Rabbi Mordecai ben Hillel and His Work: A Study of Jewish Life in Medieval Germany

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Abstract
During the 13th century, one of R. Meir of Rotenburg's disciples, Mordecai ben Hillel, in his famous work, the book of Mordecai, combines to a considerable extent these two tendencies. Mordecai was not given to deciding halakhic problems. His aim was to present, in an objective compilation, the halakhic material - Responsa and commentaries - which had reached him. An encyclopedic mind, he gathered from every camp, including hundreds of responsa, and citing over three hundred different authorities. An honest scholar, he was very careful to quote his sources by name. Therefore a historical reconstruction based on his book and confronted with the numerous responsa of his teacher, R. Meir, appears possible.

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by Simon Schwarzfuchs
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Rabbi Mordecai ben Hillel
and His Work

A STUDY IN JEWISH LIFE IN MEDIEVAL GERMANY

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for the degree of
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has been read and approved by

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APPROVAL

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INTRODUCTION

At the end of the thirteenth century, a dark age opened for the German Jewry. After a thousand years of relentless efforts, the Church gained the help of the secular authorities in its fight for the degradation and humiliation of the Jews. Under the weight of this formidable alliance, the Jewish community crumbled: it did not recover fully from this defeat until the French revolution.

It is therefore of the utmost importance to study the attitude of the attacked Jews in such a momentous period. Did they bow weakly or did they attempt to defeat fate? In which measure and to what extent did Jewish life change, under the repercussions of this historical revolution?

The sources for this study will not be found in the regesta and the laws edicted against the Jews, which show only the outcome of this struggle and not the struggle itself. And under their legal objectivity, the personal reactions and feelings of countless Jews do not emerge.

Fortunately, the era flourished in rabbis and scholars, whose works have reached us: in their pages, the pulse of a generation is beating, and the changing times are revealed.

These writings can be divided in roughly two categories, the Teshubot, or responsa, and the Perushim, or commentaries.

A responsa is a written answer by an outstanding scholar to a query of a legal or religious nature, submitted to him in writing. This definition reflects the historical values and weaknesses of the responsa appearing. The query will submit a very precise and documented problem, but nevertheless it will be the problem of an individual. Similarly the answer will be the answer of an individual, however outstanding, and a reflection of his personal attitude; and we do not know whether the
decision of the rabbi was accepted. The responsum can then be accepted
as a trustworthy historical source, but cannot become the object of a
generalization.

The commentary of a talmudic or legal text will sometimes
offer as an aside some useful information: but this will always be very
scarce, as the aim of the commentary is to explain, and not to solve
practical problems.

It can then be said that the responsum will register the trials
and reactions of various classes of Jews, while the commentary will oc-
casionally give some independent and objective information.

During the 13th century, one of R. Meir of Rotenburg's disci-
les, Mordecai ben Hillel, in his famous work, the book of Mordecai, com-
bined to a considerable extent these two tendencies. Mordecai was not
given to deciding halakhic problems. His aim was to present, in an ob-
jective compilation, the halakhic material - Responsa and commentaries -
which had reached him. An encyclopedic mind, he gathered from every
camp, including hundreds of responsa, and citing over three hundred dif-
f erent authorities. An honest scholar, he was very careful to quote his
sources by name. Therefore a historical reconstruction based on his book
and confronted with the numerous responsa of his teacher, R. Meir, ap-
ppears possible.

This is what has been attempted in this essay. But it must be
remembered that Mordecai and his teacher were not the only scholars
of the time. To be complete, this study should have taken into account
the works of Isaac Or Zarua, Samson ben Zaddok, Asher ben Jehiel, and
other contemporary rabbis.

But it was felt that the extreme popularity of the Mordecai dur-
ing the fourteenth, fifteenth and sixteenth centuries warranted its being
chosen as the primary source for a historical study. The Mordecai is the
most widely quoted halakhic treatise of the thirteenth century in Germany. Therefore it must have exercised the most important single influence in forming the warp and woof of medieval Jewish life. Thus, the book of Mordecai is as an essential source for the study of the Jewry of medieval Germany.

The quotations of the Mordecai — unless otherwise indicated — are taken from the Roman edition (Wilna (1885)).

The following collections of R. Meir’s responsa have been used in this essay:

M.B.R.B. : Responsa of Rabbi Meir of Rotenburg, ed. Berlin
M.B.R.C. : , ed. Cremona
M.B.R.P. : , ed. Prague
M.B.R.L. : , ed. Lemberg

Mordecai was the son of one of the most learned rabbis of Germany. Nevertheless, his biography remained a mystery until recent discoveries of the following notices in manuscripts:

Mordecai was the son of Eliezer ben Joel haLevi (Nahum), the great-grandson of Joel haLevi, and the great-great-grandson of Eliezer ben Nathan (Abraham ben Nathan). All three generation's most important works, which appear among the most brilliant products of early German Jewry.

An interesting anecdote related to understanding his father. The son of his birth in that nation, but at the same time important as
In 1293 died a man who had been the light of German Jewry, Rabbi Meir of Rotenburg, who had spent the last seven years of his life as a prisoner in the castle of Ensisheim, departed the world of the living: with his death, German Jewry entered a great decline. (1)

Meir, the foremost rabbi of his time, had gathered around him a great number of students. The most gifted of these, Asher ben Iehiel, left Germany and emigrated to Spain, carrying into exile the spiritual inheritance of his teacher. But others remained in Germany, who brought to a close the literary history of medieval German Jewry. (2)

One of these students was Mordecai ben Hillel haAshkenazi, Mordecai ben Hillel the German.

Mordecai was one of the last authorities of early Judaism: his name is one of the most widely cited among the rabbis who influenced the development of Halakah. Up to the 16th century, Mordecai was one of the major authorities of Judaism. In later years, the respect and reverence in which he was held, declined considerably. (3)

Mordecai was the son of one of the most famous rabbinical families of Germany. Nevertheless, his biography remained a closed secret, until Zunz discovered the following notice in an ancient manuscript: (4)

Mordecai was thus the grandson of Eliezer ben Joel halevi (5) (Rabiah), the great-grandson of Joel halevi, and the great-great-grandson of Eliezer ben Nathan (Raben or Raavan). All these teachers left important works, which count among the most brilliant productions of early German Jewry. (6)

No information has reached us concerning his father. The date of his birth is also unknown, but it can safely be assumed that he
was born during the first part of the thirteenth century, fifteen or twenty years later than Meir of Rotenburg, whose oldest student he was (about the year 1230). His family life is another mystery: we know only that his wife's name was Zelda and that he had five sons. But he had a famous brother-in-law: Meir haKohen, the author of the Hagahot Maimoniot.

Mordecai came young to Rotenburg, where he studied under Rabbi Meir. It is known that he lived in his teacher's house, who allowed him to decide cases independently. Curiously enough, Mordecai has very little to tell about his teacher. He even seems to have lost every contact with him in his later life, as he never mentions his teacher's incarceration.

Another teacher of Mordecai was Perez ben Elijah of Corbeil, who had settled in Germany. Perez, who had been the disciple of Iehiel of Paris, introduced his pupil to the study of the French Rabbi's works. Perez wrote a great number of halakhic works which are cited by Mordecai.

Mordecai studied also under Efraim ben Nathan, whose Hibbur he mentions. Efraim was an older contemporary of Rabbi Meir, one of whose responsa he approved and recommended.

The names of three other teachers of Mordecai, are known to us: Jacob halevi from Spire, Abraham ben Baruk - Rabbi Meir's brother, and Rabbi Dan. They do not seem to have exercised a great influence on Mordecai, who mentions them very seldom.

It can then be said that Mordecai, through his family and teachers, stood at the crossroads where the three most important halakhic schools of the thirteenth century. Through his ascendance, he was the inheritor of the thought of the German school represented by his grandfather Rabiah. Perez taught him the message
of the French rabbis, and Meir introduced him to the teachings of the Austrian schools (16). This confluence of the teachings of all the western European Talmudic schools became one of the characteristics of Mordecai ben Hillel.

Mordecai was a man of many interests. Although only part of his works has reached us, it is sufficient to give us a proof of his extreme versatility.(17)

The best known of Mordecai's works is his famous Sefer ha-Mordecai, which won him everlasting fame in the halakhic world. But he was also a poet and a grammarian.

One of his poems refers to the laws of Shehitah(18). Three others discuss grammatical problems: the vowels, the Kamats Gadol, and the Kamats Kotser (19). This is indeed a field of study which was seldom touched upon by German Rabbis. A fifth poem, a Selihah, refers to an incident which made a profound impression on Mordecai(20).

It is remarkable that in all these works, Mordecai observes an absolute silence about himself. In his great halakhic work, he cites more than six hundred responsa: among these be mentions only one of his own (21). So great was his quest for objectivity, that were it not for the title, it would be impossible to trace the book to any author. Here the man disappears before the written word. There is hardly any other author of similar importance, whose works are so devoid of personal references and intimate details. Behind the vast array of information which he conveys, the author is absent. The book has won complete independence from him.

In the Mordecai (22), we find very few allusions to the author and most of these are later interpolations (23). They tell us that Mordecai was head of a Yeshibah (24). As a teacher, he was extremely
cautious: he hardly ever expressed a personal opinion. At most he confessed to be 'surprised' at some rabbi's decision, but will not contradict it (25). He was of a very rational mind, and shows constant aversion for any form of superstition (26).

It would seem that his search for absolute objectivity was the corollary of his great intellectual honesty: Mordecai, who never criticizes, always mentions the source of his quotations (27). But his too great objectivity stifled every constructive impulse. In his work, Mordecai was more the faithful custodian of the past than the dynamic builder of the future. His encyclopedic mind, which had read and registered everything was the very obstacle to his adopting a personal position.

As seen in his halakhic works, Mordecai's life seems to have been confined exclusively to the quiet of his study. But one of his poems shows that Mordecai was not aloof from his people's everyday life, and that he took a personal part in its sufferings.

In 1264, a Jewish proselyte was burned at the stake in Augsburg. This neophyte, who had been preaching Judaism in Germany, had beheaded the statues of some saints in Sinzig, and was condemned to die for this crime. In his moving Selih'ah, Mordecai commemorates the tragedy (28).

In 1291, Mordecai lived in Goslar, where a certain Moses Tako tried to deny him his settling rights (לִפְנֵי בְּרִית הֵרְדֵלָּא). After a protracted argument, his rights were confirmed (29). But this trial seems to have been held in such an atmosphere of bitterness, that Mordecai soon left Goslar.

In 1298, he had settled in Nuremberg, when the herd of Rindfleisch butchered this important Jewish community. Mordecai, his wife
and five sons fell then under the attack of the murderers (30). Only one of his sons seems to have survived him. (31)

Mordecai's death brought to an end a brilliant period of the German Jewish history. With the constant deterioration of political and social conditions, an intellectual decline began, which ushered in an era of darkness for German Jewry.

Notes on Chapter I, part 1.

1) S. Agus, Rabbi Meir of Rothenburg, vol. I, p. 133-140
2) see chapter II
4) Zunz, Literaturgeschichte der synagogalen Poesie, p. 259-608.
5) Kohn, loc. cit., p. 108-9, Aptowitser, Mabo le Sefer Rabiah, p. 75. Kohn and Aptowitser accept the view of Zunz, who made Mordecai a great-grandson of Rabiah. Kohn, recognizes that this identification brings very serious chronological difficulties, but points out that Mordecai, who cites the Rabiah very extensively, never calls him "my grandfather" (p. 108 n. 4). But the Mordecai on Hull.in (710) reads: "...2473". This indicates that Mordecai was really Rabiah's grandson.
6) S. Aptowitser, loc. cit., p. 35-79
7) According to Agus, (loc. cit., p. 7), Rabbi Meir was born about the year 1215; accordingly, Mordecai who was his student, was born between 1230 and 1235.
9) According to Hagahot Maimoniot on Ishut IX, 1, where we read: "...2474...10)
12) Cg. M. Nidda 738, B.K. 215, Hull 764, Yeb. 54 and Agus 511.
13) M. Meg. 817 Cg. Kohn, loc. cit., p. 213

14) M. Git 404. He seems to have been the author of a book called Sinai. Cg. Kohn, loc. cit., vol. 27, p. 183 and Agus p. 6, notes 13, 14.

15) He is mentioned only in the manuscripts: Kohn, loc. cit., p.123; 124. He was probably Rabbi Dan haAshkenazi, who emigrated to Spain and is mentioned by ben Aderet (responsa 529,530,543,1229-33).

16) Meir was the student of Isaac Or Zarua (Agus p.7-9). Perez had studied under Ichiel of Paris (Kohn, loc. cit. p.121) and note 11 above. Mordecai knew also the works of the English (M. Sab. 464,M.R. 844,913,921, Yeb. 117,Git.465,A.Z. 826,B.K.152), Spanish (Er. 526,M.K.685,Hull 666,755), Greek (B.M. 273,445), and Bohemian rabbis (Pes.567,Sheb. 780, Hull 620, B.B. 616).

17) Three of his works have disappeared:


21) M. Ket. 308. Also in Shilte haGibborim on Yeb. 93. Kohn, loc. cit. p. 159,160, also found allusions to Mordecai's responsa in Hayim Or Zarua's (230,238) and Asheri's (84.6) collections: but this identification is entirely based on a similarity of names, which hardly makes it conclusive. Mordecai's brother-in-law, Meir haKohen summarizes a responsa of Mordecai in Hagahot Maimoniot, Ishut 9.1.

22) We use the term "the Mordecai" to refer to the book. "Mordecai" always refers to the author.

23) Cf. later, chapter II.

24) S. M. Sab. 422: where Mordecai's son writes:


26) For instance, Mordecai does not oppose the recitation of Christian formulas for a charm, because it is the herbs which (M.A.Z. 815 margin)

27) see Chapter II

28) see above n. 20.

29) The incident is described in a responsa of R. Hayyim Paltiel included in R. Meir of Rotenburg, Responsa, ed. Ausberg, 476 C. Cf. Rabinowits, the Herem heYishub, p. 97-100.

30) See the references in note 8 above. A Sehih'ah also refers to this
tragic event (Haberman, loc. cit., p. 231-2).

31) M. Sab. 461: He must have been Joseph ben Mordecai, father of Hziel, mentioned above (note 4).

work alike, outstanding in the medieval halakhic production, that kept his name from falling into oblivion.

In its form the Sefer ha-Mordecai appears to have been closely modeled after Maimon's compendium of halachic law. It discusses the laws of the Talmud in the order of their appearance, chapter after chapter. It is this analogy of the Mordecai with Maimon's famous work which prompted successive editors to publish these two books together(1). But the resemblance ends here.

Mordecai's teacher, Rabbi Meir of Hebron, had gathered around him a great assembly of faithful students. But one of these, except Asher ben Yechiel, who later emigrated to Spain - could emulate the creative powers of their teacher. Meir was truly the last German Rabbi who mastered the whole rabbinic literature. He was one of the last Tosafists, and the greatest expounder of the medieval German legal school.

It is therefore not surprising to notice that none of his disciples produced any original work. R. Meir ben Cohen - Mordecai's brother-in-law, supplemented the code of Maimonides with notes and responses he had gathered from many sources. Shimon ben Tzadok (Tzadoki) was contented with reporting in Tosafist fashion, the sayings and acts of his revered teacher. Isaac ben Meir of Dagan listed the opinions of R. Meir and other rabbis. Chayye ben Isaac rearranged the Ch-zoras written by his father. Mordecai ben Shlomo expressed all these tendencies in his work.
Mordecai ben Hillel's major work was his halakhic compilation, called after him Sefer haMordecai, the book of Mordecai. It is this work alone, outstanding in the medieval halakhic production, that kept his name from falling into oblivion.

In its form, the Sefer haMordecai appears to have been closely modeled after AlFasi's compendium of talmudical law. It discusses the laws of the Talmud in the order of their appearance, chapter after chapter. It is this analogy of the Mordecai with AlFasi's famous work which prompted successive editors to publish these two books together(1). But the resemblance ends here.

Mordecai's teacher, Rabbi Meir of Rotenburg, had gathered around him a great assembly of faithful students. But no one of these except Asher ben Iochiel, who later emigrated to Spain - could emulate the creative powers of the teacher. Meir was truly the last German Rabbi who mastered the whole rabbinic literature. He was one of the last Tossafists, and the greatest expounder of the medieval German legal school.

It is therefore not surprising to notice that none of his disciples produced any original work. R. Meir haCohen - Mordecai's brother-in-law, supplemented the code of Maimonides with notes and responsa he had gathered from many sources. Shimson ben Tsadok (Tashbets) was contented with reporting in Boswellian fashion, the sayings and acts of his revered teacher. Isaac ben Meir of Dueren listed the opinions of R. Meir and other rabbis. Chayyim ben Isaac rearranged the Or Zarua written by his father. Mordecai ben Hillel expressed all these tendencies in his work.
His book is then a conglomeration of responsa, explanations, decisions and descriptions of French and German customs, following the order of the Talmud. Mordecai draws on every source; in the same page, he can quote side by side, responsa and Tossafot, Rashi and Rabenu Gershom. As he had no historical sense, he does not differentiate between a responsum of the eleventh century and one of the thirteenth century. He is not concerned with the origin of customs and describes German as well as English or French situations. He does not try to reconcile different views and never expresses a personal opinion.

The impression is gained by the reader that Mordecai was confronted with a difficult problem: from Rabenu Gershom to his time (a span of three centuries), talmudical schools had flourished in Western Europe, producing many important works. These had become so numerous that the student was unable to master the halakhic literature in its entirety. An effort had to be made, to sort and rearrange this material in a convenient way. So Mordecai took Alfassi's code as an example. What Alfassi had done with talmudical law, he did with the works of the early Franco-German school. He presented without discrimination their conclusions as an appendix to every chapter of the Talmud. But he did not follow Alfassi completely as he refused to decide between different opinions and state his own conclusions. He therefore quotes from every halakhic work, ignoring specific conditions and abolishing borders. His book appears then as a "summa" of the whole halakhic production of the early Middle Ages.

The Mordecai is a complete mirror of medieval Halakhah. It cites all the early authorities, reports the actions of Mordecai's teachers and present a full view of the development of Halakhah. Mordecai was an extremely careful writer, and a very honest one. He always cites his sources with great accuracy. Many halakhic works are known to us only through the allusions to them which are scattered in the Mordecai. The names and activities of many rabbis are mentioned
only by him. This care has made of the Mordecai the primary source of medieval cultural history. (2) Unfortunately, the text of the Mordecai suffered greatly in its transmission.

Even a superficial study of this printed text, reveals to us some rather disturbing facts about its composition. A special section, entitled Hagahot (notes), is found without mention of any author's name, after some treatises (3). In other treatises, these Hagahot are part of the text (4). In one case, we find two different recensions of the same chapter, side by side (5).

A close reading will show, that in many cases, the book refers to its author, Mordecai, as deceased and also as a martyr (6). In other instances, an anonymous writer refers to Mordecai as a living person, who, it would seem, took no part whatsoever in the composition of the book (7). Many passages are also repeated in two different chapters (8).

A comparison of the printed text with the manuscripts which have reached us, shows such a great number of divergencies that the question may be asked whether the manuscripts and the printed text represent the same book (9).

There can then remain no doubt that the text of the Mordecai as it has come to us in its printed form is one of the most corrupt texts found in the whole Hebrew literature. Early authors of the fifteenth century had already noticed this fact (10). It is therefore understandable that the major part of the commentaries printed with the Mordecai try to correct the great array of mistakes and misreadings which mar it (11).

Only a clear conception of the aims which Mordecai had in mind when he wrote this book, and of the composition of the received text can explain the causes of the complete deterioration of one of the most acclaimed books of Halakah.
Our Mordecai is not to be confused with the "short Mordecai" which was written as a summary by Samuel Schlettstadt around the year 1370, that is seventy years after Mordecai's death. It is only by contrast with this short Mordecai that our text received the name of "Mordecai haAruk", the long Mordecai.

Probably the major characteristic of our book is the extreme care with which the source of every quotation is mentioned. The Mordecai takes the appearance of a very objective history of Halakah and tradition. The hand of the author is never apparent: his own responsa and decisions are conspicuously absent. The Mordecai is rather a work of compilation, than an original contribution to Halakah. It is a legal compendium which constitutes an extremely important source of halakhic material - often contradictory, as the author did not dare, or did not want to decide between conflicting opinions. This is the weakness of the Mordecai, as well as its strength.

It becomes now clear how extraneous material could penetrate this book. An encyclopedia is never complete, and no student can resist the impulse to complete, or add to it. Already during Mordecai's lifetime, students - among whom is to be counted his own son (14) - added to it: they did only more so after his death (15). In this respect, it can be said that Mordecai never completed his book.

During the fifteenth century, many discrepancies already noted between different manuscripts of the Mordecai, which were classified as manuscripts of the Rhenish Mordecai, and manuscripts of the Austrian Mordecai (16).

Many manuscripts of these two different recensions have reached us, and a careful study has revealed a number of basic differences between them. For instance, the manuscripts studied by Samuel Kohn, contain a treatise called \( \text{תל"ע "למ"ס ד"כ \_ \למ"ס} \) - laws of Palestine - and a halakhic commentary of the eighth chapter of Zebahim: both these works are absent from the printed text, which, in turn, contains the Halakot Ket-
anot, which are not to be found in the manuscripts (14). The text printed in our editions corresponds to the Rhenish Mordecai, while most manuscripts are copies of the Austrian Mordecai. (18).

This latter recension is much longer than the Rhenish text, and abounds in references to Austrian Rabbis, which are absent from the Rhenish Mordecai. (19)

A careful study of the Hagahot found in our printed text, shows that the material they bring forth, is found in its entirety in the Austrian Mordecai. It would seem that, at some time, an effort was made to complete the Rhenish Mordecai with material found only in the Austrian text (20).

This analysis would have remained fruitless if it had not been possible to identify with some measure of certainty the author of these Hagahot and to ascertain the time of their composition.

The fact that the author of these Hagahot refers to himself many times in his notes made this possible. He cites the short Mordecai as his own work (21). The author of this shorter work book is well known to us: he is the famous Samuel Schlettstadt. This view is confirmed as the author of these Hagahot gives us his name: 

There is no doubt then that the author of the Hagahot is Samuel Schlettstadt, who was rabbi of Strasbourg around the year 1370 (23). Schlettstadt wrote first his Mordecai Katan, which must have been based on the Rhenish Mordecai. Later he read the Austrian Mordecai, and decided to complete the Rhenish text with the new material he had just found (24). This would seem to indicate that the division between the Rhenish and the Austrian Mordecai came very early (25). In those areas where Schlettstadt found little new material to add, he wrote marginal notes, which eventually became part of the text. Where the new material was of more considerable length, he wrote a second recension of the chapter he was studying. Some times he was careless, and copied a text which was already to be found in the Rhenish text, although in a differ-
ent context: this explains why the otherwise unaccountable repetitions are found in our text (26).

It would seem that Schlettstadt was also the author of the Halakot Ketanot, which do not appear in any manuscript. (27).

On the other hand, the and commentary on the 8th chapter of Zebahim, which are not printed in our texts, are found in the manuscripts, and are there ascribed to Mordecai (28) and can then be considered as part of the original book.

Another problem arises in connection with the Mordecai on Moed Katan. In our texts, we find two different treatments of this treatise: the first is very similar in its form and contents to Mordecai's work, and must therefore have been written by him. But the second consists of a compendium of laws connected with mourning. Samuel Kohn has identified in a decisive way this second version with the well known Hilkot Semakot of Rabbi Meir of Rotenburg (28).

These are the most important foreign elements which penetrated the text of the Mordecai. Many others, smaller in size, found their way into its pages, and can sometimes be detected there. (30)

The Mordecai won great fame very rapidly: seventy years after the death of its author, Samuel Schlettstadt commented upon it. Even before this, in 1340, the book was already mentioned in the Agudah (31). At the end of the fourteenth century, it was studied in Spain, (32) and in 1464, part of it was printed with the first Soncino edition of the Talmud Berakot!

During the 15th and 16th centuries, there is hardly any author of importance who does not draw on the Mordecai as a halakhic source of the first importance. During this period, many commentaries and summaries of the Mordecai were written. And then a great silence began, broken only intermittently by the efforts of some scholars who tried to correct the
faulty readings of the text they had received (33). What had happened?

It would seem that the Mordecai became one of the early victims of printing. In 1509, the whole text of the Mordecai was printed for the first time in Constantinople. It became then too apparent that the text of the Mordecai had been hopelessly corrupted. It was also noticed that many passages cited by early authors were absent from the printed text. Scholars were forced to agree that such a book could no more be relied upon for halakhic decisions. And in a time primarily concerned with religious law, such a judgement was a condemnation. From that time, the Mordecai lost its importance and it is only in modern times, that it regained a historic value, as opposed to its halakhic importance (34).

The intrinsic qualities of the Mordecai were of no avail; the Mordecai is the mirror of a decadent age in Jewish learning. Exclusively concerned with reporting the past, it offers very little evidence of original learning, as the author himself refrains from expressing any personal opinion. Moreover, at the end of the thirteenth century, German Jewry entered a long eclipse. The Mordecai represented its past, and was not a sign of renascence. A generation had looked upon its former glories, and stored it away for a long hibernation. It did not try to sow the seeds of future learning.

Modern scholarship revived the Mordecai, and tried to come back to its original form and content. With the help of countless emendations, the book became intelligible again. But one major problem still remains unsolved: which text is the original text, the Austrian or the Rhenish Mordecai?

Samuel Kohn gave preference to the Austrian Mordecai. According to him, Mordecai was the student of Rabbi Meir of Rotenburg, who was himself the disciple of the Austrian Rabbi (35). Therefore, the text reflecting a greater share of Austrian influence, should be the
original text: this was obviously the Austrian Mordecai (36). But today it is known that Mordecai's main teachers, Meir and Perez ben Elijah, studied in France (37). This makes the argumentation of Samuel Kohn completely inconclusive.

Samuel Kohn argued also that the Austrian Mordecai showed a more objective attitude on the side of the author. But, as has been shown, (38), it is absolutely impossible to define the position of Mordecai in halakhic matters. It is then impossible to accept such a criterion for a book, which is so obviously a compilation.

This problem remains unsolved; hitherto ignored manuscripts will perhaps give the solution.

If the Mordecai has lost much of its value as a halakhic work, it has become a major historical source. The author tried to bring a faithful description of early and contemporary religious practice, as reflected in the works of eminent rabbis: thus he threw abundant light on the establishment and development of the Jewish community, and its daily life. His work is a mine of information on the social and economic life of the Jews: it is a mirror of their ideas and struggles.

Where the responsum is interested in the particular and tries to solve a specific problem, a commentary, like the Mordecai, aims at the universal: it describes Jewish life in its relation to Jewish law, and not only its reaction before its problems. Thus the Mordecai can be the basis of a historical reconstruction.

The mass of information this book conveys to us explains many mysterious aspects of medieval Jewish life. But its main importance lies in the fact that it allows us to describe the physical constitution of medieval Jewry; in its most accomplished expression: the Jewish community.
Notes on Chapter II, part I

1) In modern editions, the different chapters of the Mordecai follow in the same order as Algassi's code. Nevertheless, the numeration of the paragraphs suggests a different sequence: the book is divided in three parts. The first one contains - in the following order: Ber., Sab., Er., Pes., Taanit, Betsa, R.H., Yoma, Suk., Meg., M.K., Hal. Ket. The second one contains: Yeb., Ket., Git., Kid., Hull. The third part has: B.K., B.M., B.B., Sanh., Mak., Sheb., A.Z. The divisions are not original, as the manuscripts have a completely different order. (S. Kohn, loc. cit., p.37)

2) Cf. Kohn, loc. cit., p.27, 557
4) Cf. Ber, Yoma, Sukkot, R.H.
5) Cf. Sheb. and Pes.
6) Sheb. 772
   B.M. 246
   Sab. 461
   Hull 620
7) Meg. 787
   Ket. 308
   B.K. 187
   Sab. 484
8) for instance:
   Sab. 228 = Sab. 451
   Pes. 570 = Hull 666
   Yeb. 81 = Ket. 306
   Meg. 785 = M. K. 909
   Ket. 232 = B.B. 674
   Yeb. 89 = Yeb. 93
   Ket. 258 = B.K. 168
   B.K. 145 = B.B. 654
   Kid. 521 = Kid. 548
   B.B. 490 = B.B. 659
   Kid. 522 = Kid. 548
   B.B. 650 = B.K. 192
   Sab. 397 = Meg. 780
   B.K. 203 = B.B. 493

9) Cf. Kohn, loc. cit., p. 325
10) Cf. the list in Kohn, loc. cit. p. 320
11) See appendix C.
12) Kohn, loc. cit., p. 278, 9. see later in n. 23
13) Cf. chapterI. This characteristic has made of the Mordecai an essential source for the cultural history of medieval Jewry. Many works and rabbis are known only through the allusions which the Mordecai makes to them. Kohn, loc. cit., made a detailed study of this material. For supplementary material, and a list of the responsa, see appendix.
14) Sab. 422a, 454, 461, 464 Hull. 620

15) See the references above in notes 6 and 7. cf. Sab. 459, Pes. 560
B.K. 65, and especially Ket. 182, where a marginal note reads:

16) Cf. the list in Kohn, loc. cit., p. 319-326

17) S. Kohn, published these passages (loc. cit. p. 276-7 and 306-317) and five other texts not found in the printed editions (ibid. p. 421-428)

18-19) ibidem, p. 379-383

20) ibidem, p. 478

21) Yeb. 111: Cf. B.K. 199

22) M. Git. 456

23) Samuel Schlettstadt became famous as Rabbi of Strasbourg when he ordered the execution of two Jewish informers (one was actually put to death). Subsequently he had to go into hiding in the castle of Hohelandersberg, where he remained until 1376. He later visited the Nassi in Babylonia. Cf. Jewish Encyclopedia, II, p. 103-4.

24) Kohn, loc. cit., p. 477-479

25) Ibidem, p. 479-80. The Agudah, (written about the year 1340) knows only one text: this would indicate that the differentiation occurred between 1340 and 1370 (ibidem, p. 286). Anyway, it is clear that, the Hagahot, can be considered as contemporary of the Mordecai, and can be used for the sake of historical reconstruction.


27) Ibidem, p. 518-9: This fact was already known to Azulai.

28) Ibidem, p. 128

29) Ibidem, p. 519-20

30) In particular, Schlettstadt (M.Ber. 192-3) The manuscripts contain also Rabbi Meir's commentary on Maimonides' code, the (M.Ket. 161). Cf. Kohn, loc. cit., p. 37, 127, 521, 523. Agus (loc. cit. p. 153-4) does not include this treatise among Rabbi Meir's works, without giving any reason for this omission.
31) Kohn, loc. cit., p. 324 n. 3 and p. 286.
32) According to Kohn, p. 287, Ribash already cites the Mordecai at the end of the fourth century.
33) see above note 11.
34) Kohn, loc. cit., p. 319-322
35) Cf. above chapter I, n. 16.
36) Kohn, loc. cit., p. 524-7
37) Cf. above, Chapter I, n. 16. The fact that the differentiation occurred at all is easy to explain: the Rhenish Jewry evolved very early, a way of life, ot its own, and constituted a separate entity in the Jewish world. This became soon the case of Austrian Jewry also. Cf. Kohn, loc. cit., p. 323-4.
38) cf. above Chapter I, note
CHAPTER III

Size and leadership of the community

Thirteenth century German Jewry was not concentrated in great communities. It was rather dispersed in small numbers in many different localities. "In our time," writes Mordecai, "we do not find a great number of Jews in one place." (1)

An incident, reported by Mordecai, explains the causes of this dispersion. In Lorraine, some Jews, disturbed by the increasing demands of the duke, fled to small villages. The duke, who desired their return, threatened with expulsion, those Jews who had remained, if they did not induce the fugitives to return(2). Here the two reasons of the dispersion are clearly indicated: flight and expulsion.

Despite its dispersion, German Jewry did not evolve any kind of central authority, which could organize, and unite, these scattered communities. (3).

The Jewish settlements differed considerably in size. Often, Jews lived in a complete isolation in an entirely Gentile environment.(4) Many communities did not even have a Minyan. (5)

In one case, it is reported that all the members of the community within the degrees of propinquity were compelled to invite outside visitors to serve as witnesses for a wedding (6). In other instances, communities were composed exclusively, or nearly so, of Kohanim: the communities addressed numerous inquiries to different rabbis, in order to know who should be called to the Torah.(7). These two facts seem to indicate that many a settlement was first established by an isolated newcomer, who subsequently brought his family there. The descendants of this early settler then constituted the majority element in the community.

A more important community could have two synagogues. Another was large enough to be the victim of a dissidence, when an important
minority left the old community to organize a new one (8).

It is difficult to ascertain the exact membership of such a community: detailed information is lacking. But the list of the martyrs who died during the Rindfleisch massacre has come down to us in the Memorbuch of Nurnberg (9). The numbers vary from 2 in one community, to 128 in Bischofsheim, 133 in Neckar Gartach, 150 in Heilbronn, 154 in Nuremberg. But we do not know how many escaped the massacre through flight or conversion. Nevertheless the list would indicate that most communities must have counted between 150 and 200 souls. Some very important communities counted over one thousand Jewish inhabitants (10).

Generally, the Herem haYishu’u must have controlled the size of the community. (11). In these towns, the Jews would usually live in the "Street of the Jews", and not in a predominantly Christian part of the town. (11). In the Talmud, there is reference to a rule that the community, according to ancient talmudic law, is ruled by the "seven notables of the town". (12). During the Middle Ages, it was held that the number seven was not essential. Accordingly, the number of the community leaders could vary considerably. (13).

It would seem that in the early Middle Ages, a change occurred in the mode of selection of the leaders. Thus, Rabenu Tam felt that the notables of the town constituted the community council and that no election was necessary: the local aristocracy was in power (14). But during the thirteenth century, election had become essential for the filling of a community office.

Only tax-paying members of the community could take part in the election (15). Where the community had bound itself to accept a majority decision, a simple majority was sufficient. Where no such agreement had been reached, unanimous approval was necessary (16). A section of the community had no right to hold its own election, with the intent to impose its elected leaders on the rest of the community: no election was
held valid, if part of the community had not been allowed to take part in the proceedings. (17).

The will of the community found its expression in the assembly of the tax-paying members, and its power was entrusted in the hands of its democratically elected leaders. Unfortunately no information as to the tenure of office has reached us. According to one town (18), no great importance was attached to this matter: an official once elected remained in office, as long as he did not encounter violent opposition. Another passage seems to indicate a tendency to make community leadership a hereditary function. (19).

Aside from their elective prerogatives, the influence of the community leaders was tremendous in their community. Whoever was involved in a litigation with a person who happened to be an elected official, was allowed to request a change of venue; thus his opponents' influence would be of no consequence. (20).

But in the event of intervention by a Gentile, the status of the official became that of a private citizen, and his influence disappeared. (21).

It has been noted (22), that in early German Jewish history, Rabbis very often led the community. This is not surprising, as the leaders of the community were usually chosen among the more educated element of the community. Despite this fact, no case is reported where rabbis and lay leaders fought for the control of the community. (23).

In virtue of their election, the community leaders became the depositories of the community powers. This power they exercised in many fields, so that the history of the Jewish community was reflected faithfully in the powers it had conferred upon its elected representatives.
Notes on CHAPTER III

1) M. M. K. 860

2) M. Kid. 561: although the incident took place in Lorraine, it can illustrate our argument, as conditions in Lorraine and Germany were very similar.

3) See chapter on courts. It is only during the 16th century, that German Jewry was centralized under the "gemeiner Judischheit Befehls­haber in Teutschland". Cf. Graetz, loc. cit., 19, ff., 48-55

4) M. Er. 509: B.K. 187 M.B.R.P. 944

5) M.B.B. 495 M.B.R.P. 1006

6) M.B.R.B. p. 159 n2. 41

7) M. Git. 402, 403, 404: M.B.R.P. 968: M.B.R.B. 231 p. 237:

8) M.B.R.P. 968: M.B.R.B. 231 p. 237:


10) Thus, some important communities, like Worms, Spire, Mainz, had a great influence on other settlements of less importance. Cf. Finkelstein, loc. cit. p. 25-7

11) The is mentioned in B.M. B.M. 379 Cf. A.Z. 805

12) M.B. Meg. 27a

13) The number of the elected officials varied from community to community: some had four, others seven or twelve. Cf. Frank, Kehillot Ashkenaz uVate Dineham, p. 3 n. 2, p. 7, n. 2, 4

14) Frank, loc. cit., p. 3 M.B.B. 480: M.B.R.B. p. 320 n. 865

15) see later chapter are legal basis of the community

16) Isaac Or Zarua, Responsa, 65, as quoted by Frank, loc. cit., p. 3 n. 5

17) M.B.R.P. 968

18) Such an incident is reported in M. Sanh. 908 (margin): M.B.K. 108 M.B.R.P. 546

19) Frank, loc. cit., p. 60, 117 See chapter on courts.

20) Ibid., p. 10, 11, 27

21) Ibid. F. 27
The Jewish Community described by the Mordecai was a well
established institution in thirteenth century Germany. Functioning as
an autonomous entity, it constituted a state within the state, a Jewish
island in the Christian sea. Its authority extended not only to religi­
ous matters, but to social, economic and judicial problems as well. (1)

Although a description of the rise of the Medieval Jewish
communal system is still missing, (2) it would seem that Jewish settlements
were established by isolated newcomers. When they found a proper loc­
ation and a promising opportunity, they settled down, calling for their
family to join them. Soon this new settlement would attract other in­
terested immigrants, and a full fledged community came into being.

This community assumed all the duties and responsibilities of
the new settlement. But, as it was not a direct successor of the ancient
Palestinian township, the talmudic jurisprudence concerning the local
governments, could not become its legal basis. The medieval Jew was
well aware of the differences between his legal status in a foreign, and
often hostile, world, and that of the citizen of a (free Jerusalem. There­
fore, the medieval community had to create a new communal system:

Thus, the medieval community evolved its own legal sys­

The tenth century, which marks its appearance in the western world, wit­
nessed also the emergence of the Takkanah, or communal ordinance. Such
a rule was readily accepted by the small communities (2). But when they
later increased in importance, many members of the communities became
dissatisfied with the state, and began questioning the authority of the
community. It was easy for them to show that it was not based on talmud­
ical law, and therefore did not bind them. When such protests were heard,
they were brought before the court, composed of leading talmudical schol­
ars. (3).
These rabbis understood the need for a communal system, if organized Judaism was to survive in the Christian world. Confronted with this problem, they endeavored to show that there existed indeed a sound legal basis for such community practice. They scanned the Talmudical literature, and found various references, which could be used for the problem in discussion. Thus they created the legal fiction a communal constitution. They strengthened daily practice with the help of talmudical law.

Such an effort would have been of no value for the historian, if it had remained an 'a posteriori' rationalization of a given situation. This was not the case, as, in their decisions, the rabbis tried to define the limits of communal rule. In their attempt to protect and buttress the extent of community rule, they also tried to prevent any abusive practice. Thus, their explanations became a dynamic force in the moulding of community life; their word became the communal constitution, which also served as a blueprint for the new communities established at a later date.

This makes a study of the legal basis of the Jewish community extremely important. It shows how it came into being, and which were its limits. Thus we see how its authority was established by majority rule and how all obstacles were lifted, whether they came from Jews or Gentiles.
1. Community Authority

Already at the end of the tenth century, Rabbi Judah ben Meir haKohen, also called Leontin, and Rabbi Eliezer ben Judah had ruled that in religious matters, the majority of the community could agree to a decree which would serve to uphold the Torah, and excommunicate the minority which refused to comply with the decree. It could even confiscate the property of the violators of the law, in order to stop further transgressions. (4).

This momentous decision which established majority rule in religious matters, and gave the community the right of excommunication and confiscation, was never questioned (5).

But the two rabbis had also decided that the same principles which governed religious matters, applied also to secular problems (6).

Here they met considerable opposition.

Thus Rabenu Gershom wanted to impose majority rule in non-religious matters, he wrote (7):

"If the members of the Community are establishing an ordinance to help the poor for any other purpose, and most of those worthy to decide have agreed to it, the others may not ignore the ordinance and claim that they wish to discuss it in court, for no court may sit in such a case, since everything depends on the opinion of the Elders of the city, for such is the custom of the Ancients."

According to Rabenu Gershom, majority rule - in secular matters - is binding because it is the custom of the Ancients, and not because it is the law. (1)

Still later, Rabenu Tam decided that no majority could compel the minority to accept the decision it had passed on secular matters against the will of the minority: unanimity was essential. (8).

A century later, Rabbi Meir of Rotenburg wrote (9):

"Whether regarding the election of officers, appointment of cantors, or the creation of a charity chest and the appointment of its officers, whether to build or to destroy anything in the synagogue, or to buy a community wedding-hall or bakery, or to provide all other co-
Cmunity needs - all such matters shall be decided by a vote of the majority. Should the minority refuse to heed the decisions of the majority, this majority, or its appointed officers, shall use coercive force, whether through Jewish law or the law of the land, to compel the minority to abide by its rulings. Should an expense of money be involved therein, the minority shall leave to defray its part of the expenses."

It is quite obvious that the position of Rabbi Meir is a far departure from Rabenu Tam's opinion. Unhappily, Rabbi Meir does not explain us his reasons, and we are left with guesses. It has been suggested that Rabbi Meir assumed that a person born in the community had at one time or another agreed to, and voluntarily accepted, the way of life of his community. Unhappily, no text supports this explanation. (10)

In our opinion, Mordecai gives us the answer to this problem. Commenting Rabenu Tam's previously cited statement, he writes: (11)

"The majority can compel the minority to accept its decisions, where the community had agreed previously to accept the principle of majority rule, but this does not apply where no such agreement was reached."

In other words, democratic procedures are to be applied, in every community which had accepted their principle. (12) Medieval majority rule can then be based on the legal fiction that the Community had bound itself to accept it.

Any ordinance - including majority rule can become a part of the Constitution of the community. Accordingly, Rabbi Meir rules that a new settler had to accept all the ordinances and customs of the community he had settled in. (13). He was not allowed to disapprove of a certain custom, and state that he intended to disregard it. (14) He was required to accept the custom of the community, even where it contradicted and rejected sound talmudical law (15). As a new settler, he had settled in the new community of his free will, and was therefore expected to adopt its specific way of life.
It is clear that, in such a view, the Minhag (custom) was unaffected by talmudic law, and took precedence over it. It is also clear that the initial unanimous agreement of the community to establish a certain custom, could only be reversed by another unanimous vote. A new custom could replace an ancient custom only by an amendment to the communal constitution, and what had been accepted by a unanimous vote, could be repealed only through a unanimous vote. (10)

In this way, majority rule became accepted in secular matters as well as in religious matters. The authority of the community was thus firmly established.

2. Outside interference.

The legal basis of the community was, by essence, local. A community established its constitution, and issued its ordinances, which were binding only on its own members. Such community government could work only inside the community. Its most dangerous enemy was outside interference from any source, which would have destroyed the function of the community, by denying it any possibility of expression.

During the thirteenth century, the German Jews lived in a Christian environment, sometimes friendly, often deceitful. For a wavering Jew, the easiest way to reverse a communal decision, or the escape of its implementation, was to turn to an outside jurisdiction, and require its intervention.

Numerous documents show that Jews turned frequently to Christian authorities, and defied the Jewish court. Repeatedly the Jewish authorities, forbade this practice, and imposed heavy penalties upon the transgressor. Nevertheless, the practice was never discontinued, and the continual struggle between the community and its destroyers went on for centuries. (17).
But outside interference was not coming from Christian quarters only. Sometimes Jewish authorities also tried to influence the decisions of the Jewish Community.

This explains why Joseph Bonfils affirmed the complete independence of the community, and decided that, in as much as the community had the right to enact its own ordinances, no outside community could revoke these ordinances (18). Later, Rashi refused to assume any responsibility in a case involving another community. (19).

This principle of absolute communal independence was universally recognized, except where different communities had federated, or reached an agreement to this effect. (20). Litigants would also be allowed to appeal to a superior court, which was usually situated in another community. (21). In matters of taxations, too, a certain measure of cooperation was necessary, as many communities could find themselves under the jurisdiction of the same overlord. Then taxes would have to be paid in common, and some kind of partnership had to be agreed upon by the different communities involved. (22).

3. The Herem haYishub.

Strong action against outside interference was not looked upon as sufficient by the medieval community. A method had to be developed which would prevent the members of the community from neglecting the regulations which had been established. The danger always existed that, at any time, a group of immigrants would settle in the community, and disregard completely its constitution, on the ground that they had taken no part in its formulation, and were therefore not bound by its provisions.

The community tried to control immigration. Through the Herem haYishub, it forbade newcomers, under threat of excommunication, to
settle in the community, unless prior agreement had been obtained. The right of residence was called Hezkat haYishub.

The Herem haYishub first appeared at the end of the tenth century, which is precisely the period when actual community rule first began. (23). Thus, the community produced at the same time its constitution and the weapon for its enforcement.

It has been recently suggested that this Herem was essentially an economic regulation, preventing undue competition. (24). But in the two texts of the Herem which have reached us, no mention is made of any economic implication. One of these texts explains clearly which category of Jews this Herem was intended for:

"No other Jews of any other town than Canterbury, shall dwell in the said town, to wit, no liar, improper person or slanderer." (25).

It can then be maintained that the Herem haYishub was created, to prevent the settlement of persons who, by their reckless actions, would endanger the community rule. At its origin, it has only a police function.

But during the twelfth century, its nature begins to change. It becomes an economic regulation, which aims to prevent any harm to the economic status of the community members. The reason of this change can easily be detected.

During the middle of the eleventh century, the Merchant Guild first appeared in Western Europe (26). This new economic system, which influenced the whole life of medieval Europe, influenced also the Herem haYishub. The community already regulated the social life of its membership. Grasping the full impact of the Guild system, it adapted it to its own needs, by extending the Herem haYishub to the competitive area. Having already compelled its members to accept its rule, by regulating settling rights, it now entered also the economic field, by granting or denying the right to engage in business activities on its territory.
Because the community could also offer a commercial protection to its membership, it increased its power and influence in a very great measure.

But this extension of the community power did not come, in force, without raising very serious objections. As has been seen before, (27), Rabenu Tam insisted on unanimity in community government, and refused the majority the right to amend the community constitution without the benefit of such unanimity. It is not surprising, therefore, to hear him claim that the Herem intended solely to prevent the entry of: "Lawless men, informers, those unwilling to shoulder their share of taxation, but upon others there is no Herem." (28).

Rabenu Tam maintained the ancient view of the Herem haYishub, as expressed in the text cited above. (29).

But eventually, the influence of the Guild proved to be too strong: the Herem haYishub was submitted to a great change and finally became a commercial regulation.

Nevertheless, a spirit of dissatisfaction with this new Herem filled the air. In order to justify the innovation, later Rabbis looked for talmudic sources referring to trade restrictions. (30). A few generations later, the original meaning of the Herem haYishub was forgotten, and its newly found implications were generally accepted.

In Mordecai's lifetime, the Herem haYishub reached a high degree of development, and many minor details of legislation became connected with it.

During the thirteenth century, the Herem haYishub was in existence throughout the whole Rhineland. (31). But in other parts of the country, many communities had no ban against new settlers. (32).

As has been shown, the Herem haYishub implied the existence of the Herem haYishub; or settling rights. The Herem could be used only against those who had been denied the Hezkat haYishub.

Settling rights could be acquired in many ways: proof of previous residence (33), purchase, (34), inheritance (35), unanimous approval by
the community (36), undisputed residence over a period of three years (37), and marriage (38). Settling rights could also be granted on a temporary basis (39).

These rights were lost if their owner had been out of town for more than a year and had stopped paying taxes during his absence, or if he had voluntarily relinquished his right of residence, and, thereby become exempt of any liability to community taxation (40). Finally, the community could deprive one of its members of his settling rights, because of misconduct (41).

Rabbis, (42), refugees, (43), and merchants who came to town on market days (44), did not fall under the Herem.

In some cases, a Jew could receive — probably on his request — from the ruler, the authority to accept or reject new settlers in a given community. In very rare instances, a Jew could buy permanent settling rights from the overlord, for his descendants and himself. (45). Sometimes, the community would admit a new settler, less he inform against it: in such a case, the settling rights which had been granted, were not regarded as permanent (46).

Settling rights were governed solely by the customs and practices of the communities, which were often very different. (47). Usually the testimony of one witness would be accepted in litigations involving settling rights. (48). Where the testimony of two witnesses were required — as in the Rhineland — relatives or witnesses reporting what they heard from others, were admitted to testify. (49).

Temporary settling rights could be granted for one year, and then renewed. But when they expired, the new settler was asked to leave town, without being granted any delay to wind up pending affairs. (50).

The community had to give unanimous approval to the granting of settling rights: an idle, or retired, person was well in his rights when he opposed such a measure. (51).
Nevertheless, many Jews tried to circumvent the law, and escape to its limitations. This compelled Mordecai to take a very stringent attitude, and to reinforce the provisions of the Herem. According to him, the formal annulment of vows, which takes place at Kol Nidrei, did not include the Herem haYishub (52). He ruled that temporary settling rights did not constitute proof for claiming settling rights (53), and he forbade in vigorous language, any direct application to the overlord for rights of residence, without the prior authorization of the community. (54).

Thus German Jewry tried to establish the conditions for a stable communal life. Nevertheless, efforts would have been doomed, if it had not secured the official recognition of the Christian world. If it had remained a private corporation, its members would have been at liberty to disregard its injunctions.

But, the Jewish Community soon obtained recognition from the Gentile powers. Charlemagne gave it the right to decide all cases involving its members. This privilege was frequently renewed, by individual overlords, even during Mordecai's lifetime. (55).

With the dual support of its membership and the overlord, the Jewish community could flourish and exercise a great influence on Jewish life.

Notes on Chapter IV

1) See Finkelstein, Jewish self government in the Middle Ages, p.6-20. Shonet, the Jewish court in the Middle Ages, p. 18-52, Agus, loc. cit. I, p. 54-124

2) Finkelstein, ibid. Agus, ibid.

3) S.M.B.E. 480-2, where a taxpayer protested against his assessment, and B.B. 490, where Joseph Bonfils writes:

4) Agus, loc. cit. p. 78-9

5) ibid. p. 83

6) ibid. p. 79

7) ibid. p. 85 Finkelstein, loc. cit., pp. 121-132
12) The whole process is described in the following responsa:

(M.B.B. 517, M.B.R.B. p.320 no. 865)

Thus, the community accepted first unanimously the principle of majority rule, and then applied it in its daily life.

13) See the discussion in Agus, loc. cit. p. 116 n. 213

14) Ibidem, p. 117 n. 214

15) Ibidem, p. 117 n. 215, 216

16) M.B.R.B. p. 209 n. 141, and note 160 and on

17) S. M.B.K. 55, 195, Kid. 564. For a detailed discussion, see later chapter on courts.

18) Agus. loc. cit. p. 98-99

19) Ibidem, p. 100. R. Meir always shows great reluctance when he is asked to intervene in the internal affairs of a community. (ibid. n. 154)

20) This was the case in Spire, Worms and Mainz. Cf. M. Yeb. 31, Sanh. 709, Finkelstein, loc. cit., pp. 250-1, where the federation is described.

21) See later chapter on courts.

22) See later chapter on taxation.

23) S. Finkelstein, loc. cit., p. 1-5

24) M. Rabinowitz, in his Herem heYishub, pp. 16-22, argues that the Herem heYishub was in fact a talmudical law, which came into being during Rabenu Gershon's lifetime. It is clear that these two propositions are contradictory. As has been pointed out by Dr. Zeitlin (J.O.R. n.s. 34, p. 381-2) "Whenever the Rabbis had to promulgate a new law, if they found a clue in the Talmud, they never resorted to a Herem... To say that for the Herem haYishub, there was a talmudical clue is a contradiction in terms." Therefore, the Herem haYishub must be regarded as an independent legislation, created for the sole purpose of strengthening communal life. As for M. Rabinowitz' contention that the Herem was originally an economic regulation, see later n. 30.


26) Ibid. p. 102 (quoting C. Gross, the Guild Merchant, Oxford 1890)
27) see above n. 8


29) see above n. 25. Rabinowitz quotes also a similar opinion of Rabbi Isaac of Dampierre, mentioned in M.B.B. 517: we have been unable to trace it there, or in the work Mordecai.

30) This seems to have caused Rabinowitz' misunderstanding of the Herem haYishub. It may be added here that every supporting passage quoted by Rabinowitz, is later than the 12th century, that is posterior to the introduction of the Guild system.

31) M.B.B. 517 (margin):

32) M.B.R.P. 382


34) M.B.B. 559 R.B.M.P. 101, 382, 1001

35) M.B.B. 517 (margin)


37) M.B.R.L. 216 M.B.B. 532

38) M.B.B. 517 (margin)

39) R. B. B. 517

M.B.B. 517

40) Rabinowitz, loc. cit., p. 17 n. 12, M.B.R.L. 217


42) M.B.B. 517 (margin)

43) M.B.B. 519, but their business activities were restricted: But when the situation had become normal again, they were asked to leave (ibid.)

44) M.B.B. 519:

45) M.B.B. 559, M.B.R.P. 1001

46) M.B.B. 532. M.B.R.P. 100; but their business activities were restricted: But when the situation had become normal again, they were asked to leave (ibid.)

47) M.B.B. 552, M.B.R.L. 213

48) M.B.R.P. 231


51) M.B.B. 552, M.B.R.L. 215:
52) M. Yoma 726:  

53) M.B.B. 517: characteristic of the early Middle Ages that the prin-

54) As quoted by Rabinowitz, loc. cit., p. 49. (This text is not found
in the modern editions of the Mordecai; Rabinowitz found it in a
secondary source).

55) Aronius, Regesten, no. 78 and 747. Community. The same situation
prevailed in the Jewish community: community legislation as well as 7
judged. (1). It is therefore difficult to ascertain where the legisla-
tive power of the community ended, and where its judicial power began.

It is well known that Jewish self government found its express-
tion in the Yehadut, or community ordinances. We have already shown
which was the legal status of this system (2). Its limits must now be
defined.

Thus Rabbi Meir of Honenburg rules: (3).

"The seven leaders of a community originally elected with
the knowledge and consent of all the members of the com-

munity to manage community affairs and to punish offend-
ers, have the right to enforce their rulings and decrees.

But, no majority of city dwellers can force a minority
to be governed by a ruling to the original passing of
which they have not consented, or to accept the author-
ity of leaders whom they have not consented to elect."

And Rabbi Meir qualifies this opinion, when he writes, (4):

"A majority vote of this assembly (of the community)
shall be binding on the whole community. This shall ap-

ply to the election of officers, appointment of cantors
or the creation of a charity chest and selection of its
officers. It shall likewise be decided by majority vote
whether to build or destroy a house in the synagogue, to
buy a community wedding-hall or beakery, or to provide
all other community needs. Should the minority refuse
to heed the decision of the majority, this majority, or
its appointed officers shall use coercive force, whether
through Jewish law, or the laws of the land, to com-
pel the minority to abide by its rulings. Should any ex-
 pense of money be involved therein, the minority shall
have to defray its part of the expenses."

This view of Rabbi Meir was not discussed; and we can accept
it as an accurate description of the community jurisdiction. The com-
munity was endowed with extensive powers, and could enforce its decisions
It is characteristic of the early Middle Ages that the principle of the separation of power was unknown: executive and legislative powers were merged in the person of the political ruler. In Germany, the local "Rat" directed and judged the community. The same situation prevailed in the Jewish community: community legislated as well as it judged. (1). It is therefore difficult to ascertain where the legislative power of the community ended, and where its judicial power began.

It is well known that Jewish self-government found its expression in the Takkanot, or community ordinances. We have already shown which was the legal basis of this system (2). Its limits must now be defined.

Thus Rabbi Meir of Rotenburg rules: (3).

"The seven leaders of a community originally elected with the knowledge and consent of all the members of the community to manage community affairs and to punish offenders, have the right to enforce their rulings and decrees. But, no majority of city dwellers can force a minority to be governed by a ruling to the original passing of which they have not consented, or to accept the authority of leaders whom they have not consented to elect."

And Rabbi Meir qualifies this opinion, when he writes. (4):

"A majority vote of this assembly (of the community) shall be binding on the whole community. This shall apply to the election of officers, appointment of cantors or the creation of a charity chest and selection of its officers. It shall likewise be decided by majority vote whether to build or destroy aught in the synagogue, to buy a community wedding-hall or bakery, or to provide all other community needs. Should the minority refuse to heed the decision of the majority, this majority, or its appointed officers shall use coercive force, whether through Jewish law, or the law of the land, to compel the minority to abide by its rulings. Should an expense of money be involved therein, the minority shall have to defray its part of the expenses."

This view of Rabbi Meir was not discussed, and we can accept it as an accurate description of the community jurisdiction. The community was endowed with extensive powers, and could enforce its decisions
In order to insure that these conformed with Jewish law, the consent of a resident rabbi - who seems to have passed on their "constitutionality" - was required. (5).

The community ordinance applied only to the city which had enacted it. (6). In emergencies, different communities would send representatives to a synod which would then be empowered to take decisions affecting every community. (7). Nevertheless, local patriotism, and the spirit of independence of the various communities, precluded the possibility that these decisions would gain universal acceptance. In the whole history of Askenazi Judaism, few Takkanot were accepted by the entire Jewish Diaspora (8).

It can then be safely maintained that Jewish self government was essentially local.

The local community enforced the decisions under threat of excommunication and other penalties. (9). But this did not prevent defiance of community ordinances: Rashi already complained against the communities which did not enforce their own regulations. Later it was ruled that alleged ignorance of a community ordinance could not be regarded as an excuse for its violation. (10). Such stringent views would hardly have been necessary if the observance of community ordinances had been general! (11).

The activities of the community extended to many fields. To enforce its regulations and preserve public order, it established courts. (12). It supervised commercial relations (13), and took care of family matters, and religious affairs and administered charity (15). It ruled the whole field of Jewish-Christian relations, especially for fiscal matters (16). Even when an individual member bound himself by a personal ban to abstain from a certain thing, the terms of this ban were put into writing, and signed by all the members of the community. (17).
But the Jewish Community never became an impersonal and unassailable power, free from attack, and above the law. It could be sued in court (18): it would then appoint a representative to defend its actions (19). Thus the community was endowed with complete personal responsibility and never became an irresponsible power.

The community, which was an emanation of its own members, retained therefore their loyalty, and constantly increased in status and influence.

Notes on Chapter V.

1) Frank, loc. cit., p. 35
2) See above Chapter IV
3) M.B.R.P. 968
5) M.B.R.P. 968
6) M. Hull. 711:
7) Cf. Finkelstein, loc. cit., pp. 35-37, 69, 249
8) As for instance the Takkanot against polygamy, compulsory divorce, acts of information. According to M. Meb. 108, a Takkanah could be repealed, in an emergency, with the consent of a hundred rabbis. Later, (did the number of rabbis diminish) the consent of thirty rabbis was looked upon as sufficient, for this purpose. Cf. Finkelstein, loc. cit., p. 143, 145, 146
9) See later, chapter on courts. It would seem that many such bans were conditional: Temporarily: (M. Mak. 730)
10) M. Sheb. 755
11) The formal annulment of vows taking place at Kol Nidre did not annul these ordinances. Nevertheless transgressors were exceptionally allowed to attend public services on Yom Kippur. M.Yoma 725, 726
12) See later, chapter on courts.
13) economic conditions.
14) See later, chapter on family life
15) see later, chapters on charity, family and religious life.

16) See later, chapter on taxation.

17) Cf. M.B.R.L. 393

18) In one case, the cantor sued the community which had discharged him (M.B.R.B. p. 298 n. 392) The community could also accept gifts. (M. Meg. 821, M.B.R.P. 925) or sell the right to erect certain buildings near the synagogue (M.B.R.P. 233). In emergencies, it could decree a general fast. (M.B.B. 495).

19) This is the same, mentioned in N.Sheb. 472, B.B. 489, M.B.R.P. 943, 977, 983, 1012. M.B.R.B. p. 295 n. 37.
CHAPTER VI. The community and its courts.

The medieval Jewish community constituted an independant entity. As such, it was preoccupied with the regulation of its activities and the maintenance of good relations among its members. In order to achieve these aims, the community had to maintain courts of justice.

The Jews of the Middle Ages had remained attached to their old legal system, and endeavored to perpetuate it. But with the end of Jewish independence and the beginning of the Diaspora, the entire structure of the Jewish court had collapsed. How then could a court fulfill any useful activity, if it were deprived of power to implement its decisions.

Medieval Jewry solved this problem by giving its Communities and Rabbis the power of excommunication. Thus appeared the Herem Beth Din, the power by which the court could excommunicate a person who failed to respond to a summons, or refused to comply with its decisions. At first, this right was given only to a few important communities, but by the thirteenth century, every community had received this right, and a solid basis for Jewish jurisdiction had been established. (1)

Rabenu Tam describes in this way the authority of the Jewish court:

"One need not go to a distant city to a great rabbi, but in the city which is nearest the complainant. The summons should call only to go to one of the three nearest cities which have a Herem Beth Din. If there is a great rabbi in the vicinity, he may not refuse to issue the summons. The summons should call upon the defendant, to appear before the court of one of the three nearest cities. If the defendant is not in a settled community, the statement of the agent of the court that he delivered the summons to, is to be accepted as final." (2)

A) The courts of first instance.

In its most elementary form, the Jewish court may consist of one ordained teacher of the law or three lay persons of good reputation. In thirteenth century Germany, we find both systems in use.
It would seem that French and German Rabbis practiced some form of ordination in the Middle Ages, although historians claim that Rabbi Meir halevi of Vienna introduced Semikhah (ordination) at the end of the fourteenth century. But a closer reading of the texts reveals that, in France, "students were ordained as rabbis, according to the custom prevalent in France and Germany," where rabbis ordain their students as rabbis when they see that they have reached the degree of Horadl (decision); and give them the right to establish their residence in any locality, to judge and take decisions." There is no doubt that this system of ordination antedated by far the so-called innovation of Rabbi Meir halevi. (3).

It is indeed difficult to decide whether this ordination was of the same nature as the ancient Semikhah described in the Talmud. But there is no doubt that the thirteenth century German Rabbi felt that he had extensive jurisdictional rights.

In purely religious matters - Issur Veṭṭeṭer - the jurisdiction of the Rabbi was undisputed: he was also the recognized judge in family matters (marriage and divorce). Rabenu Tam decided that any decision rendered by one judge was valid. (4). This judge could even compel a reluctant person to appear before him in certain cases (5). During the thirteenth century, we find continuous evidence of the application of the law of the נאום, the experienced judge, who was allowed to judge a case by himself. (6). This even brought about some conflicts of jurisdiction, as when two such judges lived in the same town: in this case, the choice of the judge was left to the parties. (7).

In most communities, the legal system was the responsibility of the community leaders; in some towns, a permanent court of three members was set up. In this case, it was requested that at least one member of the court be a recognized and experienced judge. It would even seem that in Germany, only judges in good standing would be allowed to sit on such a court, and that laymen were excluded. (8)
But the most popular type of court was the arbitration court, composed of three laymen (א"כ). This court could also consist of two judges: one source tells us that each party chose one judge, but no mention is made of the third judge (9). Usually the two parties would join in choosing a third judge. (10). The arbitration court asked that the two parties agree by means of a Kinyan - a symbolic act making an agreement binding—to accept its decision: only then would it render its decision. (11).

That the arbitration court was very popular is shown in numerous responsa. Mordecai explains this fact, when he states that in Germany permanent courts were not to be found frequently; it was then more practical to turn to such a court. (12).

This makes it all the more surprising that, in many a case, litigants would still prefer to appear before a rabbi. The reason was the very long delay an arbitration court required to give its decision. It was also less expensive to hire the services of one judge than three. And the authority of a famous rabbi was by far superior to that of an arbitration court (13).

Such a rabbi was a qualified judge, and wielded authority by virtue of his training and legal background. But the authority of the lay judge was of an essentially different nature; it was conferred upon him by the community. The community leaders, writes Rabbi Meir, wield the same authority over the members of their community regarding matters for which they were elected, as the great scholars of each generation over all of Israel (14). And in another case, he rules that where the leaders of the community signed a bill of sale, they signed it as judges, and not as witnesses (15).

Despite this affirmation of authority, the judges of medieval Jewish Germany were extremely reluctant to act as judges. The rabbis preferred to leave economic problems to the jurisdiction of the arbitration court. In many other cases, the community showed no great in-
clination to fulfill its legal duties. Special legislation had to be enacted to protect the individual against this communal laxity. A plaintiff was given the right to interrupt the prayers in the synagogue, in order to call public attention to private wrongs. Prayers could not be resumed until the community had agreed to judge the case. In a similar way, the plaintiff could close the synagogue-and thereby stop public worship-until the community had agreed to hear his case. (16).

The reason of this strange reluctance is explained in a thirteenth century Takkanah:

"Let it not occur to any man to command the judges of Israel not to sit 'a judgement or to open a trial'. (17).

That such a Takkanah had become necessary shows clearly that pressure on the judge was not an infrequent occurrence. This practice eventually proved to be so successful that a ban was enacted compelling the judges to sit in court and render judgement (18).

Only when a case was obviously fraudulent, was the court allowed to refuse judgement. (19).

B) Jurisdiction and procedure.

The Talmudic view that all the biblical laws involving fines were not to be judged outside of Palestine was generally accepted. (20). Occasionally, the jurisdiction of the Jewish court was also restricted in its jurisdiction by a decree of the Christian overlord (21). Nevertheless, Jewish courts-as the table of contents of any responsa collection will show—often busied themselves with such cases. Rabenu Tam decided that a community could enact emergency regulations: in this way the scope and power of the courts were widened (22).

Jewish Courts were mostly occupied with problems of damages (23), slander (24), murder (25), theft (26), improper behaviour (27), family matters (28), seizure (29), inheritance (30), support of a deserted wife (31), and informers (32). All contracts had to be drawn in court, and the rabbi-judge would be called to certify them (33).
A judge was also asked to certify lunacy, where this was required (34). He would have to take a decision in disputes involving many communities (35). But in cases where the judge had to establish a fact, only an outstanding scholar was allowed to do so (36). The jurisdiction of the Jewish court was then quite extensive.

But its authority was seriously impaired by the reluctance to appear, shown by the witnesses in court, and the equal reluctance of judges to sit. Pressure must have been applied against them. This is why the community - or the court - was empowered to issue a law compelling witnesses to testify in court. Rabbi Meir states that such a law may be issued only if the witness would otherwise refuse to testify (37). This Herem was most frequently pronounced in cases involving adultery, theft, usury ... (38). The threat of excommunication was not always successful: R. Ephraim ben Nathan inveighs bitterly against those who maintained that the law did not apply to them, because they might be considered unfit witnesses. (39).

The problem of the fitness of witnesses was of extreme importance. It was generally held that whoever had committed a sin disqualifying him biblically from serving as a witness became disqualified at the very time he committed the sin. In other cases, the court had to proclaim his as a sinner in order to disqualify him. (40). The testimony of a thief, therefore, was not accepted, and that of an informer was equally refused (41). A gambler was not recognized as a fit witness (42). As for the witness who had contravened a local ordinance, his testimony was only finally looked upon as valid, after a lengthy argument. (43). A Gentile of good reputation was also acceptable as a witness (44).

In any case, no objection to the fitness of a witness could be raised, once his testimony had been completed, regardless whether this witness was Jewish or not (45). A written testimony was valid, as Rabenu Tam's view favoring it was accepted. (46).
The witness could be examined only in the presence of the opposing party (47). In some cases, the court would allow the plaintiff a period of thirty days, to enable him to summon his witnesses (48).

It would seem that sometimes a ban was pronounced against any witness who would not testify accurately (49). It must be noted here that the oath practically disappeared in Mordecai's time from the court proceedings. Mordecai writes explicitly: "Today we do not ask anyone to take an oath in court, but we require him to accept a ban". (50).

A case was usually presented orally; but when the matter under review was extremely complicated, the court could either give the parties a delay to present their claims, or accept a written record of these. (51).

The judges would be standing when reading their decision. The parties and the witnesses could either sit or stand up, even while hearing the court's decision (52). The reasons for the decision were not included in the court's decree, except when the litigants indicated their desire to appeal the decision to another court. When the judges signed the writ, it was phrased as a decree; if the witnesses did so, the writ read as a testimony (53).

The defendant was usually allowed thirty days to comply with the decision of the court. But if he admitted having sufficient financial means, he was expected to pay immediately (according to R. Isaac ben Abraham, within three days). If the court had decided that the defendant had to take an oath, he had to do so at the next session of the court. (54).

An interesting feature of the medieval legal system is the frequent appointment of a legal representative to represent one party's case in court. Rabbi Meir expressed strong opposition to this practice, but he was unable to stop it altogether, as it was frequently necessary for a married woman - whose husband forbade her to appear in court - or an orphan, to appoint such an attorney. (55).
The practice was so general that a standard text conferring power was drawn up. The attorney was not allowed to compromise or give up his case. He could not present any claims which he knew to be false; he was then responsible to the court as well as to his client. The attorney was responsible for any loss of money caused by his willful neglect of the case (56). The other party could not refuse to answer the attorney's summons: but if a judicial decision had been rendered, it could refuse to abide by it, until the plaintiff had appeared himself in court (57).

The court costs were paid by the litigants. It was generally agreed that both plaintiff and defendant took an equal share in the expenses of the messenger hired to get the Responsum of an eminent rabbi, whenever such a Responsum was needed. But general information about the financial status of the court remains very scanty (58).

No definite information has reached us regarding the sessions of the court. But many details seem to indicate that the seat of the court was the synagogue building. The plaintiff, for instance, presented his claim to the synagogue, where he could stop the prayers to compel the judges to sit on his case. All bans were pronounced in the synagogue. It can therefore be safely assumed that the synagogue was the judicial center of the community. (59).

C) Superior Courts and appeals.

The community, which set up the courts, had given these courts the right to compel both parties to appear before them. But in many cases, the litigants wanted to have their case tried in other court. Such a situation occurred if either one or both litigants wanted their case to be tried out of town, or when they wanted to appear before a superior court, or to appeal their case.
As had been shown, Rabenu Tam asked very strongly that a case be decided in a local, or in the nearest court (60). Rabbi Meir indicates that this regulation was necessary lest the defendant ask for a change of venue: a poor plaintiff would not always be in a position to incur the expenses made necessary, by this change. (61).

Nevertheless, change of venue was sometimes allowed, as for instance, in civil cases - except for disputes over trusts and sales; (62). The defendant had the right to demand that questions of information or assault be judged in another town. (63). This right was also given to the plaintiff, or defendant, who claimed and proved that the court would be prejudiced against him, in view of the high communal status of the opposing party (64). It is interesting to note that R. Eliezer ben Joel haLevi felt that if the party which wanted the case to be tried in a foreign court, offered to cover all expenses, such a transfer of jurisdiction should be authorized. But, according to Mordecai, he never tried to impose this view. (65).

Sometimes, the plaintiff wanted his case to be tried in a higher court - usually called Beth haVaad, or Beth Din haGadol - Unfortunately, the Mordecai never explains what is meant by Beth haVaad. (66). But he tells us that the most eminent scholar of the generation constituted the Beth Din haGadol. (67). Although we find a number of references to such superior courts in contemporary literature, (68), it has been recently argued that, in Mordecai's time, these courts did not exist anymore as central national jurisdictions. (69). Accordingly, the name Beth haVaad was given to the court of some important communities, and, as has been seen, Beth Din haGadol designated only an eminent authority (70). But the fact remains that these institutions were still known during the thirteenth century, and exercised a centralizing influence, either because of the influence of the community or the eminence of the scholar. If medieval German Jewry possessed no central institutions, it had, at least, central personalities.
These superior courts passed over litigations between communities (71). They often reviewed decisions, criticizing or supporting them. (72). In general, eminent rabbis were weary of reviewing decisions, and usually expressed their views in very measured words, except when a gross breach of law had occurred. (73).

Sometimes, also, a local judge, at a loss to decide a case, would refer it to the superior court (74). The lay leaders of the community would occasionally refer a decision to the superior court, when it had met considerable opposition, and put public order in jeopardy (75). One such case is reported, where Rabbi Meir had to decide upon the fitness of a judge! (76). But even then the reviewing judges would be very careful in wording their decision, and asked for the approval of other outstanding authorities - an approval which was not always given. (77).

But the greater part of their activity must have been appeals. In medieval Jewish Germany, the party which appealed could not demand that the case be judged a second time. He had to summon the judges themselves to court, and sue them then for any damage their erroneous decision had caused. According, to Rabbi Meir, this was extremely frequent. If proved wrong, the judges were required to reverse their decision. The problem of the financial responsibility of the judges was of course connected with the appeal procedure. After a long argument, it had been finally decided that the judges were not financially responsible, as they had not asked to pass on the case, and had not volunteered to do so of their own free will. (78).

Only a litigant who originally wanted to bring his case to a superior court and had been compelled to present it to a lower court, was allowed to enter a plea of appeal: he was then given a written statement of the reasons for the court's decision. But if both parties had previously agreed to have their case tried in a local court, this court was under no obligation to deliver any written statement to the litigant who requested it: this, of course, foreclosed any plea of appeal. (79).
But, whether an appeal was granted or not, the decision of the court was immediately effective. If this decision was reversed, financial reparation would be made. (80).

There is no doubt that many cases were tried in foreign courts. This is why a way had to be found, by which the opposing claims could be presented in all fairness to these courts, as the parties were usually unable to appear in person before them. The institution of the receivers of the claims — was the answer to this problem. A special court of three members would be set up, which would register all claims. (81). Both parties were of course asked to agree to such a registration. (82). If one of the litigants was a scholar, and his opponent an ignoramus, the court itself would put in writing the scholar's claims, less the superior court be impressed with the learning expressed in his statement. (83).

D) The weaknesses of the legal system.

As it appears, the medieval legal system was an imposing structure, perfectly equipped to take care of all the problems. Nevertheless, this great legal construction was built on very shaky foundations.

Its most dangerous enemies were not the Gentile powers. The real danger came from the ranks of the Jewish Community itself. Very often, individual members of the community would try to bypass the Jewish Court by applying directly to Christian courts.

The Jewish Community fought an unceasing battle against them. One Takkanah after the other threatened them with excommunication (84). And, as has already been noted (85), the ban against the informers, was one of the few banishes with the ban against polygamy, the only one which met universal acceptance among Askenazi Jews. This is, indeed a true measure of its importance.

Acts of information came from every class of the community:
in one case, the Parnas himself informed against the Rabbi (86) The community tried to stop such activities by the imposition of heavy fines. (87) The court itself compelled the informer to compensate for any damage he had caused. It was held that the status of an informer applied as long as a person threatened to inform, but not after the harm had been done. The community was allowed to refrain the would be informer in any way it chose. But once he had violated the ban, he repaired only the actual damage he had brought about. (88).

Where a Jew had been accused of an act of information, and testimony by Jews was found insufficient to support the charge, and a Gentile witness supported the accusation, the accused man was asked to take an oath before the Gentile, denying the accusation. (89).

But in some instances, the Jewish Court or community could allow a Jewish plaintiff to turn to a Christian court. (90) Three possible cases thus are listed: when a debtor involved fraudulent reasons to refuse payment of a debt (91), in cases of bodily harm, and when one had become an informer in the heat of anger. (92) Rabenu Tam added that the collection of a debt with the help of Gentiles did not constitute a breach of the ban against the informers. (93).

Another weakness of the Jewish legal system is apparent in the penalties it could impose. As has been seen before, it could declare a transgressor unfit to testify. More effective were threats of flagellation and fines (94). The court could also declare publicly that/certain violator of the law was a Rasha, and curse him. (95) It could excommunicate him for a given period. (96); and expel him from the synagogue (97). Sometimes, the court would seize his property, or threaten him with economic boycott. (98) It could also enlist the aid of Gentiles to coerce him, or even have him amputated. (99).
As for informers, Rabbi Meir states that a Jewish court can order their execution, and he approves of such an execution which took place in Spain. But when he was asked to judge a similar case, he suggested different penalties, but not death. (100). In the same spirit, Mordecai, discussing the fate of the convicted murderer, the following Gaonic responsum:

"Today, we cannot do anything to a murderer. We can neither execute or maim, or exile him. But we should have no relation whatsoever with him, or look at him. And he shall be perpetually unfit to testify in court." (101).

There was then a general opposition to the death sentence. In a murder case, the court would therefore order a Ne'kamah – a legal revenge – but no execution (102).

It would appear, in view of the preceding, that the Jewish legal system, despite its well developed structure, was the weak expression of a weak community. It could not recommend severe penalties and was unable to cope with the informer. The strength of the Jewish legal system could then only be an expression of the religious faith of the community. Where this faith was strong, the legal system was strengthened. But where faith was small, the Jewish court was an impotent instrument.

This is why it is rather surprising to see how strongly the Christian world supported the Jewish Court. In many privileges, the jurisdictional powers of the Jewish community are confirmed. In 1236, all German Jewish communities received judicial powers. (103).

The Christian authorities also helped the Jewish courts to collect the fines which had been imposed on the transgressors of the law. This zeal was considerably aided by the prevalent custom to divide the amount of the fines levied between these authorities and the Jewish community. (104).

As interested as this help may have been, it strengthened considerably the Jewish Court, in a time where it lacked almost completely
any serious means of enforcement. This dual influence of the Jewish community and the Christian world made the Jewish legal system possible.

Notes on Chapter VI

1) Sanh. 707, 708, 709: Cf. Frank, loc. cit. p. 76

2) Finkelstein, loc. cit. p. 189-190

3) Isaac bar Sheshet, Responsa, 271. Frank, loc. cit. p. 158

4) M. Sanh. 678:

5) M. Sanh. 709

6) Or Zarua, quoted by Frank, loc. cit. p. 30 n. 7. Ibid. p. 75 n. 1

7) M. Sanh. 677

8) M.E.M. 428 insists that the court be a

Cf. Frank, loc. cit., p. 75 n. 1,2

9) M. Sanh. 709

no mention is made of a third judge.

10) M.B.R.P. 975


12) M. Ket. 129

13) M.B.R.P. 975

Frank, loc. cit., p. 33

14) M.B.R.C. 230, See above chapter IV

15) M.B.R.P. 118 (Ket. 109a). An Asmakhta - a conditional stipulation providing for the payment of a fine, in case of non-fulfillment of a promise - had to be filed before an authoritative court (composed of the leaders of the community).


M.B.R.B. p. 140 n. 17. The synagogue could not be closed during the month of Nisan and the High Holidays. For a general description, see Finkelstein, p. 15-18, 119, 196, 228.

17) Finkelstein, loc. cit., p. 245

18) M. Sanh. 676

19) M. Sanh. 710

20) M. Git. 384
21) The bishop of Cologne decided in 1252, that he alone, and not the Jewish community, would judge cases of theft, forgery, damages, desertion and adultery (Aronius 588).

22) M.B.B. 480 See above Chapter IV

23) M.Git. 304; but he adds that these cases were judged 196 154 126.

24) M.B.B. 81: see chapter on moral conditions.

25) There is no actual reference to such a case. But Mordecai writes that a relative of the murdered man is to be accepted as a fit witness. M. Sanh. 695

26) M. B.B. 564 M.B.R.P. 834

27-32) See later in this chapter and chapters on economic and moral conditions, and on family and religious life.

33) M. Kid. 522

34) M. Git. 221 M.B.R.C. 160

35) M. Kid. 561, Hull 620. See later.

36) M. Ket. 243, R.B.M.L. 241:

37) M.B.R.B. p. 44 no. 296

38) M. Yeb. 101, Sheb. 782, Ket. 207

39) M. Sheb. 760

40) See the long responsum of R. Meir (Lemberg 310) and M. Sanh. 696, where a detailed list of fit and unfit witnesses is given.

41) R.M.R.P. 978

42) M. Sanh. 695, 722

43) M. Sheb. 780: Rabenu Tam invalidated his testimony, Ri, Riba and R. Meir accepted it. The reason they gave was: (Ibid. and Sanh. 694)

44) M. Git. 324 Cf. M.B.R.B. p. 40 n. 284

45) See above and M.B.R.L. 370, Sanh. 688

46) M. Yeb. 17: Cf. Sanh. 718

47) M.B.R.P. 166

48) M.B.K. 53

49) M.B.K. 157