time. That attitude was even more characteristic of the earlier period.

The minor festivals, such as Purim, were celebrated with great joyfulness by the community. It was customary to distribute gifts to the poor, and in some cases to one's Christian servants.<sup>89</sup> Purim was a time in which many restrictions of Jewish law were set aside to allow a carnival-like atmosphere to exist within the community.<sup>90</sup> The Megillah was read in the synagogue but with some local differences as to the manner in which the reading took place. Some communities read the Megillah rolled in the form of a Torah scroll, while others read it folded as if it were a letter.<sup>91</sup> Pesah was a holiday to which much attention was paid in our sources both with regard to the many preparations that had to be made for the holiday, as well as the celebration of the holiday itself. The prohibition against the presence of even a trace of leavening was severe, and

<sup>89</sup> Mahzor Vitry, par. 245. There was some difference of opinion whether it was proper to distribute gifts to non-Jews during Purim. Note the contrary view held by Rashi in Sefer HaPardes, par. 205.

<sup>90</sup> L. Zunz, Zur Geschichte und Literatur, p. 171. The opposition ordinarily expressed to any blurring in dress of distinctions between the sexes was ordinarily far-reaching, but was waived for Purim. Note the extremely negative position by Eliezer of Metz with regard to such carnival-like behavior he noted at a wedding reception (Sefer Yerei'im, par. 96). Cf. L. Zunz, Zur Geschichte und Literatur, p. 171.

<sup>91</sup> Eben Haezer, 9ab. R. Eliezer noted that the dominant custom was to read the Megillah rolled up as a Sefer Torah following the approach suggested by Seder Rav Amram, p. 37.

infractions were condemned vigorously.<sup>92</sup> There were differences of view among the authorities on the strictness of their interpretations.<sup>93</sup> R. Eliezer found severe interpretations of the laws of leavening in the communities of Bohemia that he had visited while traveling. Their strictness had been imparted to them years before by the authorities they had consulted.<sup>94</sup> Cleansing of houses before the holiday was extremely thorough, including the scraping of walls and the scouring of chairs, tables, and benches where any possible contact with leavening might have occurred.<sup>95</sup> The holiday

<sup>92</sup>Eben Haezer, 9ab. R. Eliezer felt himself to be bound by the views of the earlier authorities and so he attacked R. Tam publicly for suggesting a more liberal interpretation of the prohibition on leavening. Note R. Tam's position expressed in Tosafot, Pesachim, 20a, as well as Sefer Hayyashar, par. 48, 9. The matter is discussed, but inadequately handled, by E. Urbach, Baale HaTosafot, pp. 149-50.

<sup>93</sup>Note as one example the differences between R. Eliezer (Eben Haezer, 8cd) and Mahzor Vitry, p. 270 (quoting a responsum by R. Isaac b. Judah) on the problem involved in finding a grain of wheat inside a roasted chicken. This well-discussed problem found R. Eliezer arguing in favor of a more rigid interpretation against his more liberally disposed French colleagues.

<sup>94</sup>Eben Haezer, 9d. We have already taken note of the travels of R. Eliezer to the East (supra, Chapter I). There is little doubt as to the historicity of R. Eliezer's travels. The question, however, of the extent to which the earlier Jewish communities were trained in the proper interpretation of Jewish law constitutes an entirely different matter.

<sup>95</sup>Eben Haezer, 7c.

was distinguished by a measure of freedom for children, and the playing of nut games was common.<sup>96</sup> The Seder ceremony was identical with our contemporary Seder. The Talmud provided for individuals to lean on their left side during the course of the drinking of the four cups of wine. R. Eliezer took note of the changes that had occurred in the manner in which individuals sat at their tables. Since there were no longer couches upon which one sat, the custom of leaning on the left side was not prescribed any longer.<sup>97</sup> Although four cups of wine were required, a gaonic tradition was retained in which the fifth cup of wine was added as long as Hallel was chanted over it.<sup>98</sup> R. Eliezer noted certain distinctions between Passover wine used in the West and that used in the East. While in the East the wine was extremely strong and could not be drunk without being diluted, the Passover wine in Germany was much less strong. Glasses utilized in the West were much larger than those in the East.<sup>99</sup> According to R. Eliezer,

<sup>96</sup> Supra, Chapter VI.

<sup>97</sup> Pesahim, 108a. Eben Haezer, 164d.

<sup>98</sup> The original source for the drinking of the fifth cup is to be found in a gaonic reading of a Talmudic text. Pesahim, 118a, has the following text in our version:

ח"ר רביעי גומר עליו את ההלל ואומר הלל גדול

However, Seder Rav Amram, p. 41, and other gaonic authorities read חמשי אומר עליו הלל גדול

echoed by Eben Haezer, 166d. On that basis, a fifth cup of wine was permitted, a ruling that Alfasi accepted as well.

<sup>99</sup> Supra, Chapter VI.

the reason that הא לחמא עניא was written in the Aramaic tongue was so that it might be understood by the women and the children who were present at the Seder. Similarly, he held that the phrase ייהי ויפסח should not be used, for it properly belongs to an era in which sacrifices were brought to the Temple.<sup>100</sup> The Haroset that was used contained not only apples and nuts but also cinnamon, spices, and herbs.<sup>101</sup> The Afikomen was eaten, according to R. Eliezer, in order that the very last morsel of food consumed be a reminder of the Pesah sacrifice, and he justified his interpretation by construing the term etymologically in such a fashion.<sup>102</sup>

There was a proliferation of customs and superstitions during the mourning period. In almost all respects mourning customs adhered to the well trodden paths of the Halacha. Every effort was made to pay proper homage to the dead. Many people took part in the funeral; on occasion special respect was shown by the next of kin walking barefoot behind the hearse.<sup>103</sup> Customs and traditions did develop

<sup>100</sup>Eben Haezer, 166a. This particular historical note is not paralleled by any other source of the time.

<sup>101</sup>Mahzor Vitry, p. 270, par. 50.

<sup>102</sup>Eben Haezer, loc. cit. The etymology that he used divided the word in two -- אפיק וניס

<sup>103</sup>Eben Haezer, 184a.

...ואני שמעתי שכשמחה אשחר של רבינו רני יצחק ברבי יהודה ציוה לבנו ר' יהודה לילך יחף אחריה לבית הקברות...

See supra, Chapter I, footnote 212.

which had their source not in Jewish religious tradition but rather in the realm of the superstitions shared with the Christian population. One such custom was that of tearing grass at a cemetery and then throwing it behind one's back. The very first reference to the custom is to be found in the eleventh century.<sup>104</sup> Although ostensibly related to the Jewish belief in resurrection, in fact the custom incorporated elements that were magical and superstitious in character. At one time, the Jewish community of France stood accused by informers of killing Christians by magical means, accomplished by Jews throwing grass over their shoulders after a funeral. Only the intervention of R. Moses b. Yechiel prevented violence from occurring.<sup>105</sup> R. Eliezer was asked about the

<sup>104</sup>Sefer HaBardes, par. 290. Rashi gave R. Kalonymos (probably the elder, d. 1126) as the source for the custom. Rashi himself conceived of it as symbolizing resurrection. For the folkloristic material hidden in the custom, see J. Trachtenberg, Jewish Magic and Superstition, p. 178. Also note the similarity in Rashi's comments, to those that are found in Or Zarua (Part II, par. 422), transmitted in the name of R. Eliezer, a close colleague of Rashi who studied with the same teacher.

<sup>105</sup>Mahzor Vitry, par. 280, p. 247. The story has come down to us in mythical fashion. R. Moses argued the innocence of the custom because of its relationship to the belief in resurrection. The text puts words in the mouth of the French king after the explanation of the Jewish apologists praising them for their beliefs and volunteering the information that resurrection represents a fundamental Christian belief as well. Mahzor Vitry adds that the incident is quoted because of the fear possessed by some Jews that the practice of the custom would bring down upon them the ire of the non-Jews. How valid a statement that was historically is seriously open to question.

reasons for the custom and his reactions were homilectical in character. He was unaware of any mystic significance to the custom, or at least did not see fit to mention it.<sup>106</sup>

It was customary for the funeral procession, upon leaving the cemetery, to stop seven times. This was interpreted by some as a means whereby the spirits of the dead would be induced to leave the party of mourners. There were others who insisted on a much more rational explanation.<sup>107</sup> Of much earlier date was the custom of washing one's hands after a funeral. Here, too, there were early superstitious beliefs about dispelling the spirits of the dead. For R. Eliezer, the washing of hands had become a symbolic affirmation of the atoning nature of death, parallel to the washing of hands in

<sup>106</sup>Eben Haezer, 9b. R. Eliezer did not view a belief in resurrection as being the reason for the custom, as did Rashi. On the other hand, the exegetical material quoted by R. Eliezer follows closely the verses quoted by Rashi and probably constitutes the source for R. Eliezer's statement. Trachtenberg's thesis with regard to R. Eliezer's response seems unwarranted, in view of its similarity to Rashi's statement. See J. Trachtenberg, loc. cit.

<sup>107</sup>Or Zarua, Pt. II, par. 422. R. Isaac ascribed the custom to R. Baruch of Greece (Southern Italy), a contemporary of our R. Eliezer. R. Baruch was quoted as an authority by R. Isaac, often as a transmitter of opinions of the earlier North African authorities. R. Isaac also quoted a statement of R. Samuel b. Meir, in spirit much closer to R. Eliezer, in which the same custom is accepted but for a totally different reason. In R. Samuel's view, its intent is to allow the mourner to pour out his heart in tears while encouraging consolation to be given to the mourners. There is no doubt that R. Samuel was aware of the magical interpretation and chose a more rational path instead.

Temple Days before the slaughter of the red heifer.<sup>108</sup>

During a period of mourning, groups of visitors from the community were with the mourner at all times. It was customary that a crowd followed the mourner into his house immediately after the funeral. They did not begin speaking until he spoke, and they then served him a meal of consolation consisting of eggs and bread. Thereafter, he was permitted to eat even meat and wine during the course of Shiva.<sup>109</sup> The mourner who appeared in the synagogue on the Sabbath during the days of Shiva would be escorted back to his home by members of the congregation.<sup>110</sup> When the mourner first entered the synagogue after the afternoon prayer on Sabbath eve, he was escorted in and all rose before him; as a sign of mourning he did not sit in his accustomed place.<sup>111</sup> During

<sup>108</sup> Eben Haezer, 9b. It is significant that R. Eliezer did not dwell on the mystic nature of custom. See Mahzor Vitry, par. 280, p. 248, in which it is clear that the custom was not universal and was not compulsory on the mourner. When R. Eliezer's statements on mourning are compared with later statements of Sefer Hasidim (e.g., par. 452), it is apparent later generations were much more susceptible to the influence of mysticism and superstition.

<sup>109</sup> Mahzor Vitry, par. 280, p. 248.

<sup>110</sup> Eben Haezer, 183d.

<sup>111</sup> Mahzor Vitry, par. 275, p. 243. The text contains an eyewitness account of such a custom in existence at Rameru. Though there is no evidence to suggest that it was not practiced in Germany, the tone of the material suggests that it was novel and not universally accepted. There exists no earlier source for the custom in the literature, either talmudic or post-talmudic.

the course of the week, the mourner did not leave his home, but members of the community held services in the mourning household.<sup>112</sup> On the last day of mourning, congregational visitors joined with the mourners in the afternoon prayer and only then left the home.<sup>113</sup> The extremely pious at times went even further in order to fulfill the commandment of consoling mourners, including the removing of their shoes and walking barefoot in sympathy with the plight of the mourners.<sup>114</sup> One who had not yet buried his dead could not enter the synagogue on a Sabbath before the funeral took place. He was to sit outside the building while the others went inside to say their afternoon prayers.<sup>115</sup> Every attempt was made to discourage excessive mourning. The occurrence of a holiday soon after burial acted as a brake upon any excesses and forced changes in the liturgy of burial.<sup>116</sup>

Interest in magic existed both among Jews and Christians. It was to a large extent the view of Christianity that Jews were magicians with great mystic powers. Therefore,

<sup>112</sup>Sefer HaPardes, par. 161.

<sup>113</sup>Eben Haezer, 183a.

<sup>114</sup>Sefer Hasidim, par. 434. Such an excess of pietistic concern was in no sense typical. It did, however, represent the kind of concern for the mourner that was characteristic of Jewish society.

<sup>115</sup>Eben Haezer, 184c. An Onen was not responsible for the performance of the commandments until burial had actually taken place. This particular custom was one that was not practiced before the twelfth century.

<sup>116</sup>Eben Haezer, 185a. צדק הד"י was not said when it was close to a holiday.

of  
 they never tired/cautioning their people against any contact  
 with such Jewish magic.<sup>117</sup> Although such estimates of Jewish  
 magical propensity far exceeded reality, there was in-  
 terest in magic within Jewish circles.<sup>118</sup> Some acts of magic,  
 though not expressly recommended by the rabbinic leaders of  
 the people were nonetheless tacitly condoned by them.<sup>119</sup> R.  
 Eliezer believed, with others of his time, that amulets had  
 the power of healing;<sup>120</sup> he accepted the possibility of mes-  
 sages received from the beyond for the proper instruction of  
 those who were left behind, as well as in the powers of dreams  
 to inform and direct men.<sup>121</sup> Yet, his work was remarkably

<sup>117</sup>S. Grayzel, The Church and the Jews in the 13th Century, Decrees XXII, XXIV, as well as an excellent short summary on the problem of magic, particularly as it affected Jewish-Christian relationships, p. 73, footnote 145. A full treatment of magic and superstition in our period is beyond the scope of this work. For such a treatment in detail, see J. Trachtenberg, Jewish Magic and Superstition, passim.

<sup>118</sup>See, e.g., Sefer Yerei'im, par. 82, Sefer Rokeah, par. 317, Sefer Hasidim, par. 172, et al.

<sup>119</sup>Note, e.g., R. Meir of Rothenburg's permission to murmur incantations over a wound on the Sabbath since it doesn't fall under the category of healing. Responsa of R. Meir of Rothenburg, par. 55.

<sup>120</sup>Eben Haezer, 148c. R. Eliezer based his statements on Shabbat, 68a, but the medieval sources are replete with reference to amulets. See, e.g., Tosafot on Shabbat, 103b; SeMaG, par. 65, et al. For a fuller description of the use of amulets, see J. Trachtenberg, op. cit., pp. 132-152.

<sup>121</sup>Eben Haezer, 23d. Belief in dreams was widespread. Moses of Coucy, e.g., related in the introduction to his work that he began his work as the result of a vision in a dream in which God directed him to do so. SeMaG, Introduction, p. 3b.

free of the influence of spirits and the spirit world. The approach of R. Eliezer was far more rational than mystic, far more preoccupied with the demands of Jewish law than with the determination of theological niceties. R. Eliezer, in keeping with talmudic precedent, held that there were many theological questions beyond the ken of men. One cannot plumb the depths of the universe.<sup>122</sup> Our period was one in which there was still contact with the philosophy of the East. R. Eliezer acknowledged a belief in a world consisting of four elements exactly as Saadiah Gaon did before him.<sup>123</sup> He championed the view that God was totally without form and substance, and asserted that such was the view of the Talmud as well.<sup>124</sup> The problem of Theodicy manifested itself, though somewhat obliquely, in the plaintive comment of R. Eliezer that a man who is faced with the death of his children must not rail against the lot that has been chosen for him by God. Rather, he is to accept the will of God courageously and stoically and find solace in the justification of the ways of

<sup>122</sup>Eben Haezer, 67a. ודאי אין יודע באילו הדברים כי אם הבורא והוא העלים ולא פירש במעשה בראשית ואין לנו עסק בנסתרות

<sup>123</sup>Ibid., 66b. R. Eliezer displayed some knowledge of Saadiah's formulations. See H. Malter, Life and Works of Saadiah Gaon, p. 320.

<sup>124</sup>Eben Haezer, 68d. ... שאין בכל החלמוד דברים שמודיע שיש בישראל נוחן דמות לבוראינו יתברך שמו

God ( צדק הדין ).<sup>125</sup>

Direction of religious life was derived from the Halacha. It was taken for granted that the Halacha represented the will of God, as revealed to the people of Israel. While God was the Author of the Torah, it was set in order by men, and interpretations developed in each generation so that men could live by the rule of Torah. Interpreters of the law were participants in the revelatory process.<sup>126</sup> The means by which halachic decisions were carried out constitutes a tribute to the Jewish community of the time. Decisions were made by the leading scholars of the time, and their rulings were universally accepted without any mechanism to compel enforcement. At the same time, individual scholars of repute always had the right of disagreement with the majority of their colleagues. A sense of personal modesty, as was the case with R. Eliezer, or concern for the way such a disagreement would be interpreted by the people, often prevented them from disagreeing in public.<sup>127</sup> Halachic decisions took into

<sup>125</sup>Ibid., 101b.

<sup>126</sup>This view is found in many rabbinic sources of an earlier period and was reformulated for our time. Ibid., 288b.

<sup>127</sup>There was universal concern for interpretations of rabbinic rulings made by the people. It was particularly troubling to Rashi as well as to his German spiritual heir, R. Eliezer. Ibid., 104a. אבל רבינו שלמה ראה לו בו היתר... ואמר אע"פ שהוא היתר אין מוריין כן ואין מפרסמין בדבר

For an examination of R. Eliezer's personality and his evaluation of his own contributions to halachic thinking, see supra, Chapter I.

consideration changes that had taken place in conditions of life, retaining the Talmudic framework for decisions that were handed down.<sup>128</sup> The authorities were acutely aware of their dependence upon decisions made by the scholars that preceded them.<sup>129</sup> They were loathe to do so, but did make changes in Halacha when deemed necessary. Despite some measure of pietism excessive stringencies were frowned upon.<sup>130</sup> Any real threat of life and safety resulted in setting a law aside, even of the greatest sanctity. The scholars of the time, as confident as they might have been in their own knowledge, were willing and anxious to consult with one another. Their works show great influence of one upon the other and they did not hesitate to comment caustically about contrary views to their own, however, they felt about one another personally. Religious law was not codified or published in any well ordered form. Responsa were widely known and quoted.<sup>131</sup> Much rabbinic

<sup>128</sup> Eben Haezer, 127d. במגנצא לא יעשה אלא כחורית הראשונים וסברתן

<sup>129</sup> Ibid., 155a. במגנצא לא יעשה אלא כחורית הראשונים וסברתן  
מסום כבודן

<sup>130</sup> At a later point in Jewish history, the hostility of the outside world stimulated within the Jew rigidity in the interpretation of religious law and preoccupation with stringencies as a means of expressing their faith. The scholars of our period were suspicious of excessive pietism. See, e.g., the typical comment of R. Eliezer ( Eben Haezer, 137c).

<sup>131</sup> An examination of R. Eliezer's text indicated an extensive correspondence on matters of religious law. While we have noted above (Chapter I) the fact that R. Eliezer's correspondence with R. Samuel ben Meir was of very special importance, he corresponded at length with all the great scholars of his time. Moreover, his procedure was typical. For a fuller description of the manner in which such correspondence

knowledge remained in oral form. Scholars often took note of comments made by their teachers that had never been reduced to writing. There existed a sense of halachic propriety. One did not disagree publicly with one's colleagues if at all possible.<sup>132</sup> The authorities did not impose upon the community edicts that they could not live with, and often such edicts were set aside for no other reason than the difficulty experienced by the community.<sup>133</sup>

Religious life of the community, then, was varied and full. It provided for the expression of the Jewish way of life as contained within the Halacha, interpreted by the rabbis of the period. Although both mysticism and superstition were present, they did not occupy the center of attention. Such speculation was discouraged in favor of greater immersion in the mainstream of Torah study. While theological concerns were present, ours was not a period of intense theological activity. The religious outlook was primarily optimistic despite the tragedies of the time and sought to provide for the continuation of those patterns of development originating in the period of the Talmud, always conscious of the pressures and problems of their own time.

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influenced the development of Halacha, see E. Urbach, op. cit., passim.

<sup>132</sup>Eben Haezer, 173d. כשם שהדברים מותרין ואחרים נוהגין בהן איסור אי אחה רשאי להתיר בפניהם כך דברים האסורים ואחרים נוהגין בהן היתר אי אחה רשאי לאסור בפניהם

<sup>133</sup>The concept predates our period. What is significant for us is that the rabbis did not hesitate to use it when they thought it necessary. Eben Haezer, 245c. שאין גוזרין גזירה על הצבור אא"כ רוב הצבור יכול לעמוד בה.

## SUMMARY

The career of R. Eliezer b. Nathan, as well as his writings, have provided us with an interesting commentary to the life of the Jews of Germany in the twelfth century. As we have noted, that community was still in an early stage of organization, as well as religious and cultural development. Encouraged by the receptive attitude of the secular authorities and the relative absence of hatred among the burgher group, the Jew proceeded to build his major institutions of self-government and develop his culture and religion. Though temporarily thwarted by the events of the First Crusade, he quickly rebounded from that setback to strengthen still further the institutional life of the community. The Second Crusade touched the Jewish community in Germany hardly at all.

Outwardly the life of the Jews in Germany closely resembled that of their gentile neighbors in the urban centers in which Jews were concentrated. Their dress was similar, the spoken vernacular was understood by Jew and gentile alike, and their housing was not segregated. Both groups participated in the rapid economic expansion of the German cities. While Jews distinguished themselves in the fields of commerce and money-lending, they were not prevented from entering other

fields of endeavor as well. Jewish merchants traveled far and wide in our period. Often they were associated in their business undertakings with gentiles who provided them with working capital or even accompanied them on their travels. Such activity was rather perilous, and both Jewish and gentile merchants often found themselves prey to the attacks of highwaymen and brigands. Jewish traders and businessmen were highly successful and the Jews of the period enjoyed a high level of prosperity. Not only men participated in business, but women as well. As a result they gained the right not only to contract on their own behalf but also to appear in court on their own. Though poverty was not unknown, the authorities within the Jewish community were not plagued with the need to provide for the masses of Jewish poor that was to be the lot of future generations of their coreligionists in Eastern Europe. During our period, the community remained relatively small, and it was able to provide for the needs of its members without difficulty.

The Jewish community maintained a series of institutions to deal with the needs of its people. Foremost among these, perhaps, was the synagogue which functioned not only as a place for religious expression but also as a focus for all of the communal concerns of the people. Typical of our period was the regulation that one could bring communal prayer to a halt in order to place before the community for judgment a personal wrong done by one of its members to another. The synagogue was also at times the forum for the

moral admonishment of the community. Attached to the synagogue were a number of functionaries, whose role was primarily that of organizing and leading Divine Worship. By far, the most significant leader of the community was the rabbi, whose role was very much in transition during the course of our period. Drawn from the ranks of the intellectual elite, the rabbi was not as yet a paid functionary of the community. He apparently had no great difficulty sustaining himself in the rapidly expanding economy of the time. The rabbi was turned to as a source of halachic authority in the numerous religious issues of the time, but he was involved in the secular problems of the community as well. Rabbis functioned as judges in their individual communities, and when events proved necessary, gathered together in synods to enact legislation to deal with the problems of the time. The German-Jewish community was by no means isolated; it was in communication with the major centers of Jewish life. Communications flowed freely across the flexible political boundaries of the time. Rabbinic authorities desirous of receiving instruction from elder or more competent colleagues were able to seek out such instruction with great freedom. Though local customs and interpretations were accorded proper respect, rabbinic authorities were able to develop a mainstream of legal interpretation that maintained the unity of the Jewish people despite the existence of national boundaries. This was particularly true of the French and German communities. The responsa of R. Eliezer

show beyond any question the deep and significant ties that bound the two communities together despite their occasional differences.

Our sources point to Palestinian influence on the German-Jewish community. An important intellectual stimulus was provided by the migration into Germany of the Kalonymides of Italy, where Palestinian influence reigned supreme. In addition, contact was maintained with the Palestinian center even during our period and Palestinian texts were studied. Gradually, however, Babylonian influence gained the ascendancy. The influence of the Babylonian Gaonate, as well as the intensive study of the Babylonian Talmud were superimposed on the Palestinian foundation of the community. Increasingly indigenous German scholarship established itself and individual scholars developed their own approaches to the problems facing the Jew. That approach, as typified by R. Eliezer's work, made proper obeisance to the work of earlier authorities. The labors of the Gaonim, in the thinking of R. Eliezer, contributed enormously to German-Jewish society and must continue to guide its intellectual leadership. However, when the demands of the time make it necessary, prior precedents must be set aside if Jewish faith and Jewish life is to survive. Such an approach to Halacha was remote from intense preoccupation with the stringencies of Jewish law so typical of later generations in Eastern Europe. At the same time, both the manner and the context of Jewish study was determined by halachic

considerations more than any other. Though knowledge of philosophy was not unknown, it was remote from the intellectual world of the rabbinic authorities. Their knowledge of Bible was extensive although tied in closely with their understanding of Talmud. Though secular poetry was almost unknown, religious poetry flowered. Many of R. Eliezer's colleagues contributed compositions of various kinds to enrich the liturgy; his own contributions have survived in part to our own day. The period before the invention of the printing press was one in which much flexibility still existed, and additions were made to the prayer book with some frequency. At the same time we note the existence of handbooks of prayer that defined the Halacha of prayer ever more precisely. Though superstition and magic were the province of the unlettered masses rather than their intellectual leadership, elements of medieval superstition are evident within R. Eliezer's work. At the same time, his work is infused with a rational spirit of those engaged in the labor of deciphering the Halacha, rather than the soaring mystical spirit of other generations and other lands. Despite the events of the times, its tone is optimistic.

The Jewish community of the twelfth century was certainly aware of its limitations in many areas. It knew that the power of life and death lay beyond its control. It was prepared in keeping with Talmudic precedent to accept the law of the land as binding upon it, even if the promulgation of such a law was on occasion contrary to Jewish law. At the same time, Jewish

authorities jealously guarded their own sovereignty. A secular law that was unjust should not, in their opinion, be obeyed. Moreover, the secular authorities had no right to interfere in the functioning of Jewish courts nor in the internal organization of the Jewish community. A Jew who brought his problems into a gentile court for adjudication opened himself up to the most far-reaching rebuke. Though functioning within the framework of the rights granted to them by the secular community, Jewish authorities always quoted their own Talmudic sources rather than secular privileges when invoking their authority. They promulgated Takkanot and enforced the Herem in organizing and administering the community. The secular authorities were quite prepared to accept Jewish autonomy. The expanding free city of the twelfth century was very much in need of the economic contributions of the Jews in the period, and a liberal Emperor was well disposed also to Jewish economic activity. The burgeoning hatred of a later period between the Jews and their neighbors which eventually forced the Jews to flee the German cities was not yet an overwhelming problem, although Jews were conscious of the tenuousness of their existence in a Christian land. Personal relationships between Jews and gentiles remained cordial through most of our period. The concern for proper moral relationships between Jews were extended to non-Jews as well. Defrauding a non-Jew was as much of an offence in the eyes of Jewish authorities as acting in a similar fashion to Jews.

Similarly, the rabbis of Germany, as well as France, distinguished sharply in their thinking between the pagans of the Talmudic period and the Christians of their own time. As a result, certain Talmudic restrictions, such as the one directed against gentile libation wine were fundamentally changed in our period.

R. Eliezer was one of the most significant figures of the Jewish community. Although not born into a family of academic eminence, he displayed great brilliance as a young man and became the son-in-law of one of the most distinguished scholars of the time, R. Eliakim b. Joseph. Particularly after replacing R. Eliakim as the spiritual mentor and chief judge of Mayence Jewry, the fame of R. Eliezer spread through the whole of German Jewry. He was turned to as an authority on Jewish law by scholars in many different cities, and he was a particularly favorite correspondent of the French Tosafot. His major work, Eben Haezer, is a monument to his erudition and his grasp of the problems of his time. Though not as much of a force as his contemporary, Rabbenu Tam, R. Eliezer represented German Jewry at the major synods of the time. He distinguished himself also as a religious poet and as a chronicler of the First Crusade. His students, among whom he counted his brilliant sons-in-law, were many, and they carried his teaching to the many centers for the study of Torah that constituted the pride of the Jewish community. R. Eliezer traveled widely and his impressions often comprise the only

information we have on the early communities of Eastern Europe. Some historians were far too hasty in assuming that R. Eliezer traveled into Russia. However, his statements about his travels bear evidence to the fact that R. Eliezer was not a sedentary scholar but one who was involved in the world of his time and aware of the problems faced by his people.

We have noted the fact that the twelfth century was one in which an open society existed. It was the century of Medieval Renaissance, one of population growth, and economic growth. For Jewish history, it has always been, above all, the century of the Crusades. It is crystal clear, however, from the evidence gathered here, that the effects of the Crusades, in our Century at least, were temporary rather than permanent. The openness of the century was felt by Jews, not only by gentiles. As a result, the period was one of growth and development for the Jewish community, in step with that of their gentile neighbors. Liberal interpretations of Jewish law, a liberal view of the place of women, and a liberal attitude to the gentile community combined to make the century one of significance. R. Eliezer was the embodiment of the best of the spirits of that century.

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