

ATTITUDES TOWARD COMMUNITY PLANNING AS REFLECTED IN
SIGNIFICANT RESPONSES OF HARBENU ASHER BEN YERIEL

by

Donald Joel Peterman

Thesis submitted in partial fulfillment
of the requirements for Ordination

REBREW UNION COLLEGE - JEWISH INSTITUTE OF RELIGION

Cincinnati, Ohio 1977

Referee, Dr. Alexander Guttmann

TABLE OF CONTENTS

CHAPTER	PAGE
Chapter 1. An introductory essay dealing with the origins and nature of rabbinic authority and responsa literature.	1.
Footnotes, Chapter 1	10.
Chapter 2. An historical survey of Jewish and general communities of the Mediterranean Islamic Empire and of Islamic-Christian Spain from the 9th to the 14th centuries.	11.
A sociological reconstruction from primary documents of the Spanish Jewish communities of the late 13th century.	19.
Footnotes, Chapter 2	36.
Chapter 3. A brief biography of Rabbenu Asher with particular emphasis on his responsa, methodology and decision making processes	37.
A synopsis of thirty responsa of Rabbenu Asher, specifically translated for this thesis.	43.
Footnotes, Chapter 3	53.
Chapter 4. An analysis of seven significant responsa reflecting insights on community planning.	54.
Appendix. Discussion of relevant issues suggested by the responsa of Rabbenu Asher for a contemporary Jewish community.	65.
Documentation section. The complete Hebrew texts and English translations of the responsa used in this thesis.	73.
Bibliography.	125.

DIGRESS

This thesis provides an example of a strategy for examining and developing community planning principles. The thesis begins by explaining, in general terms, the origins and nature of rabbinic authority, and by focusing on what I believe to be the rabbinic vehicle for communal planning implementation, the responsa literature. Using an historical - sociological approach I have selected thirty representative responsa from the Responsa collection of Rabbenu Asher ben Yehiel. Following translation, these were analyzed and interpreted in light of the findings of the Cairo Geniza material of Coitein, so as to provide reconstruction of both an historical and a sociological model of Jewish society in 13th century Spain. In addition, a partial list of fundamental community planning principles were culled from Rabbenu Asher's Responsa, these principles for the most part based in the Tenach and the Talmud. Finally, this information was used to project a future communal societal structure.

CHAPTER I

Jewish history, from its earliest beginnings to our present period, can be viewed as an organic whole. Each successive stage can be seen as more fully revealing the nature of the unique force guiding it, a force whose initial vitality is almost universally recognized and whose future course arouses widespread interest. Judaism has shared with the world a belief in one God, who "exercises His will" in human history whenever He chooses, who delivers His people, Israel, from its sufferings and its persecutors, and who directs the progress of all humankind towards a predetermined goal. "God changeth the times and the seasons, removeth kings and setteth up kings" until there shall arise "a kingdom which shall never be destroyed."¹

Jews in the Diaspora, with individual rights curtailed, lived on limited sufferance; defended themselves from attackers; wrestled with a theoretical antisemitism which exploited the obvious contradiction between the avowed mission of Israel and its actual state of dependence upon foreign rulers; and awaited the Messianic Redeemer.

Impelled by the phrase "And ye shall be unto Me a kingdom of priests and a holy nation"², the Jewish consciousness imposed upon itself a regimen of pietism. This pietism seems to be based on the reality that Judaism is closer, fundamentally, to the histories of the peoples of Far Eastern Asia. Like

them, the Jewish people attempted to preserve their heritage of national traditions in their "original" purity, against that process of religious and cultural assimilation to which the people of Europe and the Near East succumbed.

While, to be sure, there were a great number of individual Jews who ceased to be Jewish during this period, Judaism continued and organically grew. This was because of the strong foundation of Jewish national tradition, based on the concept of religious democracy as defined in the book of Deuteronomy 1:13, where Moses says to the Children of Israel: "Get you wise and capable men, who are well-known among your tribes, and I will make them heads over you." The reader may at this point argue that Moses was commanding the Children of Israel to establish a theocracy, in which they would surrender all of their personal freedom in order to be members of the "Yahveh cult", i.e., in order to become Jews. This would be a correct deduction if it were not left to the people to agree, amongst themselves, on suitable representatives. Clearly the Children of Israel were mandated free choice. Yet they were placed in the tantalizingly awesome position of having to make a decision. They could not abstain from committing themselves to the choosing of their leaders. Indeed, they were compelled to commit themselves to the rules and procedures of the community before they could join!

No wonder such a heady moment of personal commitment inspired the Children of Israel, under the guidance of Moses,

to choose a theocracy as their form of government, and a spiritual leader as the ultimate judge and arbitrator for both religious and civic law.

An example of this type of society is found in Goitein's fine description of the Jewish community as depicted in the Cairo Geniza documents, circa 1100 c.e.

Modern democracy functions in an extremely formal and legalistic way. Each and every step, such as the election of representatives or the fixing of a budget, is preceded or accompanied by the exact description of the procedures, by the promulgation of laws and by-laws, and the taking and counting of votes. It lies, however, in the very nature of things that, in reality, masses can be guided only by a comparatively limited number of leaders and that the laws represent the condensed expression of the powers actually ruling a people. The society reflected in the Geniza records (much as similar societies not only under Islam but in contemporary Christendom as well) was far less legalistically minded, or, rather, did not feel the necessity of making laws because it had the safe guidance of the Law of God. The modern historian would commit a grave error if he assumed that legalistic procedures were the only way of securing and safeguarding the participation of the populace in the conduct of its affairs. Although formal decisions taken by public bodies were by no means entirely absent, the Geniza people had many other ways for making its will prevail. It must be conceded that, because of its comparatively limited size, the Jewish community was, to a certain extent, exceptional: everyone could be, and normally was, present in the synagogue when public affairs were discussed and decided upon. Constant surveillance and action by a whole congregation were possible and, as we see, took place regularly. 3

This society was based on law, the rules of which "have their roots in the Bible, their trunk in Talmudic literature and their branches and foliage in the very extensive halakhic writings of the post-Talmudic period." Most of this post-Talmudic Jewish legal literature is divided into three distinct

genres: the literature of commentaries and novellae, the responsa, and the codes (posqim). Among these, the responsa occupy a profoundly important place.

The origins of the responsa as an independent branch of halakhic literature date from the Geonic period. It grew and expanded over the greater part of the Jewish diaspora. Both by its extent - according to some estimates about one quarter million opinions have survived in some written form unto this day - and by its character and nature, this literature constitutes a basic source for the judge when he needs to make a decision, as well as for the scholar when he wishes to broaden and deepen his research. The literature of commentaries and novellae is more supplementary in nature. The work of the codifiers primarily states substantive conclusions of law, generally devoid of an explanation of intent or process. In the responsa the reader is confronted with the living reality of the law. One is presented with the precise facts of the case and the arguments of the parties. One is permitted to follow the great halakhic authority (ies) through the intricacies of each stage of the judicial process, until the final reasoned judgment is reached. By means of the responsa, halakhic scholars continued to monitor their religious democracy and bore the responsibility for the continuing development of Jewish law. These halakhic scholars took great pain to carefully balance the will of their people with the mandated (ordained) Law of God, as they understood it, (i.e., as it was handed down to them

through their teachers), as they clarified existing principles and elaborated new precedents. The fact that these principles and precedents emerged from the consideration of judicial problems arising in everyday life, gave them preference and priority over not only the conclusions found in the literature of commentaries and novellae, but also - in the view of most halakhic scholars - the provisions prescribed in the works of the codifiers.

The litigation among the Jews was generally conducted before local Jewish judges. Those problems which these judges found too difficult to solve themselves were referred to the central halakhic authority of the area, or of a neighboring region. Certain matters, particularly disputes arising between individual litigants and the local communal authority, were brought directly before the great halakhic scholars, who gave their opinions, briefly or at length, on the questions put before them. In the course of these opinions they sought to find a solution which was right and proper, both in terms of law and in terms of the socio-political-religious circumstances and ramifications of the case. The definitive statement of the particular halakhic scholar might have been just another opinion, were it not for the fact that the Jewish community assured itself of a set of halakhic authorities through its educational system of yeshivoth and academies.

This custom of a Talmudic authority in every generation seems to be the guiding principle in the weltanschauung of

the halakhists, which dictates the development of the halakah throughout history. From time to time there emerged new spiritual centers of the Jewish people. When Jabneh became such a center, after the destruction of the Temple, it was mandated by the Rabbis that the court there was to be the central determining authority⁵, and Yose ha-Gelili explained the words, "in those days"⁶, as referring to "a competent judge functioning at the particular time."⁷ The possibility was recognized that future scholars might not be as wise as their predecessors. Nevertheless, these Rabbis established that contemporary scholars and judges should be regarded with the same esteem as those of the past generations, and "whoever is appointed leader of a community, even if he be the least worthy, is to be regarded with the same esteem as the mightiest (halakhic scholar and judge) of earlier generations." Moreover, "Say not, 'How was it that the former days were better than these?' for it is not out of wisdom that you enquire concerning this."⁸ The enduring continuity and vitality of the halakah dictates that the scholars of each generation exercise the authority conferred on them in the cause of its continued creativity and development. To refrain from using such authority or to question it, on the grounds that the wisdom of later scholars does not match that of their precursors, would show a lack of understanding of the entire Jewish legal process.

Lest there be some misunderstanding on the part of the reader, the halakhic authorities did not fabricate their religious

and civil decisions from a capricious conceptualization of justice. Rather, the Halakha and Aggada of the Bible and the Talmud offered, together, a complete and well-defined way of life; strong enough to preserve the people which pursues it in the face of every tempest and calamity history can offer. This Jewish national tradition is the "product of a religious-nationalist vitality which glows in every statement and whose vigor interpenetrates every teaching."⁹ The teachings of Judaism, a mythic, monotheistic folk religion, by the sages of the Mishnah, developed and elaborated upon the theological and ethical elements of the Bible. Adept in the understanding of the psychodynamics of human consciousness, these sages of the Mishnah translated the poetic spiritual genius of the Bible into a language and form within the mental and spiritual grasp of the average human being. Ironically, the sages of the Mishnah were fundamentally ascetics and their lore was ascetic. Their pure asceticism did not distinguish in quality between the observance of the ritual commandments, the pursuit of social justice, and the introspective purging of the heart. To them everything had the fundamental capacity and quality of holiness. In fact,¹⁰ they believed their own times to be close to the Messianic age.

In spite of the temporary nature of the circumstances under which this law was developed, and despite the danger of petrification to which all inherited tradition is exposed, this law was destined to guide and preserve the Jewish people. The authors of the Mishnah, in endowing the people, Israel, with

a wealth of law and precepts, did not intend to provide them with a guide for a prolonged Diaspora. Yet, as indicated above, in every generation Talmudic scholars took up the mantle of the judge and guided their people, using the Codes, with the responsa as their vehicle of communication.

It is for this reason that the responsa serves today as an excellent primary source of the history of the Jews in a great variety of countries and ages. In fact, responsa literature has one major advantage over a variety of other accepted historical sources, such as chronographies, official documents and biographies, since the evidence it affords is historically unbiased, without any specific historical purpose or intent. Moreover, while in general the accepted sources preserve on the whole only important events, the responsa echo the mundane occurrences of daily life of the ordinary person. The folkways, beliefs, dialects, and, of particular importance, details about the lives of villages and townspersons, are exposed in ways which are normally blurred or deleted in historical sources. Since the beginning of modern Jewish historiography the responsa literature has been drawn upon for this purpose. However, it is only during recent decades that monographs have been devoted to individual collections of responsa, which have been analyzed both from the standpoint of their contents as books and from the point of view of the study of a particular subject.

Using these investigative techniques, among others, we shall attempt to discover what it was like to live, as a Jew,

in Spain under first Moslem, and then Christian, domination.
Chapter two begins by dedicating itself towards this end.

FOOTNOTES

1. Daniel 2:44.
2. Exodus 19:6.
3. Goitein, vol. II; pp. 4-5.
4. Elon, p. VII.
5. Sif. Deut., 153.
6. "And thou shalt come unto the priests the Levites, and unto the judge that shall be in those days; and thou shalt inquire; and they shall declare unto thee the sentence of judgment." Deut. 19:9.
7. Sif. Deut., 153; c.f. Rosh ha-Shanah chapter 2, Mishnah a.
8. Rosh ha-Shanah 25b based on Eccles. 7:10; Tosef. R.H. 2:3.
9. Baer, vol. I, p. 4.
10. Ibid., p. 8.

CHAPTER 2

HISTORICAL SURVEY

The first settlement of the Jews in the Iberian Peninsula is lost in the obscurity of the ages. No doubt can exist that it was during a very early historical period. E.H. Lindo suggests that if Tarshish was, as is supposed by many learned writers, the ancient Tartessus, a city of the Iberian Peninsula, some Jews may have established themselves in this part of Europe in the times of King Solomon, upwards of seven centuries before the common era¹. While this early date may in fact be correct, we need not begin our historical survey until a much later date. Our first important information comes not from Spain proper but rather farther east, in Egypt, at the regional headquarters of the Islamic Empire.

In early Islam, as in Roman times, all North Africa was a colonial and provincial area. Egypt had to provide Syria, which was the seat of the caliphal government, as well as northern Arabia, which harbored the holy cities of Islam, with wheat and other victuals just as it had done once for Rome. When the conquering Moslem Arabs pushed westward from Egypt through the whole of North Africa, they were hunting mainly for slaves, gold and other treasures. Those vast stretches of land were, for them, at the beginning, a piece of real estate useful only for quick enrichment and ruthless exploitation. Over the centuries the Moslem west, al-Mashreb, grew to comprise all of North Africa

west of Egypt, including Moslem Sicily, with Andalus, or Spain, forming a subsection.

Near the end of the 10th century the situation around the Mediterranean appeared to be one of great stability: a strong Byzantium dominated the Northeast, a Fatimid Empire which stretched from Syria to the borders of Morocco and Umayyad Spain was being ruled by the powerful viceroy al-Mansur ("The Victorious"), who, in fifty military expeditions, assured an almost unchallenged ascendancy over the Christian principalities of northern Spain and the towns and tribes of most of Morocco. This stability was not destined to last. The Umayyad caliphate disappeared altogether within one generation after the death of al-Mansur (August, 1002). The great Christian reconquest of Spain began to assume unprecedented dimensions. It was checked twice by the mighty Berber kingdoms, the Almoravids and the Almohads, which successively occupied and protected Moslem Spain. In both cases, however, the Berbers lost their vigor after comparatively short periods of glorious achievements. With the fall of Seville, then the capital of Moslem Spain, in November, 1248, the entire Iberian Peninsula again became a Christian domain. Even the small Moslem kingdom of Granada in the southeastern corner of the country, which miraculously survived for another two and a half centuries, was under the suzerainty of the Christian kings of Castilia. All attempts by the Moslem sultans of Morocco to renew the attack on Spain were to no avail. The Straits of Gibraltar, which had formed

a most frequented bridge between Africa and Europe for six hundred years, became a barrier between the two continents by the end of the 13th century.

The war against their Moslem neighbors caused the Christian Spaniards to become at once the most tolerant and the most fanatical people in Medieval Christendom. The political objectives of the Reconquest opened up to the Jews broad opportunities for outwardly directed growth, but its religious motivations aroused the zeal of the Christians and threatened the internal religio-ethnic existence of the Jews. The Jews of Spain found themselves caught between two great religious and political powers, Christianity and Islam. During this entire period, stretching from the 7th to the 15th century, all the nations involved were committed to a social order founded upon political and religious tenets, whose bases were accepted by their adherent groups as beyond question.

From the early period of Christian-Moslem hostilities it seems that land was the basis of the economy and social position of the Jews. Shortly after 985 c.e. we have abundant evidence of Jewish ownership of landed property in Barcelona, and its environs, and through out Catalonia. The Jews bought, sold and exchanged parcels of land and leased or rented them out under the terms of existing laws. Most of the Jewish estates lay close to the city. The Jews apparently did not buy land merely as an investment, but cultivated their fields and vineyards themselves.

Both Latin and Hebrew documents, of the 10th century and later, speak of significant Jewish holdings of land around the city of Leon. The earliest laws of the kingdom (1017-1020) provide that if a free tenant wishes to sell a house he had built on land owned by someone else, the property was to be assessed and its price fixed by four assessors, two Christians and two Jews. This law seems to indicate that the Jews and the Christians in the rural communities had common and equal rights. However, Hebrew sources seem to indicate that the position of the Jews in Leon was one of subjugation. We are told that Leon had an organized Jewish community, whose scribes were well versed in Jewish law. The community was forced to pay a collective tax to the crown and also had its own charter of royal privileges, which was probably extended to the other Jews of the realm.

It should not be assumed that the Jews were treated as free citizens in either the Christian or the Moslem dominated areas of Spain. As proof of this, the old Catalanian code of law, the Usatges de Barcelona, compiled between 1053 and 1071 clearly provided that the wergild to be paid for the killing or injury of a Jew was to be arbitrarily fixed at the whim of the count. During this period we find that all over Spain the Jews were dependent upon kings and lords for protection. When this source of safety failed they were exposed to attack from all quarters. A tragic illustration of this dependence upon the crown for protection may be drawn from the civil riots in

Mercatello, following the death of King Sancho the Great in 1035. After his death the inhabitants of Castrojeriz overran the royal mansion. Before the end of their rampage they had killed four officials of the crown, sixty Jews and destroyed the Jewish settlement in the vicinity of the royal palace. Interestingly, the other residents, both Christians and Moslems, were not harmed but merely compelled to move to Castrojeriz. The significance of the event is clear, a revolt against the crown strikes at the Jews, the property of the crown. To make matters even less tolerable, the French knights who came to the aid of the Christian Spaniards against the Moslems, brought with them great expertise in anti-Jewish excesses. As early as 1066 they had been warned by Pope Alexander II to refrain from acts of violence against the Jews. Luckily the treatment of Jews soon came to be dictated by practical economic and political concerns.

The Jewish population of Moslem Spain was numerically the largest in Europe. While there were sound political and religious reasons for the Christians to force the Moslems out of Spain, it was found to be advantageous to keep the Jewish population relatively intact. Constant warfare had left the land in ruins, and it was necessary to repopulate the devastated areas and to develop commerce for the cities. The Christians' burgher class, drawn from the military knighthood and the oppressed Christian peasantry, grew very slowly. Therefore, it was essential to use the Jews who were already living in

the cities. These Jews were skilled in commerce and handicraft, and able, with a little coercion, to advance the Christian kings and lords huge sums of money with which to finance their military campaigns. It seems natural that the administrative and diplomatic skills of the Jews would also be put to good use. The Christian kings needed secretaries proficient in Arabic. The Jews were familiar with the nature of the conquered territory and its administration, and knew the language and customs of its inhabitants. In addition to these political considerations, the Christian kings were impressed by the highly developed civilization they found in the Arab lands, and were inclined to seek advisors and aides brought up in the milieu. Apparently the use of Jews as high officials quickly became common within the new Christian kingdoms. As early as 1081 we find that Pope Gregory VII warned Alfonso VI not to appoint Jews to positions of authority and command over Christians. Evidently this warning was not heeded by the Christian kings, for Jewish court dignitaries continued to grow in power and influence over the next couple of centuries. Unfortunately, this increase in political and economic power quickly corrupted the Jewish aristocracy, who began to assimilate into their own value systems the extreme cruelty and racism which flourished in wartorn Spain. The Jewish court dignitaries, orthodox and rational in their faith, regarded as their duty the complete annihilation of Karaite Sectarianism. Much earlier, under Moslem rule, the Karaites had been forced to withdraw to the border regions adjoining

the Christian territories, and eventually had to seek refuge in the fortress towns of Castile. The relentless persecution by three generations of Jewish courtiers in the service of Alfonso VI, Alfonso VII and Alfonso VIII, overtook the Karaites in their last refuge and succeeded in destroying the sect with the aid of the governing powers.

While some Jews were becoming powerful and wealthy as a result of the centuries of warfare between the Christians and the Moslems, most Jews were suffering tragic losses. Judah Halevi personally witnessed the utter destruction of Jewish communities at the hands of the plundering Christian reconquerors. He also saw streams of Jewish refugees fleeing before the sword of the Almoravides. In the following poem he magnificently captures the heart rending genocide:

Between the hosts of Seir (Christians) and Kedar (Moslems),
my host is lost; Israel's host vanishes. They wage their
wars and we fall when they fall - thus it was ever in
Israel. ... In a city of merchant princes, among whom are
threescore mighty men of Israel, when the angel tore the
houses down, he did not then pass over the homes of the
sons of Israel. From God issued the decree to destroy a
mother city in Israel. ... And on the day the city was
taken by assault, the vengeance of the sons of Seir was
wrecked upon Israel, and their streets were filled with
the slain. Philistines (Berbers) retreat and Edomites
(Christians) plunder, some in vehicles and some on horses.
... The foes battle like savage beasts, the princes of
Eliphaz (Christians) with the chieftains of Nabaioth (Moslems),
and terrorized between them are the young lambs. 3

The transition of Spanish Jewry from Moslem rule to Christian domination shook Jewish life deeply. Relatively few Jews were able to utilize the changing situation to advantage, to circulate

as traders between warring camps, at times even to traffic in human beings, and to engage in the ransoming of captives, whether for profit or out of genuine humanitarian and pious motives. Later Arab historians speak, with obvious exaggeration, of large numbers of Jews fighting side by side with the Christians in the great decisive battles. To be sure, there were, even in the 14th century, instances of Jewish inhabitants of frontier towns going to battle against the Moslem enemy by the side of the local citizens' militia. But the fact of the matter is that Jewish participation in the conflict was limited to the defense of their own dwelling places and districts. They did not join either side, but remained throughout a harassed and suffering community caught between the two warring camps.

There is no doubt but that the status of the Jews of Spain in the 13th century was superior to that of their brethren in the rest of Europe, who were exposed to constant plunder and violence. Yet even in Spain they felt a sense of insecurity and a consciousness of a state of internal war. "The Jews sat on the crater of a volcano seething with religious and nationalist tensions. It erupted from time to time, prompted by internal⁴ strife and foreign war and by the agitation of the Church." Dr. Ellis Rivkin succinctly traces the last centuries of the Jewish experience in Medieval Spain. He suggests that in the 12th and 13th centuries the Jews had risen to grand political power and financial security, despite the ideological cleft separating Judaism from Christianity. This condition rapidly

deteriorated in the 14th century. The year 1391 brought anti-Jewish pogroms. The restrictive legislation of 1412-15 humiliated, degraded and impoverished the Jews. They were further disoriented and demoralized by the Debates of Tortosa, and finally expelled in 1492.⁵

Now that we have constructed an historical skeleton of the Jewish experience in both Moslem and Christian Spain, I would like to flesh out our understanding of this dynamic period by describing the Jewish communal world as it appears through an analysis of the relevant primary documents. Once this task is completed we should be adequately prepared for our discussion of the responsa of Rabbenu Asher.

SOCIOLOGICAL RECONSTRUCTION

The Mediterranean Islamic society of the High Middle Ages was essentially urban. The Geniza records, as analyzed by Goitein, indicate that this society was divided into roughly two distinct classes: an upper class of businessmen such as merchants trading in spices, textiles or jewelry, and bankers; and a lower class made up of manual laborers and artisans such as weavers, bloodletters, tanners and cobblers. The government servants, religious scholars and divines did not form a well-defined social class, and the peasants did not belong to society at all. These social class differentiations, marked as they were, had very little in common with the watertight compartments dividing the contemporaneous world of feudalism.

They seemed more akin to that which prevails in our modern society, where the division into classes is a matter of fact and etiquette, not of laws and institutions.

This does not mean that this society was rootless and cut off from the soil. Townspeople were far less removed from the land than our own urban population is today. As the Geniza records indicate, not only the rich, but even people of modest means often possessed farming lands and administered them personally. Many lived in little towns in the vicinity of their fields. Industries, such as the production of oil, cheese, wine and wax, were situated in the districts of olive growing, sheep breeding, viniculture, and bee keeping; and, similarly, the great industrial crops such as flax, silk and wool were often worked on the spot into raw materials, or even into finished products. Thus, the medieval townspeople was, as a rule, never far away from nature, and constantly involved in the primary processes of production.

The Christians and Jews living under Islam during the High Middle Ages formed communities of a very specific character. They were not citizens of the principalities in which they happened to live but were "protected" subjects. That is, their life, property and honor were safeguarded, and the free exercise of their religion was permitted, as long as they paid their poll tax and submitted humbly to the restrictions imposed on them by Islam. The administration of their own affairs was left up to themselves. They formed a state, not only within

a state, but beyond the state, because they owed loyalty to the heads and to the central bodies of their respective denominations, even though these were found in a foreign, or even hostile, country. In addition, a caliph or sultan ruling over a considerable number of non-Moslems, or even a governmental official in charge of a city or a smaller locality, found it advantageous to recognize a representative dignitary, or one or more notables who would form a connecting link between a subject minority and himself, who could be held responsible whenever convenient. The ecumenical, territorial, and local religious and semi-religious authorities of the various denominations thus also served, as a rule, as their official or semi-official secular heads. The ecumenical or territorial leaders would appoint, or confirm the election of, local representatives wielding both religious and secular authority.

In one, and perhaps the most important, respect the Jewish community was even stronger than the amorphous masses of Moslems. It had carried over from Hellenistic and Roman times, civic forms of communal organizations which gave the individual member ample opportunity to be active in the life of the congregation. The pre-Christian Jewish congregation grew out of the unique needs of a religion that had abolished sacrifices and offerings everywhere except in the Temple in Jerusalem. Prayer, as well as the study of the Holy Scriptures and the religious law, became a concern for everyone and had to be organized on a local basis. Thus, there arose the synagogue

(literally, the assembly). When Palestine and most of the Near East came under Greek, and later Roman, domination, the trappings of secular corporation were added to what had originally been a brotherhood of intrinsically religious character. The result was a public institution of enormous vitality, developing in many different shades within Judaism. This asset of a long-standing tradition was enhanced by the tangible effect that the rise of a Middle Eastern bourgeoisie, in early Islamic times, had on the non-Moslem population. Jews now belonged largely to the middle class of merchants, skilled artisans, government officials and agents, and to the very prominent medical profession. These well-educated and experienced individuals took a lively interest in the affairs of their community, and earnestly strove for the honors bestowed on meritorious members. However, with this rise in social standing, there often prevailed a marked tension between the notables, who derived their influential position in the community from their connection with the government or from their riches, and the rank and file, which insisted on having its full share in the decisions affecting the activities of the Synagogue.

The concerns of the community were manifold. There were questions of religious doctrine and ritual practice. Similarly, the upkeep of the houses of worship and the seats of religious learning, as well as the appointment and payment of the various community officials, required much attention. Furthermore, law in those days was personal rather than territorial. An

individual was judged according to the law of the denomination to which he belonged. Almost the entire field of family law, and also cases of inheritance and commercial transactions, were handled by the courts of the various religious communities. Criminal law was the preserve of the state, although, as we shall see further on, this did not remain completely true for Spain, and certainly is contrary to fact in the beginning of the 14th century as reflected in the responsa of Habbenu Asher ben Yehiel.

Since Moslem judicial organization did not know the institution of a public prosecutor, it was left to the officials of the Synagogue to seek redress in cases of infringement on the rights of their coreligionists, or of dissention within their own flock. It seems natural that Jews often applied to government courts, sometimes even in cases of communal strife and dissention arising from their own religious tenets or rituals. This turning to government jurisdiction resulted in an interesting interplay among the various laws invoked. As we shall see later, this practice of taking communal disputes to the government was soon frowned upon by Jewish leaders. However, in everyday life the ordinary citizen arranged his affairs before the denominational courts, which were less expensive and presumably less corrupt. In retrospect, judicial autonomy was one of the most essential aspects of Jewish life in the countries of Islam during the High Middle Ages.

The relative independence of the law of the state (which

was, as we have seen, essentially religious in nature) was paralleled by, and partially had its origins in, the freedom of economy from state interference. The law of Islam, as that of Judaism, was mainly the creation of scholars of the middle class, who were economically independent and, as a rule, not in the service of any government. The 8th and 9th centuries had witnessed the rise of a large and powerful merchant class all over the Middle East. During the 10th through the 12th centuries, this class was a main bearer of Moslem civilization, including its Jewish enclave. At the same time, the Italian and other Mediterranean merchants on the European shores appeared on the economic scene. By now a vigorous merchant class was active on both sides of the Mediterranean and created an atmosphere of unity, despite the constant wars and political upheavals. Owing to the relatively great freedom of the economy from state interference, individuals were less involved with the states of aggressive antagonism between the various rulers. This state of affairs was recognized by a keen contemporary observer, the Spanish traveler Ibn Jubayr. After describing how, at the time of heavy fighting between Moslems and Christians, Moslem caravans passed safely through Crusaders' territory or moved to seaports held by Christians, he concluded: "Likewise, in Moslem territory, none of the Christian merchants is forbidden entrance or is molested. The Christians impose a tax on the Moslems in their land, which gives them utmost security, while the Christian merchants also pay (customs) for their goods in

the land of the Moslems. Reciprocity prevails and equal treatment in all respects. The warriors are engaged in their wars, while the people are at ease." ⁶ Thus men, goods, money and books enjoyed relatively free trade throughout the Mediterranean area. In many respects, the area resembled a free-trade community. The treatment of foreigners, as a rule, was remarkably liberal. The close connection between all parts of the Jewish diaspora, expressed in contributions to, and spiritual and organizational dependence upon, ecumenical religious authorities in faraway countries was not regarded, by the governments of the various states concerned, as an infringement on their sovereignty. The mainstay of the Jewish faith and people was the local community, centering on one or two synagogues. It was called "the holy congregation," a post-biblical version of "a kingdom of priests and a holy nation." ⁷ There was a strong feeling that next to God, as revealed in His law, it was the people that wielded the highest authority. The bearers of dignities regarded themselves as installed by both. The communal officials would be chosen, and resolutions adopted, by the community as a whole, not only by the leading notables; although the latter, naturally, made the main decisions. An individual Jew who considered himself wronged would appeal to "Israel," that is, the local congregation assembled for prayer, a custom of deep significance for both legal procedure and life in the synagogue. The local community acted as judge, or rather as jury, particularly when it was small and without

a spiritual leader of higher rank.

In order to understand more completely these Jewish communities, the factors that assigned an individual to his place within the particular local society must be probed. First of all, his origin, his family, was of tantamount importance. When he was of "the good people," "the noble families," "the illustrious houses," he would not lose face, even if his personal misfortune deprived him of the material well-being normally enjoyed by respectable families. Thus, in a more indirect way, wealth played a decisive role in the formation of the various ranks of society. Religiosity and learnedness - these two qualities were interconnected in medieval Judaism - were other decisive factors. At first impression, this fact may seem strange to the modern reader. It should be remembered, however, that religious practice and theory enjoyed a position in medieval life comparable to adherence to communism in contemporary Russia or China. To be a fervent believer in, and a gifted expounder of, the ruling creed was a great title of honor and an indispensable qualification for public leadership. Besides its wealth, it was the number of pious and scholarly members adorning it, which determined the prestige of a family. Integrity and sound business practices were other factors enhancing the social status of a family. Naturally these are qualities held in esteem everywhere. However, they were particularly valued by a cosmopolitan society constantly on the move and facing many risks and much incertitude. Last,

but not least, liberal spending, coupled with the readiness to exert oneself for the public welfare or for people seeking help, determined the social prestige of a person and of his clan. Generations after a man had died, his generosity towards the scholars and the needy still would be publicly eulogized during memorial services.

The most impressive aspect of Jewish philanthropy, as reflected in the Geniza record, is its ecumenical character. The principle, "charity begins at home," or, as the Hebrew saying has it, "the poor of your town have precedence over those of another," was regarded as a religious injunction. The very existence of such an injunction shows that at the time it was pronounced, much was being done for the needy outside the local community. The character of the Jewish community, or perhaps of Mediterranean society in general, precluded parochialism. In the first place, the maintenance of the ecumenical seats of learning in Jerusalem and Baghdad was a major concern for all Jewish communities, large and small. Local institutions of higher learning, or even individual scholars, could, likewise, count on the support of friends in other countries. Presents made to a scholar were regarded as equivalent to the offerings on the altar in the ancient Temple in Jerusalem. It was the quality of the scholar, not his whereabouts, which mattered.

Local variations, as well as consideration of style, entailed differences in the series of groups described as

forming a congregation and in the order in which they appeared. The following list presents a cross section of the Geniza material preserved:

1. judges and scholars in general
2. the elders, usually meaning "the renowned elders," that is, the acknowledged community leaders
3. other notables, normally persons bearing one or more honorific titles
4. parnasim, the honorary or paid officials in charge of the public welfare services
5. cantors
6. heads of the families (usually praised for their generous giving)
7. teachers and scribes
8. young men ("in the splendor of their appearance")
9. the rest of the community, minors and of age (i.e., children and women)
10. sometimes, important professional groups, like government officials, physicians, representatives of merchants or merchants in general, would be
8
mentioned separately.

Now that we have listed the various subgroups mentioned as composite parts of the Jewish communities of the Islamic Middle Ages, let us examine some of these groups and their functions in some greater detail.

In our civilization, people study in order to acquire

knowledge and to gain employment. In the society reflected in the Geniza records, study had an additional function: it was an act of devotion, it was worship. To give as much time as possible to the reading and discussion of holy texts was religiously meritorious, and the reputation of being versed in them was a mark of honor, coveted not only by members of the professional class, but by any respectable citizen. And no one could aspire to communal leadership without being distinguished by a certain degree of erudition.

This popular attitude toward learning and scholarship inculcated by the biblical commandment: "this book of the Torah shall never depart out of your mouth, but you shall study it day and night"⁹ had a salutary effect on the whole process of Jewish education. Parents everywhere were bound by religious injunctions and the pressure of society to send their children to school, at least for a number of years. The community made strenuous efforts to provide education for orphans and the children of the poor. Adults tried to devote at least a fraction of their spare time to the regular study of the sources of their religion. The maintenance of the higher seats of learning was a concern for all, and donations for them were solicited and collected in countries far away, just as Jews of Spain and North Africa contributed regularly to the upkeep of the academies of Baghdad.

Professional scholars normally served the community in one capacity or another. In principle, however, it was not

public service that distinguished them and made them eligible for emoluments from the community chest and gifts from private persons, but the very fact that they devoted time to study which others would use for worldly gain. It was for this reason that the community regarded it as a sacred duty to contribute to their upkeep. In fact, the legal definition of a town, as opposed to a village, in Jewish law, is that it was a place that had at least ten batlanim, persons who do not work, which means who renounced or reduced their profitable occupations for the benefit of (study), service to the community and maintenance of a minyan (forum of ten men) to insure that full public services could be held in the synagogue. 10

The duties of the elders during the High Middle Ages in both Islam and Christendom, as culled from the Cairo Geniza, is as follows:

1. sit with the head of the congregation as judges of the court
2. share with the head of the congregation the burden of all the needs of the community
3. support the head of the congregation in the enforcement of religious duties
4. help the head of the congregation protect public morality
5. deal appropriately with those who live in a way disapproved by religion
6. consider the letters addressed by the heads of the

academy to the community and answer them after
¹¹
 deliberation in the general assembly.

Social services, in our day the responsibility of federal, state and local authorities, had to be provided in the Medieval period by the synagogue. The education of children whose parents or other relatives were unable to bear the costs, the care of orphans and widows, of the poor and the old, the ill and the disabled, needy travelers and foreigners, and last but not least, the ransoming of captives - all were works of charity, expected to be carried out by each denomination for its own members. This entailed much organization, often transcending the limits of a locality or even a country, and required a spirit of devotion to the common good, which made for closely knit Jewish communities despite wide geographical dispersion.

The field of social services was the one in which respectable members of the community who did not excel in scholarship found rich opportunity for making their contribution to the common good. We find well-to-do and influential persons serving as parnasim and beadles. The parnas of the Geniza period differed greatly from his successor in European Jewry. He was not a leader or a president of a congregation. Rather, he was a communal official of lower rank who served mostly in an honorary capacity, but who occasionally was in receipt of
¹²
 remuneration. Goitein reports that all the Geniza sources point to the fact that in each congregation several parnasim were active simultaneously, a circumstance in accordance with

Jewish law which required that no public office involved in the handling of money should be held by fewer than two
 13
 persons.

The extraordinary position of the cantor in the High Middle Ages finds its explanation in the spiritual situation of the time. Life was dominated by religion and had become very austere. Therefore, the adornments of life itself had to take refuge in the places of worship. It was there that music and poetry found unlimited scope for realization. The Jewish service was extended in length on Sabbaths, holidays and special occasions, and even on workdays. The official service was freely expanded and interspersed with poetical accretions, often the work of a local hazzan or poet. The texts of the liturgy were chanted by different participants, or responsively by two or more singers, each of whom strived to show his musical talents. Jewish sacred law provided that every knowledgeable layman was fit to lead a community in prayer, but the Geniza papers show that even small communities had a professional cantor, and often more than one.

"The wandering scholars" are a phenomenon familiar to any student of the medieval history of Christian Europe. In Islam, the "seeking of knowledge," resulted in extensive travels. In Judaism, traveling for the sake of study was common even in antiquity, when Palestine formed the spiritual center for a diaspora spread over the entire civilized world. Around 200 c.e., Babylonia, later known as Iraq, became another

great center of learning which, in the course of time, outstripped Palestine. Commuting between these two centers was a constant feature of the pursuit of knowledge during the early Middle Ages. Later on, the 'academies' continued to be the goals of any scholar who could afford, and who dared, to make the journey, even if he himself was already an acknowledged authority.

Linguistic barriers did not deter travelers in search of knowledge. Latin in Western Europe, classical Arabic in the countries of Islam and Hebrew in the Jewish houses of learning, made it possible for foreigners to take part anywhere in classes, or even to lead them.

The women of the Medieval Jewish community were the workers par excellence. Each married woman was expected to engage in some work in addition to her household chores. Therefore, the marriage contracts often stated whether a wife's earnings belonged to her husband (who was under the obligation to provide her with all her needs), or whether she would be allowed to retain them. When a husband went abroad, he would earmark or deposit sums for his wife, from which she would pay rent, taxes, and her household expenditures, but would stipulate expressly not to lay claim on any earnings made by her "through work and spinning."

It is the express contention of this author that the communal description, culled primarily from Goitein's magnificent analysis of the Cairo Geniza, is precisely the same

type of Jewish community which thrived in both Moslem and Christian Spain, and represents a precise overview of the world described in the responsa of Rabbenu Asher ben Yehiel, as will be evidenced in the following chapters. Perhaps, before examining the life, works and responsa of Rabbenu Asher as they pertain to communal planning and organization, it would be wise to acquaint the reader with a few salient particularities of the Spanish Jewish communal world.

Even the largest Jewish communities in Spain, which were undoubtedly also the largest in Europe, never consisted of more than 200 to 400 families! Baer estimates that the total Jewish population of Spain during the late 13th century was¹⁴ somewhat under 10,000 tax paying families.

While the functioning offices and communal positions, as described above, are very similar, some of the names of these positions are different in Christian Spain. At the head of the communal organization (Heb. kahal) stood the elders (viejos) or councilmen (Sp. adelantados, Heb. mukademin) and the judges (Heb. dayyanim). The rab appointed by the crown over municipalities (aljamas) and provinces also appears to have exercised primarily judicial functions. The bedin (also called albedinus, alvedi and vedi) found in northern Castile and in Aragon, was both a public prosecutor and police chief. Originally this office enjoyed high social standing, but its status declined in the 14th century. The administrative machinery of the community was still imperfect. In the aljamas, as in

the Christian municipalities, certain traditions of the Moslem period still prevailed, as is attested to both by the names and the functions of the various offices. The dayyan (judge) wielded the same decisive authority in the aljama as the alcalde did in the municipality. It was not necessary for him to be a great Talmudic scholar, but he was required to consult the local rabbinical authorities before passing judgment. It appears, however, that this precaution was often neglected. The rabbis were also authorized, when necessary, to take drastic measures to maintain religious discipline. The council of elders, composed of representatives of the aristocratic families, directed the affairs of the community, including the administration of taxes and the law, with no clear demarcation existing between their authority and the prerogatives of the dayyanim. However, whereas the elders held their seats on the council by virtue of their lineage, the dayyanim were appointed for an indefinite term. Only towards the end of the 13th century did the practices of appointing new dayyanim annually come into vogue.

FOOTNOTES

1. Lindo, p. 143.
2. Baer, vol. 1, p. 40.
3. Ibid., pp. 69-70.
4. Ibid., p. 181.
5. Rivkin, p. 12.
6. Goitein, vol. 1, pp. 69-70.
7. Exodus 19:6
8. Goitein, vol. 2, p. 42.
9. Joshua 1:8, incorporated in the daily prayers.
10. Mishnah Megillah 1:3.
11. Goitein, vol. 2, p. 58.
12. Ibid., p. 79.
13. Mishnah Sheqalim 5:2.
14. Baer, vol. 1, pp. 189-196.
15. Ibid., pp. 212-213.

CHAPTER 3

Early in the 14th century, approximately 1305 - 28, the incumbent of the Rabbinate in the leading Jewish community of Castile, Toledo, Spain, was Rabbenu Asher ben Yehiel. Rabbenu Asher, the foremost Talmudist of his age, is belovedly known by students of Talmud and responsa as the Hosh (ה"ח), Rabbenu Asher, our master Asher or Asheri. His first teachers were from his prominent scholarly family, his elder brother and his father, one of the Hasidei Ashkenaz and a follower of Judah ben Samuel he-Hasid. Young Asher, born in Cologne in 1250, continued his studies in Troyes, Cologne and Coblenz. Sometime later he traveled to Worms to study with his main teacher and mentor, Rabbi Meir ben Baruch of Rothenburg, who had been appointed Rabbi of Worms in 1281.

Rabbenu Asher proved to be an excellent student. So much so, that he was soon appointed by Rabbi Meir to the local bet-din. While Asher was becoming the most prominent disciple of Rabbi Meir, the local secular government was plotting to politically destroy both scholars, and strip each of them of their sizable fortunes. Rabbenu Asher witnessed the arrest and imprisonment of his beloved teacher Rabbi Meir. In his stead, Rabbenu Asher became the acknowledged leader of German Jewry and headed the unsuccessful efforts to obtain his master's release. Towards this end, Asher was prepared to contribute a considerable portion of his assets. In addition, the Jewish

German communal world was collapsing around him. In 1298 the Rindfleisch massacres destroyed many of the Jewish communities in Germany. Rabbenu Asher worked selflessly and indefatigably to help mend the resulting disruption of family and communal life. Fearing a similar fate to that of Rabbi Meir, Rabbenu Asher in 1303, left his home, his fortune and his position of high Rabbinic authority.

Rabbenu Asher travelled first through Provence. There he witnessed a Jewish community which was "highly cultured, polished and sagacious ", yet only a few scattered individuals "had their hearts firmly planted in the Torah." He remarked to those few pious, learned Jews: "'Why don't you take courage and step into the breach to prevent Truth from being cast to the ground?', and they said to me that they would not be able to accomplish anything without the notables of the land."¹ Asher proceeded to Montellier and was received with great honor. There too he reflected:

It is a great city in Israel, from which Torah emanates to all who seek it; but 'her princes are like harts' (Lamentations 1:6); they hide their faces and fail to remove the stumbling blocks. Everyman, therefore, does as he pleases with none to tell him, 'What is it that you are doing?' Such license is the fault of the men in authority, and the Lord will call the elders and princes of his people to account, for it is clear that they have the power to prevent this. ²

Sometime later Rabbenu Asher reached Barcelona. His appraisal of the Jewish world he found is expressed in a letter of encouragement written to Abba Mari Astruc:

My heart tells me that words of admonition will not correct them, for they (the Jews of the area) are deeply rooted in sin and heresy, and it is difficult for them to rid themselves of it. Nor is it a problem involving only one or two individuals, for the root bearing gall and wormwood has spread to every city. Even those who revere God's word, nevertheless shield their relatives. Those who now carry on their activity secretly will soon dare come out in the open and will brazenly declare, "We have the upper hand, who dares to come and lord it over the disciples of Aristotle in their own homes?" Israel will split into sects even as the kingdom of the house of David did in ancient times. . . . Let a date be fixed for a gathering of all the leaders of the people in one of the large cities, and Rabbi Solomon (ben Abraham Adret) will also delegate to it some of the notables of this land; and with the help of his pleasing words and mellow council a godly plan maybe devised for turning the hearts of all Israel as one to the Law of Moses without neglecting, at certain times, the other sciences. 3

The above recommendation regards the entire contemporary conflict concerning the study of philosophy, not as a local problem, but, rather, as one which transcends regional and political boundaries. The tolerant approach to secular learning is not at all characteristic of Rabbenu Asher. He spent the rest of his life (till 1328 (9?)) fighting what he considered the destructive nature of philosophy, especially as brilliantly espoused by Maimonides approximately one hundred years earlier.

Rabbenu Asher, by now the Rabbi of Toledo, at the invitation of the Jewish pietists of Castile, supported a ban proposed by Solomon Adret that no Jew should study philosophy who was under the age of 25. Speaking on the study of philosophy, Rabbenu Asher bragged: "Although I know nothing of their secular wisdom, blessed be the Merciful God who spared me

from it; examples and evidences come along for the purpose of diverting man from the fear of God and his ⁴Torah." In general, Rabbenu Asher was a tough-minded individualist, zealously defending his own "tradition" of Jewish law and its incumbent translation into Jewish communal practice. He criticized those who used positions of influence at court for their own advantage. He opposed customs which were influenced by the Christian environment. In particular he fought against granting equal rights of inheritance to husband and wife (known as community property in modern law), and the practice of primogeniture as practiced among the nobility. He disapproved of chaining and imprisoning debtors, as well as compelling a husband to grant his wife a divorce upon the declaration of her unwillingness to live with him.

Utterly different though he was from the Spanish Jews, Rabbenu Asher was soon recognized not only formally, but in fact, as the leading religious authority of the entire country. The judges and aljamas brought their difficult cases to him. Queen Maria de Molina commanded him to decide matters too difficult for the authorities. The entry of this man, whose whole life was dedicated to learning and piety, into the oligarchy of court grandees who dominated the Jewish community, seemed to have been a novel phenomenon in Castile. In flagrant cases submitted to him, Rabbenu Asher's responsa were couched not in the style of a quiet pietist and retiring student, but rather resembled the decisions and commands given

by the supreme political and judicial authority of the country.

During the extent of his lifetime, Rabbenu Asher proved to be a prolific scholar. He wrote a commentary on Zera'im, the first order of the Mishnah, with the exception of Berakot, as well as of Toharot (sixth order), Nedarim (third order) and Tamid. He composed glosses like those of the Tosafot on several Talmudic treatises. He is best known for his abstract of Talmudic law, Fiskei ha-Rosh (also called Hilkhot ha-Rosh and Sefer ha-Ashrei), modeled on Alfasi's Sefer ha-Halakhot. Here, he omitted the haggadic portions of the Talmud, as well as all the laws not practiced outside of Palestine. In his Fiskei ha-Rosh, Rabbenu Asher argued for the rule of hilkheta ke-vatra'e (i.e., that the law is according to later halakhic scholars). He suggested "all matters not elucidated in the Talmud, as compiled by Rav Ashi and Ravina, may be controverted and reconstructed even when the statements of the geonim are dissented from . . . The statements of later scholars carry primary authority because they knew the reasoning of earlier scholars, as well as their own, and took it into consideration in making their decisions." ⁵ The Fiskei ha-Rosh quickly superseded Alfasi's work and became so popular that it is printed in virtually every edition of the Talmud, under the title of Rabbenu Asher, and was one of the three opinions weighed by Josheph Caro, along with that of Alfasi and Maimonides, in the construction of the Shulhan Arukh.

In addition to the works ascribed above, Rabbenu Asher

also penned more than 1,000 responsa arranged in 108 chapters, subdivided into sections. Our earlier discussion of the judicial autonomy of the Spanish Jewish community explains why the vast majority of the responsa of Rabbenu Asher are concerned with mishpat ivri (civil law). In fact, 17% deal with matters of family law and almost 63% with civil, criminal and administrative law. The remaining one-fifth deal with questions involving the Orah Haim and Yoreah Deah (blessings, festivals, prohibited foods, niddah, miqvaot and the like).⁶ To be more precise, the problems which the circumstances of the Spanish Exile posed are deeply reflected in the responsa of Rabbenu Asher. Communal life, Jewish trade and economy, public administrative organization within the framework of the community and its governmental and electoral arrangements, the relations of the Jewish diaspora with the alien environment and the dominant government authority - all these, from time to time, gave rise to problems. For some of these problems no express solution was to be found in existing Jewish law. For others, a new or different solution had to be found in order to fit the social milieu. The specialty, the difficulty and novelty of these problems, coupled with the inherent conflict of interests between the parties to the proceedings, led, in the main, to the submission of such problems to Rabbenu Asher, the central halakhic authority of his time, for his opinions and a final decision.

For the purposes of examining communal structure and the

formation of a rabbinic view of Jewish communal planning. I have chosen to present thirty of the responsa of Rabbenu Asher. The reader will find near the end of this thesis both the Hebrew and this author's English translations of the said thirty Responsa. There, in the documentation section, the responsa are organized as they appear in the printed collected editions of the responsa. However, in the remainder of this chapter, I would like to acquaint the reader with the responsa by presenting them thematically. In order to facilitate our examination of the particularly relevant responsa in the following chapter, I would like here to present a few sentence synopsis of each responsum indicating, without comment at this point, which passages, if any, are quoted from the Tanach or the Talmud in the presentation of the question or the answer. In every case I will refer the reader, using the pagination of this thesis, to complete English text.

METHOD OF GENERAL DECISION MAKING

1

Asher accepts the talmudic rule that it is better to let people sin in ignorance rather than to tell them of their sin, when one is certain they will not mend thier ways, and consequently force them to sin purposefully.

Quote used:

Betsa 30a:

The addition to the fast of Yom Kippur (for more than 24 hours) is from the Scriptures yet women eat and drink until dark (on erev Yom Kippur so that their fast is really no more than 24 hours long) and we do not object to this (their actions). However if there is some doubt (as to their response to the warning of their obvious transgressions) he should warn them in order to save his soul.

Documentation page: 85

2

Congregational decisions are decided upon majority rule.

Quote used:

Exodus 23:2

. . . follow a multitude (majority)

Documentation page: 86

3

Asher protests against the tyranny of the majority of a congregation and demands that congregational ordinances concerning financial matters be decided by the majority of the monied people, and not the majority of the entire congregation, many of whom are poor and do not give more than a small percentage of the money.

Quote used:

Baba Kama 116b:

In the case of a caravan which was attacked and plundered by a gang in the desert, the calculation of individual loss or responsibility is based in accordance to individual financial participation in the goods of the caravan.

Documentation page: 101

CONGREGATIONAL ORDINANCES AND BANS

4

A congregation may institute an ordinance in which no one is to be excluded.

Documentation page: 97

5

The right of a congregation to bend or be more lenient in a particular ban which was set to begin on a particular date, but which began one month later, and still have the ban be lawful.

Documentation page: 99

6

Asher allows a congregation to remove a ban, set for a specified period, to be annulled earlier than the original ending date, because the congregation, which set the ban, is satisfied that the individual concerned has mended his behavior.

Documentation page: 102

7

Asher talks about the seriousness of a scribal error in the writing of an exemption for an individual from a congregational ban, and what the various possibilities are for correcting this error.

Documentation page: 87

8

Asher discusses the intricacies of a communal ban in which an individual who has vowed with the entire community concerning a particular issue, and who refuses to annul his part of the ban when the rest of the community annuls theirs. Asher replied that the ban is still valid for the individual who refused to annul it.

Quote used:

Nedarim 25b:

. . . had I known that my father was among you, I would not have vowed in which case they also annulled the vow pertaining to others since if a part of a vow is annulled it is completely annulled.

Documentation page: 103

WITNESSES

9

Asher states that it is not necessary for witnesses to be brought into a town to testify concerning the transgressions of an ordinance by a member of the town. Since most congregations declare qualified all the (Jewish) residents of a town to testify against those who have transgressed their ordinances.

Documentation page: 95

10

One must not force witnesses to be brought forward to swear against an individual since, in the searching for these witnesses, there is in fact a maligning of the name of the individual against whom witnesses are being sought.

Quote used:

Pesachim 113:

Tobias sinned and Zigod was punished.

Documentation page: 104

METHODS OF PERSUASION USED FOR CONGREGATIONAL CONTROL

11

Asher suggests various methods of persuasion open to the community for those who do not follow the injunctions of the congregation.

Quote used:

Moed Katan 16a:

How do we know that we scold, curse, beat, pull hair, and make him swear; as it is written: 'And I contended with them, and cursed them, and smote certain of them, and plucked off their hair and made them swear by God . . . ' (Nehemiah 13:25) And from where do we know that we may bind him, ban him, imprison him and persecute him; as it is written: ". . . whether it be unto death or to banishment, or to confiscation of goods, or to imprisonment." (Ezra 7:26)

Documentation page: 96

12

Asher discusses the proper punishment for an individual who has publically and verbally insulted the reader of the congregation.

Documentation page: 109

13

Asher reluctantly agrees, in principle, to have a grave sinner, such as an informer or a blasphemer, be executed through the authority of the Jewish court in order to save the many more lives which would be lost if the Jews were

brought before the Gentile courts in capital cases. However, in this case before Asher he suggests that, instead of execution, a part of the blasphemer's tongue be cut off.

Quotes used:

1 Samuel 3:11:

. . . at which both the ears of everyone that heareth it shall tingle.

Isaiah 8:21:

(paraphrase) Blessed be He (God) who frees the captives! And in spite of this (statement) he blasphemed and swore and cursed his King and his God and turned his face toward heaven.

Jeremiah 3:25:

let us lie down in our shame, and let our confusion cover us . . .

Sanhedrin 56a:

as our rabbis used to say the euphemism, "blessing of the Name (of God)" (and mean "cursed be the Name (of God)")

Documentation page: 121

14

Asher takes a very hard line on informers to the Gentile authorities. Here he even allows presumptive status guilt and a single witness to be used.

Documentation page: 112

15

Asher very firmly precludes the use of Gentile courts for the adjudication of Jewish communal matters, and suggests the harsh treatment of those who do not follow this decree.

Quote used:

Exodus 23:1:

Thou shalt not utter a false report.

Documentation page: 113

TAXES AND TAXATION

16

A discussion of communal versus individual gild governmental demands for taxes (bribes).

Documentation page: 89

17

Asher explains the proper distribution of taxes and precludes those who have exemptions, or who have come to the community after the beginning of the tax period, to pay more than their just share.

Documentation page: 90

18

This concerns the diverting of congregational money from the use of the study of Torah to the paying of the poor's share of the state tax. This is done in order to save lives and is absolutely permitted.

Documentation page: 84

19

Asher and colleague affirm that Talmide Hachamim should be exempt from all forms of taxation.

Quotes used:

Pirket Avot:

... it is fitting for the study of Torah to be mixed with worldly occupations. All study which is not blended with a worldly occupation is nullified in the end and the result (of such study) is sin!

Baba Batra 1:8a:

Rabbi Nahman the son of Rabbi Hisdah placed a tax on the rabbis and Rab Nahman the son of Rab Yizchak said to him: you transgressed (by your action of placing a tax on the rabbis) the Torah, prophets and the writings (i.e., the entire Tanach).

c.f., Jeremiah 3:14:

(one is not capable of finding) even one learned man in each town or two within a particular family.

Proverbs 3:8:

(the Torah) it is a tree of life to those who hold fast to it . . .

Documentation page: 106

VARIOUS INDIVIDUAL MEMBERS OF THE CONGREGATION

20

Asher affirms the removal of communal obligation from those who have disenfranchised themselves from the Jewish community.

Quote used:

Semachot 2:

He who separates himself from the ways of the community; the Jewish people must not busy themselves with him (with his burial), nor should they mourn for him (before the burial), or mourn over him (after the burial).

Documentation page: 115

21

The right of a Jewish community to sanction a particular individual to slaughter kosher meat and its right to protect this monopoly with congregational bans, et cetera.

Documentation page: 98

22

Asher discusses the method and binding nature of the way in which a community contracted for the services of a teacher.

Documentation page: 93

23

Asher declares that an individual may not change his father's name, irrespective of the fact that the father had converted to Islam.

Quote used:

Rosh ha-Shanah 16b:

Three things nullify the evil decree (i.e., repentance,

prayer and charity) et cetera.

Documentation page: 116

THE CONGREGATION AND THE SYNAGOGUE

24

A congregation, as long as the board of trustees agree, may do whatever it likes with a building, irrespective of its sanctity.

Quotes used:

Megillah 26b:

It is prohibited to (convert) a house of study into a synagogue.

Megillah 26a:

Raba said, we have learned (that we must not sell the building and lessen the sanctity by buying something inferior).

Documentation page: 75

25

Asher says that given an insufficiency of funds the congregation should hire a cantor rather than a rabbi, assuming the rabbi they could hire with their limited funds would not be very good.

Documentation page: 83

26

A dual discussion of the low esteem that the people of Spain have for the position of cantor and, also, the impropriety of using a young, pre-pubescent, 13 year-old boy as a regular cantor.

Quotes used:

Isaiah 57:19:

Peace, peace, to him that is far off and to him that is near. . .

Jeremiah 12:8:

She hath uttered her voice against Me; Therefore have I hated her.

Documentation page: 74

27

Asher forbids the use of a decorative Moslem prayer mat to be placed in the synagogue (hung on the wall) for decoration.

Documentation page: 76

28

A discussion of the legal ownership of seats, which are purchased and owned by individuals, in the synagogue.

Documentation page: 78

29

A discussion of the legal and financial rights of owners of pews and seats in the synagogue. And concerning the right of a single individual to alter the architectural design of the pew.

Documentation page: 81

30

Asher suggests that the use of candles adds joy and gladness to the Shabbat and the holidays, and that the candles may be kept burning all night and even into the next day which may no longer be a holiday.

Quotes used:

Isaiah 24:15:

Therefore glorify ye the Lord in the regions of light

Targum Isaiah 24:15:

Wherefore, when light cometh to the righteous, they shall glorify before the Lord; in the coast lands of the sea shall they be giving thanks and blessing the Name of the Lord, the God of Israel.

Esther 8:19:

The Jews had light and gladness, and joy and honor.

Psalms 97:11:

Light is sown for the righteous, and gladness for the upright in heart.

Jeremiah 25:10:

. . . voice of mirth and the voice of gladness. . .
the sound of the millstones and the light of the lamp.

Documentation page: 82

FOOTNOTES

1. Minhath kenaoth, Pressburg 1838, letter, 52.
2. Ibid.
3. Ibid. letter 51.
4. Asher Responsa, Kelal 55, no. 9.
5. Piskei ha-Rosh, Sanhedrin 4:6; idem., 55:9.
6. Elon, op. cit. p. XIII.

CHAPTER 4

In the previous chapters we have examined the social, political, religious and communal structures of the late Medieval Spanish Jewish community. However the primary interest of this thesis is to establish a reliable set of communal organization and planning strategies, in concert with the rabbinic tradition, as reflected through the responsa of Rabbenu Asher. We have already reflected upon the general decision making concerns of Rabbenu Asher, and have presented an overview of the thirty responsa selected and translated by this author. The basic thrust of this thesis now demands that we carefully examine several of these responsa, in order to establish the primary organizing principles of the community planning theory of Rabbenu Asher.

Before we actually begin our discussion of the individual responsum, I would like to explain briefly a few of the peculiarities operative within the responsa itself. Of primary importance is the use, or rather misuse, of Biblical and Talmudic quotations and themes. The rabbis of every age, and Rabbenu Asher is certainly no exception, had a very fluid relationship to the concept of history. They showed no discomfort in completely ignoring historical, logical, topical continuity, or consistency, within, and between, the passages open to their scrutiny. It is a very difficult process, if

indeed it is even possible, to establish exactly what a particular passage means in its original context. However, this data, even if it were gathered, would be of very little use in the understanding of the same passages as they are used in the responsa. In this chapter those passages used by Rabbenu Asher will be interpreted as they appear, with this author attempting to explain them in the way in which, I think, they were intended to be understood. In closing these introductory remarks, I would like to call the readers attention to the fact that a variety of different responsa forms are illustrated in the responsa of Rabbenu Asher. Sometimes the responsa clearly report the question as originally stated, and then a full answer is recorded. On other occasions, the question is paraphrased within the body of the responsa itself. Some of the responsa are signed, and exhibit flowery greetings and salutations; while others are practically devoid of these niceties. There also seems to be a great variance in the length of the respective responsa. What these various irregularities signify is not clear to this author and I will leave this question for future scholars.

And concerning that which you asked: if it is necessary to mourn for an apostate or an atheist (denies the Jewish God but may be an idol worshipper).

Thus it is taught in tractate Semachot (Chapter 2) "He who separates himself from the ways of the community; the Jewish people must not busy themselves with him (with his burial), nor should they mourn for him (before the burial),

or mourn over him (after the burial)."

This responsum clearly indicates that individual Jews must actively engage themselves in the existing institutions and mores of the Jewish community, in order to avail themselves of the great variety of nurturing care and services afforded to constituent members. There is no more important issue available to a Jew than the proper care and respect given to the dead. For this reason, the denial of these dignities may in fact be the single strongest inducement by the Jewish community to keep its constituent members within the normative ranks of the society.

Earlier in this thesis we acknowledged that the Jewish community is really an advanced form of religious democracy. Predating the Social Contract theorists, Hobbes and Locke, by five centuries, Habbenu Asher, like them, understood that an individual had to give up certain individual rights in order to accept the greater protection and support of a communal structure. In the case of our responsum, the "ticket of admission" into the communal system was an acceptance of the monotheistic nature of Judaism. Those who either refused, or failed, to adhere to this philosophy lost their right to be part of the society.

In the Appendix we shall discuss the impact of this type of social contract theory, as well as the other issues to be discussed in this chapter, on the Jewish communal world as it

appears in our own age, and I will suggest some possible strategies for future communal planning.

page 18

responsum 3

documentation page: 85

Concerning your question if a (knowledgeable) man knows that his words and decisions are not heeded by the people, whether he is obligated to urge them (to observe the law) or (apply to them the rule:) leave them alone in order that they err (transgress the law) inadvertently and not willfully (not be in the category of intentional sinners). If it is clear to him that they will not accept his decision he should not warn them, for as we say (Hetsa 30a) "The addition to the fast of Yom Kippur (for more than 24 hours) is from the Scriptures yet women eat and drink until dark (on erev Yom Kippur so that their fast is really no more than 24 hours long) and we do not object to this (their actions). However, if there is some doubt (as to their response to the warning of their obvious transgressions) he should warn them in order to save his soul." (If there is doubt to their reaction and he does not tell them of their transgressions he would become culpable for their sins and the state of their souls.)

This responsum very interestingly refines the responsibility of those who are the institutional leaders of the religious democracy as described in the previous responsum. There we saw a very clear example of individual exclusion from the privileges of the society by one who exhibited overt anti-social behavior. Here we find a carefully articulated social-psychological-religious interpretation of the gravity of condemning the general population for particular activities, which are not particularly serious, yet clearly against the religious code (constitution) of the society.

The precise question is whether a knowledgeable individual, presumably in some position of communal authority, may inform the community of a transgression from religious-social propriety,

when he is confident that they will not abide by his statements. Betsa 30a as used by Rabbenu Asher clearly "proves" that it is better to have people transgress unintentionally, through a lack of understanding of the particularities of the social-religious code, rather than to force them to chose to willfully disregard the law. It is important to add here that the above statement is true only if the knowledgeable individual is absolutely positive that the people will disregard his council. In the presence of any reasonable doubt as to the acceptance of his teachings the situation is completely altered. "If there is doubt to their reaction and he does not tell them of their transgressions he would become culpable for their sins and the state of their souls."

In short, we have now added a moral dimension to our religious democracy. At all times the leaders of this institution must be aware of both the letter and the intent of the law. The communal organization is not well served by leaders who force the constituent members to willfully disregard communal injunctions. This type of behavior can only push the masses into social-political revolution, and, ultimately, will spell the end of the institution ascribing to this type of guilt induced behavior.

If the congregation agrees on a matter an individual (member may not object, on this matter the Torah states: ". . . follow a multitude (majority)" (Exodus 23:2) and if

it were not done (lit., "if you do not say thusly) thusly there would never be a valid congregational ordinance for when would a congregation agree unanimously?

This responsum affirms the religious-democratic principle of binding majority rule. The idealist might wish for unanimity in all decisions, but the practical individual realizes that this is an unrealistic desire. The old Yiddish adage that when two Jews argue, three positions are being expressed, serves well in bolstering the importance of binding majority rule. Yet, is this simple state of problem solving really sufficient for a religious-democratic society as complex as that described in our responsa? The following responsum answers the question with a clear, "No!". And introduces us to that which Rousseau, 500 years later, referred to as the tyranny of the majority.

page 22

responsum 3

documentation page: 101

In addition instruct us concerning a congregation which placed a ban. Is its validity dependent on the majority or can the minority protest (and reject the ban (or ordinance) for themselves). And whether one should follow the majority even if it is a financial matter and the rich are in the minority?

ANSWER: When a congregation places a ban, if it is concerning financial matters, (the decision) follows after the majority of the monied people as it is in (the case of the caravan (Baba Kama 116b) which was attacked and plundered by a gang in the desert, that the calculation (of individual loss or responsibility) is based in accordance (to individual) financial (participation in the goods of the caravan). And thus likewise here with the "ban"(ordinance) which is concerning a financial matter the majority of the monied people must be decisive and it is not possible for the majority of the people (of the Jewish community) who give a minority of the tax money to decree a ban (to tyrannize) the rich according to their (the poor's) will.

Here we see that Rabbenu Asher was interested in scrupulously protecting the rights of the minority of individuals who provided the majority of the capital used by the congregation.

Throughout the responsa dealing with communal life, we find a central theme: money. Then, as now, it was difficult to keep the institution financially solvent, and Rabbenu Asher thought it morally improper for those who did not give the bulk of the money to dictate its use. The sagacious Asher knew that oversimplification was the bugaboo of small minds and, therefore, mandated that the communities be very careful in their institution of majority rule. In this case the majority of the congregation who were poor were not allowed to tyrannize the minority who were rich. After all, justice with moral decency is the ascribed goal for any religious democracy.

Also of importance in our examination of the communal planning imperatives, as prescribed in Rabbenu Asher's responsa, is the determination of the real needs of the community. The following responsum should be of particular interest to the Central Conference of American Rabbis!

page 18

responsum 1

documentation page: 83

Concerning your question of a congregation that has sufficient funds to hire either a rabbi or a cantor (but not both), which one is of primary importance? (Answer) If the rabbi is outstanding, great (in his knowledge) of Torah, an expert in ritual and civil law there is no doubt that the study (and teaching) of Jewish Law (and traditions) is of primary importance. However otherwise (if they cannot

afford hiring such a rabbi) a cantor is more preferable in order to fulfill the obligation of services of the majority (congregation).

Here we see that the decision is based on the needs of the majority of the community. This responsum instructs us of the clear understanding which Rabbenu Asher had of the communities for which he wrote responsa. The community in question is obviously a poor one. It is apparent that both cantors and rabbis were paid for their services in the 14th century, and that a competent rabbi commanded a large salary. A rabbi of low competence would afford the community little benefit, while, apparently, all cantors could fulfill the obligations of leading religious services, and this religious obligation seemed to be the greater need for the majority of the community. This is a striking example of our religious-democracy in action, with the prime directive, the good of the majority, clearly operative.

The final responsum examined in this chapter (although I strongly suggest that the reader examine all the responsa presented in the documentation section) deals not with the concept of religious-democracy and its implications, but, rather, with the insidious, seemingly harmless first stages of assimilation. As mentioned in earlier chapters, the Medieval Jewish community of Spain was a melting-pot for Islamic, Christian and Jewish cultures. Assimilation, and even conversion to another faith, was constantly a problem. To

protect against this process Rabbenu Asher very clearly states his position on what, on the surface, seems a very simple, harmless incident, of hanging a decorative Moslem prayer mat on the wall of the synagogue.

page 16

responsum 2

documentation page: 76

What you asked on the matter of a small mat which is called in Arabic a sagadah which the Moslems customarily pray upon (which is decorated) with the figure of a black weight whether or not it is permissible to hang this (mat) in the synagogue on both sides of the sanctuary and to pray opposite it. And even though God forbid, that any Jew would pray intentionally to a prohibited object. Concerning this matter I inquired and investigated it and it has become clear to me that the practice was to prohibit it here in Toledo; to place a mat like that in a house of assembly to sit upon it, how much the more so to hang it on the side of the sanctuary (where the Torah is). This is because they (the Jews who object to it) say that the same black image upon it is the shape of the place which they (the Moslems) visit to celebrate there in their land (i.e., the Kaaba the big black cube found in Mecca). And also there are those who will say that this is the image of Markolius (Mercurius) (a Roman god) and it was customary for them (the Romans) to pray upon it and to prostrate (go down on their knees) upon it in their prayer sessions. And furthermore they said to me that the mat is called a sagadah because they prostrate themselves upon it. And this being so, it appears to me (it is my considered opinion) that it is prohibited to hang it in the synagogue at all, how much the more so on the side of the sanctuary (where the Torah is kept); and it is necessary to remove it from the synagogue in order that there should not remain any reminder in the synagogue. Why should we place such an item as this in our synagogue that is ready and prepared (to use them) for their (the Moslems) prayer? And it is not proper for any Jew to object to this in order to place a mat like the one mentioned in the synagogue. All who transgress this (decision) turn away from the straight path and go towards the evil path, and it is proper to chastise him. What appears to be right in my eyes I have commanded to be written and I have signed it.

Asher son of the Rabbi Yehiel, may his memory be for a blessing.

Here the sagadah hanging on the wall in the synagogue is seen as a dangerous precedent. If this were allowed, why not also display a mandelah or a symbol of yin-yang? After all, they are decorative and who could deny their beauty, or that of an ornate crucifix? In this light, the problem and response quickly becomes clear. The religious-democracy reflected in Rabbenu Asher's responsa has its base in the responsibility of the adherent members of the community to be Jewish. The precepts of this Judaism preclude the quiet acceptance of assimilation. Rabbenu Asher, through his responsa, must become the defender of the faith. For, in retrospect, one gets the impression that it is not so much the contents of the law applied, as the authority administering, which gave the parties involved the feeling that they were judged according to "the Law of the Torah." And "the Law of the Torah", as reflected through Rabbenu Asher, clearly excludes the use of a sagadah, even for decoration, within the synagogue. That there could have been any other decision would have relegated the religious-democracy, as carefully developed over the centuries, to a capricious system of randomly applied dogma. Rather, through the careful scholarship and piety of Rabbenu Asher, it remained a high-minded moral imperative to elevate the communal consciousness and the individual souls of the constituency blessed to share in this great religious-democratic experience.

One major question remains in the mind of this author.

How can we use, if, in fact, we choose to, the community planning consciousness as expressed in the responsa of Rabbenu Asher? The Appendix is dedicated to this problem.

APPENDIX

APPENDIX

The complex urban religious-democracy, as reflected in the responsa of Rabbenu Asher, offers the modern reader a rich assortment of community planning strategies. We find that a morally aware, scholarly oriented society can assure the maximization of human potential, and fulfill the individual personal needs for spiritual, intellectual and emotional growth. It is not a static system, dependent upon impotent dogma enforced by gangs of thugs. But, rather, an imaginative, dynamic equilibrium predicated on the genius of Jewish thought, constantly being realigned to the majority needs and realities of a particular discrete moment in history. The creation of such an enlightened religious-democracy can be well understood in view of the existence of the Jewish judicial autonomy, operative in the days of Rabbenu Asher, and the practical application of Jewish law through the responsa.

One of the instructive features of Jewish history is that neither the loss of political independence, which was comparatively short lived, nor the loss of the physical bond with the national homeland, the land of Israel, involved the extinction of the judicial autonomy of the Jewish people. In the long course of their exile and dispersion over much of the world, the Jewish people carried their law and law courts with them. They scrupulously guarded these institutions, externally by obtaining charters of rights and privileges from the various

rulers, and, internally, by strict self-discipline.

Ironically, the extinction of this autonomy was not achieved until the great movements of Europe and America, at the end of the 18th century, greatly shook Jewish society. Strangely, the commencement of the emancipation spelled the end of Jewish autonomy. The Jews did not seem able to handle the reality of equal rights. They seemed to embrace assimilationist movements, and clamor for a melding of Jewish group distinctiveness within an amorphous conglomeration of Protestant-Catholic-Jew sameness. They traded their "kingdom of priests" religious-democracy, based on binding majority rule, for a social democracy predicated on the stagnating principle of government aimed at the lowest common denominator.

The Jews abandoned the social structure which made them the bearers and spiritual architects of the world's great democracies. They begged for inclusion in corrupt societies with no price too great to accept. They rushed to ignore or excuse the decimation of their numbers by the heinous Nazis. Live and let live became the acquiescent creed of once scrupulous Jews who embraced the amoral world of big business and finance, completely forgetting the moral imperatives for which their forebears had martyred themselves. In short, the modern Jew had rapidly reached a point in history in which the Jew was no longer Jewish.

I sit at my desk, penning the last pages of my Rabbinic Thesis, on the brink of becoming a Reform Rabbi. I live in

the United States of America, the great "democratic" home of the largest population of Jews at this moment in time on the planet Earth. My rabbinic training has afforded me the opportunity to work with Reform Jewish communities from the West Coast, through the Midwest, to the East Coast. Everywhere I find communities of secularly successful congregants virtually Jewishly illiterate. I am appalled to find that less than one percent of the congregants I come in contact with are capable of reading Hebrew well enough to lead a religious service, the percentage is even smaller of those who can understand the holy Tongue. The great works of our tradition, i.e., Tanach, Talmud, Midrash, Codes and Responsa are unknown entities to the laity. Morals and ethics are abandoned for quick expediency and financial profit. Yet despite this horrendous reality, I am not despondent about the future of Judaism.

I sense a resurgence of Jewish consciousness among some of my rabbinic peers. The Jewish intellectual community is beginning to come out of the closet and affirm for all to see, the viability of a Jewish life-style, the commitment of adherents to a religious-democratic Judaism based on the full richness of our heritage, and not the bankrupt amoral degeneracy of the public ethos. The tools for such a renaissance are available. We have a significant number of committed Jewish rabbis, rabbinic students and Jewish communal workers who are, individually, working to create anew the reality of Jewish communities and Jewish communal consciousness. Jewish scholar-

ship has never been more prolific and we are blessed with a viable Jewish state, Israel, flourishing despite a maelstrom of social, political and economic adversity.

What we need to allow all of this to flower is a concerted group effort. We must abandon the ridiculous "numbers games" of most Jewish institutions, and free ourselves from the monolithic financial drain of our edifice-complex ridden Jewish institutional community. We must adopt a social contract oriented towards a religious-democratic communal system which aims at quality, rather than quantity, within the Jewish experience. Present Jewish communal experiences have converted once dynamic Jewish religious, educational and communal institutions, into country club oriented, religious, life-cycle service stations. We have bent over backwards to accommodate the ill-informed and non-motivated, at the expense of driving the intellectually active, spiritually motivated individuals from our midst.

We need a new Jewish manifesto, based on the genius of our history, and respondent to our highly complex industrialized, urban society. We have allowed Jews to become isolated, alienated, disenfranchised human beings, alone within the crowded metropolitan setting. Yet we have the tools to reinstill genuine human warmth and Jewish commitment. We must build multi-generational communities committed to human needs. We must cease to be afraid of religiosity and spiritual development of human beings. And, most assuredly, we must recreate

a positive setting for human beings to feel nurtured and fulfilled. Never before has the need been so urgent for the redemptive mission of Judaism to again assume its proper role within the psyche of the Jew. The "yoke of the Heavens" must again harness the creative potential of this generation of Jews and of the generations to come. We must begin to hear the voice of the prophet in the marketplace, demanding that the Jew take his/her rightful place in the partnership with God, striving towards the perfection of the world.

If we fail to accept this challenge we are traitors to our tradition and our destiny. No one ever suggested that being a Jew was a simple or easy task. Let us forget our neurotic need to bring back to our pabulum imitation of Judaism all the unaffiliated Jews. Rather let us take those who are willing to accept the social contract oriented commitment of a religious-democracy, and build a better reality. History and our tradition demand that we try. With the help of God we will succeed.

It is possible to catch a glimpse of this more satisfyingly Jewish community as we reconstruct the present, using the insights gleaned from our discussion of the responsa of Rabbenu Asher. Of primary importance would be the right and privilege of the individual Jewish community to determine and implement those programs and institutions they recognize as being needed. They would certainly have to assure themselves of the creation of, or access to, all the social services. The needs of the poor, the widow(er), the orphan, the ill

and the dead would be of a high priority. Schools, libraries, houses of worship and assembly would have to be instituted, with the particular curricula and liturgy constantly evolving to meet the deepening needs of the constituent members.

The individual communities would need to democratically elect, and periodically review the effectiveness of, their leaders, teachers, scholars, rabbis and cantors. No individual could set themselves above the law of the Jewish community. Each public official would in fact be a servant of the people, with the various officials not willfully imposing their own values on the people, but, rather, interpreting the variety of consensus opinions gleaned from the tradition, and bring them into consort with the realities of the particular incident and period. Using such a system (obviously the above is a description of the responsa process itself) the particular Jewish community would be fulfilling its true obligation to Judaism. Of tantamount importance is that the individual Jew is offered the right and obligation of free choice. Because of the nature of the social contract foundation, this social structure demands that the individual confronts his/her moral-**ethical** needs and desires, and commits him/herself to a community which is based upon those particular moral dimensions. Once the choice is made, and the particular member is accepted by the community, he/she is committed to follow the majority rule decisions of that society. It would be well to keep in mind the various techniques of minimizing the tyranny of the

majority, as described in the previous chapter.

The particular beauty of this system is that a constituent member of the community can no longer remain estranged or alienated from the community. Either the community changes its viewpoint to include the individual variance, or the individual withdraws his/her membership **from** the social contract. In this way we build a true religious-democracy. The individual knows the value system to which they ascribe, prior to commitment. There is no anarchy or revolution here but, rather, an orderly process of evolved law and convention, based on Jewish principles and completely within the acceptable limits of the individual members. This community, by virtue of its direct connection to Jewish law, and its intimate relationship to the actual lives of the constituent members, must by necessity inculcate, at its very base, the doctrine of continued intellectual, emotional and spiritual growth. Judaism, as I understand Rabbenu Asher's interpretation of it, can move in no other direction. It would seem necessary for these communities to be rather small in size, since the very nature of religious-democracy dictates that the individual members know one another and participate in the public and private celebrations together.

At the base of this entire thesis is the underlying principle of separating between the holy and the profane. Our value judgements may fluctuate in time, but at any discrete instant we must be able to decide what is right and what is

wrong. Rabbenu Asher had to do this, ultimately committing himself to a position, after reviewing all that the tradition and his own life experience shared with him. We Jews must also allow ourselves to make the commitment necessary in being a Jew. After all, to paraphrase the Tanach, we Jews are a choosing people. Our new religious-democracy would demand that we make a choice as to our lives, our values and our aspirations. Rabbenu Asher shows us a way to a better communal life and a richer Jewish experience. Yet, happily, the ultimate choice is ours and ours alone.

DOCUMENTATION

שות רבינו אשר כלל רביעי

[illegible]

כב בן יצחק ליהודה כחציו חלל בליט נזיר קדש חין למנוח עד
שחלל אצלו :

[illegible]

ומה נחמנו מן המצות למלך כל הכסף קודם שיהיו ארבע
והנחנו לו זה עם לבד חן חלי מחלל בזה וזוים הנשים
שמה הוא כי זה קראו חן קטן בין חתנים למלך חן כל פי שם
זה שמו גם כן חתנים והוא ענין (אל בחוקי) כלל מהי יס
כלל חן החיים של עולם:

כלל חמישי

דען קדושה בית דבנסה ומקישותיו ונרותיו *

א' ולמדנו ארזנו על בית המדרש שהקדו רוצים לשטות וקר התה הענין שהיה היה הרב לחד בבית הכנסת וגמלו הקהל והבניו לעשות בית המדרש ובנו שתי עליות לגדי באות והבית לחלוקים ועתה רוצים הקהל להסביר העליות ליהיה ואחרים שחזרו הקהל ללמוד בבית הכנסת במקום ובזו הקהל אנשים החתולו כעניי הקהל הם התינו"ק לעשות דבר זה ועתה הוציא ארז יש לאל ידם לומר הזה הא אבינו כבי רב דבי גיטתא אסור כל שכן לומר הריעות או דילמא כנסת שוכי תעיר וכולן לעשות סה שירנו ואם אין שילק אהם סה המצור הרתה ובכנסת יל סתלה כמאור כפעת הדיקס שתי בנים :

תשובה כיון שזכרנו שיש ספקות לענין הכרח מים אצל לוי הכרח להחליט בענין נכרן בני העיר (ק"ל) וכן נראה לא שם אלא מהו ספק שיש לענין תפוחא דאבי העיר ואלו המה ספקות שיש בענין העיר אצל העיר וכן לענין שם ספרד אצל דמי' ואלו' דמי' רבנן חזרו מבי' בנפחא שיש לענין זה שאין לנפחא תפוחים ביום הכיפור'. אבל שם אלו' לא חזרו אלא וספקו בני העיר לענין' ועוד להחליט דברא' קול' אלו' הם ספקות בענין זה (ה') אלא' דברים אלו' תחזיקו מן' ואלו' אלו' דברא' בני' העיר ויבין לענין' :

[illegible][illegible][illegible][illegible]

RESPONSA

page 16

responsum 22

a boy of 13 years of age may lead the prayer service occasionally however he may not be appointed as a regular (permanent) cantor until "his beard is fully grown" (i.e., grown pubic hair).

And concerning to that which you wrote that the custom of these places (probably in Spain) is to appoint (i.e., employ) members of the lowest class as cantors there, is in this matter an (apparent) low regard (a despising) of a Mitzvah (of conducting the worship service) as if it were not proper for a Jew of high birth (social standing) (to be a cantor) but rather it (being a cantor) is merely like any other craft. Heaven forbid! (to consider) that (officiating as a cantor) the work on behalf of God is a craft, rather it is a crown for the head (a very meritorious occupation). Also I have become very angry since the day that I came here (to Spain) with the cantors of this land. However, I am not angry for your reason i.e., that you have made the matter (being a cantor) dependent upon family lineage, however it is not thus in the eyes of God. If he (the cantor) is of high birth but evil, what is the value before God of his (the cantor's) high birth? And if he (the cantor) is from a foreign family (obviously not making him of high birth in Spanish Jewish society) but is a righteous man "Peace, peace, to him that is far off and to him that is near..." (Isaiah 57:19) (i.e., in the eye of God family status is of no importance but rather the individual merit of the human being). However I am really made angry because the cantors of this land are concerned with their own pleasure to listen to (their own) a pleasant voice. And even if he (the cantor) is completely evil (it makes no difference) for the people care only that he sing pleasantly. But the Holy One Blessed be He (i.e., God) says "...She hath uttered her voice against Me; Therefore have I hated her." (Jeremiah 12:8)

And what you have written that they appoint the cantor of the synagogue before the puberty to conduct the services on the weekdays because they have another cantor to lead services in the synagogue for Shabbat and Holidays (and believe this is right). This is an error (wrong) because this cantor (the young boy who leads services) is called a fixed (permanent) cantor since he was engaged to lead prayer even though there is another one (cantor) who is also hired (by the Congregation). But (the young man) is allowed to conduct the services only occasionally after two pubic hairs have appeared.

RESPONSA

page 16

responsum 1

May my master instruct me concerning (the situation in which) a Congregation wants to change (the status) of a house of study (i.e., a Talmud Torah). And this is the matter: (i.e., here are the specifics). Formerly the Rabbi would study (teach) in the synagogue and the Congregation deliberated (changed their minds) and agreed to establish a house of study, and they built two (upper) floors, to lecture in one and the second to be for the students (for them to study and sleep in). And now the Congregation wants to rent the upper floors out as apartments. And they say that the Rabbi should return and study (teach) as before in the synagogue. And the Congregation chose (elected) individuals to (actuate) carry out the matters (the will) of the Congregation; and they prohibited under ban, to do this thing! And now inform me if they have the right (permission) to do this thing for do we not say (in Megillah 26b) "It is prohibited to (convert) a house of study into a synagogue", how much the less so (to convert a house of study) into a secular thing. Or perhaps with the consent of the (Jewish) leaders they can (i.e., have the right) to do whatever they wish. And if they are not allowed (to do this), if the Heram (a vow of prohibition enforced by excommunication) is in effect and needs to be removed by an annulment, (if they wish to do so). It seems to me that from the beginning they built it (constructed the two upper floors) from money they already had in their hands for a holy purpose.

ANSWER: Since the (Jewish town leaders agreed to change it (convert the house of study), the authority is in their hands even (to convert the house of study) into a secular thing, as it is found in Megillah in the chapter Bene Ha-ir (page 26a) "Raba said, we have learned (that we must not sell the building and lessen the sanctity by buying something inferior)." Only in the case that the seven good men of the town, (i.e., the board of trustees of the Jewish community) did not sell it in the presence (and with the consent) of the people of the city. But if the board sold it in the presence of the people of the city (i.e., Jewish congregation) it is proper even (so that it becomes) a tavern. And even though a school is more important than a synagogue this means that one does not make a synagogue from a school. But it is not that important that the people of the town can not change it (i.e., change its status at all). And furthermore, the statement of Raba refers to everything that is mentioned in the Mishnah (Megillah 26a), even to matters that are more important than the synagogue. With respect to everything Raba says that the inhabitants of the town can (if they wish) change it (the status of the house of study).

RESPONSA

page 16

responsum 2

What you asked on the matter of a small mat which is called in Arabic a sagadah which the Moslems customarily pray upon (which is decorated) with the figure of a black weight whether or not it is permissible to hang this (mat) in the synagogue on both sides of the sanctuary and to pray opposite it. And even though God forbid, that any Jew would pray intentionally to a prohibited object. Concerning this matter inquired and investigated it and it has become clear to me that the practice was to prohibit it here in Toledo; to place a mat like that in a house of assembly to sit upon it, how much the more so to hang it on the side of the Sanctuary (where the Torah is). This is because they (the Jews who object to it) say that the same black image upon it is the shape of the place which they visit to celebrate there in their land (i.e., the Kaaba the big black cube found in Mecca). And also there are those who will say that this is the image of Markolius (Mercurius) (a Roman god) and it was customary for them (the Romans) to pray upon it and to prostrate (go down on their knees) upon it in their pray sessions. And furthermore they said to me that the mat is called a sagadah because they שׂגדו prostrate themselves upon it. And this being so, it appears to me (it is my considered opinion) that it is prohibited to hang it in the synagogue at all, how much the more so on the side of the Sanctuary (where the Torah is kept); and it is necessary to remove it from the synagogue in order that there should not remain any reminder in the synagogue. Why should we place such an item as this in our synagogue that is ready and prepared (to use them) for their (the Moslems) prayer? And it is not proper for any Jew to object to this in order to place a mat like the one mentioned in the synagogue. All who transgress this (decision) turn away from the straight path and go towards the evil path, and it is proper to chastise him. What appears to be right in my eyes I have commanded to be written and I have signed it.

Asher son of the Rabbi Yehiel, may his memory be for a blessing.

6

שאלה ראובן יש לו פקד סוכה בבית הנוכח סוכה ליום
 סוכו של פקד - ראובן נהנה מההוצאות
 בן פקדו ליום פקדו וסוכו פקדו עליו מהו אומר כי עתה הוא
 ראובן ובשדהו לא היה ראובן והפנה סוכה פקדו -
 וראובן אומר שאינו יכול לעמוד לו סוכה הוא להחליט פקדו
 להוצאות סוכה פקדו כי לא נסמך לו לה:

[illegible][illegible]

היה לה' גנים הרבהם וצחק וישחק וידע להם חקם קול (א"ש)
בבטל' ומתחתו לישחק גנים הרקן בבשר והצח חול לים בו
לחכם אחי כדור כל ימי חייו • ולחכם שני גנים הרקן ובחשן • ואחי
חול לחכם שני בו הרקן כל ימיו • ואחי חול הרקן יבם שם יצחק שני
בטל' כל ימי חייו • ואחי חול יצחק שני שם יצחק כל חקם כל ימיו
ומתחתו לים חקם כל ימיו כל ימיו • ומתחתו חקם כל ימיו אחי
חול • חול לים לבני יצחק יבם שם חקם יצחק חקם וכן לחכם
ליו כל ימיו • וזה חקם כל יצחק חקם חקם חקם חקם חקם
ואחי חול כל חקם חקם כל יצחק חקם חקם • וכן חקם חקם
חקם כל יצחק חקם חקם •

ד שאלה קהל שעשו הסכמה בזה"ש (*) שלא יסבדו את מקום לשום אדם שיש לו בבית הכנסת משכיל שיש להם שתיקה. הן משום כח הן משאר דבר אם לא ברצון בעל המקום. אחר כך ארבע שנהיה להשפעתם עליה על בית הכנסת. והנה הנהגה הקדוה עומת בארבע מאות ורובים ושני בורות הרבלי הבסן על בני העיר וקטן על מי שלא יסעו כפי מה שישלחו עליו יסבדו מקום בבוהב"ו ויבדו הרבה מקומות בבוהב"ו עתה באים בפרטם לעיר. על הכניסה בבת הרחם הראשון והשני שהם האחרון אל היה כלום שלא עשו שום הרמה על הרחם הראשון ולא התחזקו על ידי חכם כסו שהיה צריך וסתי והבכמות החשובה גדלים בארבע הקהל. ויש שהיו אומרים שיהיו יסבדו להעיר בני יסבדו זה על זה ועל כיוצא בו בינן יסבדו בעתה ויש דהם הרבה רבובים בעיר.

[illegible][illegible]

RESPUNSA

page 17 (v)

responsum 5

QUESTION: Our master may teach us concerning the matter of the seats of the synagogue which the owners (of the seats) regularly pledge (as collateral), sell, and will to their children. And it is the custom for the owner's name to be written on his seat. And a person (average worshipper) is not particular in sitting in his own seat but would rather act like anyone else (and sit randomly in the seats of the synagogue). And Reuben had one seat on which was written his father's name, Jacob, which had been in his possession for more than three years (i.e., possession of property for three years gives legal ownership as long as no one raises an objection and claims to have legal ownership within the first three years). And after the death of Reuben's father the seat remained in Reuben's possession (as an inheritance). And now Shimon comes and he appeals (contends) for the seat and claims that it (the seat) was his father's Yesachar and he shows (produces) a bill of sale with the name of his father. Reuben claims that he is already the legal owner since he has possessed it as the legal successor of his father for more than three years because his name had been written on the seat. And no one had contested (his ownership) during his lifetime. And now that he (Reuben) owned the seat by the law of inheritance, Shimon claims that the writing of the name Jacob (on the seat) was not proof of three years of uncontested ownership. And furthermore (in our case) there could not be Chasakah (legal ownership) of the seats of the synagogue because it was not possible for him (Reuben) to prove his legal ownership (of his father's seat).

ANSWER: If it is a known custom (of the congregation) in town that the writing of the name upon the seat constitutes legal ownership of the seat, since he (the owner) does not care to sit in his place but rather to act like anyone else (i.e., sit anywhere) and therefore a custom was introduced of writing his name in his seat, and if it were not so how would it be known that it was his seat? The result is that the writing of the name is like a document (of ownership) and the claim of Shimon is inconsequential (is nothing). And if it is written in the bill of sale that he (Shimon's father) purchased it (the seat) from someone else and not from Jacob and even if it is written in the bill of sale that he purchased it (the seat) from Jacob it is possible that Jacob bought it (the seat) back from him. And his name written on the seat proves that it is his because this is just like a bill of sale, since if it were so, that Yesachar had purchased the seat, he should have erased the name Jacob and written his own name on it (the seat). However, if it is not the custom of the town that the writing of the name on the seat establishes ownership, then it is known that Jacob sat in the seat with the presumption of ownership and he (Jacob) possessed it (the seat) according to the law of the Chasakah of a place, for he sat there prior to his death three consecutive years after Yesachar purchased it.

RESPONSA

page 17 (□)

responsum 5

And (if) the bill of purchase of Yesachar is older than (the period of time) three years before the death of Jacob, than the seat belongs to Reuben for behold Jacob possessed it for three years after Yesachar purchased it and may claim his father bought it from Yesachar before his death; or even if Jacob did not possess it for three years but his son, Reuben, possessed it (the seat) for three years, and the possession of it (the seat for three (consecutive) years took place prior to the claim of Shimon, then (Reuben) owns (the seat). But if he (Reuben) did not possess it (the seat) for three years Shimon owns the seat on the strength of his father's purchase (bill of sale).

Asher son of Rabbi Yehiel, may his memory be blessed.

ד דמלך טה נמהנו שימדיש הקהל אלף ואכנים נעדין הכל חי שים

RESPONSA

page 18

responsum 7

Concerning that which you asked: One of the pews of the Synagogue has five (sitting) spaces. One side of the pew is adjoined to the Ark of the Law and there are (sitting spaces) in the wall of the Ark itself. There was empty space between these (sitting) spaces towards the head of the pew (an aisle). And now, the individual who sits at the head of the pew removed the board at the head of the pew and placed it next to the spaces which were in the wall of the Ark and lengthens the pew so that it measures an additional space and now there is a space of six seats (measures six spaces) in the pew. His neighbor next to him in the pew complains and says, originally my seat was second in the pew and it was worth one hundred gold coins and now it is third (in the pew because of the addition of the extra space at the head of the pew) and is only worth fifty gold coins. Can he prevent (this addition) or not?

ANSWER: It appears to me that he has the right to prevent (this action) because when they originally made the pew they placed a board or a structure at the head of the pew, this same structure belongs to everyone because, the seats were distributed according to (their relative position) to the head (of the pew). The first (seat) adjoined to the head (of the pew) is the most valuable, the second (seat) less valuable (than the first seat) and the third (seat) even less valuable, and thus all of the seats decrease in value in accordance with their relative distance from the head (of the pew). Consequently the structure at the head (of the pew) is not to be changed without the consent of everybody. Furthermore the space which was between the pew and the seats in the wall of the Ark belongs to the entire congregation and it is impossible for an individual to take that space without the consent of the entire congregation. And, the individual who (owns) the second (seat) in the pew may certainly prevent him (from making the structural change) for the (above) reason.

RESPONSA

page 18

responsum B

And this concerning your question asking whether it is permissible to kindle the candles in the Synagogue in the evening of the first day of a Holiday in order to honor the second day of the Holiday or if it is necessary to wait until dark. You should know that the candles that are kindled in the Synagogue are done so only as a Mitzvah (not strict law but a praise worthy action) because behold, they are being kindled even in the morning, and Shabbats and Holidays are honored with a great number of candles, as it is written (in Scripture): "Therefore glorify ye the Lord in the regions of light" (Isaiah 24:15) and (this is translated) in the Targum; "Wherefore, when light cometh to the righteous, they shall glorify before the Lord: in the coast lands of the sea shall they be giving thanks and blessing the name of the Lord, the God of Israel." With נִסִּים as lamps. And in place of light there is happiness as it is written (in Scripture): "The Jews had light and gladness, and joy and honor." (Esther 8:16) And it is written: "Light is sown for the righteous, and gladness for the upright in heart." (Psalm 97:11) And it is written: "...voice of mirth and the voice of gladness... the sound of the millstones and the light of the lamp." (Jeremiah 25:10) Therefore it is customary to increase (the number of) candles on Shabbats and Holidays (for the sake) of gladness and not for light. And when they (the candles) are kindled on the first day of a Holiday, close to evening it is a Mitzvah at that very moment and it does not make any difference to us if they are kept burning all night and even on the second day of a Holiday close to darkness (i.e., close to the beginning of) a weekday (it is permissible) to kindle candles and keep them burning for the entire night.

RESPONSA

page 18

responsum 1

Concerning your question of a congregation that has sufficient funds to hire either a Rabbi or a Cantor (but not both), which one is of primary importance? (Answer) If the Rabbi is outstanding, great (in his knowledge) of Torah, an expert in ritual and civil law there is no doubt that the study (and teaching) of Jewish Law (and traditions) is of primary importance. However otherwise (if they cannot afford hiring such a Rabbi) a Cantor is more preferable in order to fulfill the obligation of services for the majority (congregation).

RESPONSA

page 18

responsum 2

And that which you wrote concerning those who say that it is possible to divert even money collected for the study (and teaching) of Torah to the thirty p'shitas (coins) which are given each year to a high official (or bishop) (for political bribery) in order that lives would be saved. Since, if they (the political officials) are not satisfied (financially) (i.e., not bribed by the congregation, then they would approach the Jews individually) and there are a number of poor people (in the congregation) who have no resources from which to give and who would be stripped naked (bankrupted), the law is with them (those who want to divert the money from study to bribery) since, in this situation the principle of saving life is operative and this principle takes precedence over all other concerns.

RESPONSA

page 18

responsum 3

Concerning your question if a (knowledgeable) man knows that his words and decisions are not heeded by the people, whether he is obligated to urge them (to observe the law) or (apply to them the rules) leave them alone in order that they err (transgress the law) inadvertently and not willfully (not be in the category of intentional sinners). If it is clear to him that they will not accept his decision he should not warn them, for as we say (Betsa 30a) "The addition to the fast of Yom Kippur (for more than 24 hours) is from the Scriptures yet women eat and drink until dark (on erev Yom Kippur so that their fast is really no more than 24 hours long) and we do not object to this (their actions). However, if there is some doubt (as to their response to the warning of their obvious transgressions) he should warn them in order to save his soul." (If there is doubt to their reaction and he does not tell them of their transgressions he would become culpable for their sins and the state of their souls.)

RESPONSA

page 18

responsum 7

If the congregation agrees on a matter an individual (member) may not object, on this matter the Torah states: "...follow a multitude (majority)" (Exodus 23:2) and if it were not done (lit. "if you don't say thusly) thusly there would never be a valid congregational ordinance for when would a congregation agree unanimously?

RESPONSA

page 18

responsum 8

Furthermore may my master instruct me (with respect to the following case:) a congregation instituted an ordinance and agreed to exempt Reuben son of Jacob from the ordinance and it was discovered that in the text of the ordinance Reuben son of Isaac was written (the wrong name). And behold he wants to be exempt in accordance with the written testimony (the exemption clause) of the congregation; since in any doubt that occurs we do follow the written document.

ANSWER: Concerning the error (of incorrectly writing) Reuben son of Jacob as Reuben son of Isaac if there is any doubt as to which of them is to be exempt, follow the written text. However, if there is no doubt in the matter and all (concerned) agree and all say that they are in accord that Reuben son of Jacob should be exempt; if the scribe made this error, Reuben son of Jacob suffers no financial damages. This is not a doubt (i.e., not a genuine doubt) which would necessitate to follow the written document. However, if the congregation is divided, they should take a vote and follow the will of the majority and if the majority states that they agree to exempt Reuben son of Jacob and that the scribe erred, they should then follow the majority decision (i.e., exempt Reuben son of Jacob from the ordinance).

[illegible]

RESPONSA

page 19 (1)

responsum 10

In addition my master (I have the following question). Reuben, a craftsman of either wall painting or leatherwork, must pay a bribe (a form of professional extortion) each year because of his craft to the (non-Jewish) Judges and officials so that he would not be falsely accused of some offense as is the general case of craftsmen who must give from their crafts (objects they are making) (i.e., all craftspersons had to give officially sanctioned extortion in order to stay in business). And the Congregation, likewise, gives to the Judges (Gentiles) when they go to the Gentile courts. And (the leaders of the Congregation) requested of Reuben to give his portion of this (i.e., for Reuben to pay his portion of the congregational as a member of the Congregation). He (Reuben) responded, what do we have to do with each other (i.e., what is the justification) that you come to me at a time of trouble for you while I carry alone my burden (paraphrase of Deuteronomy 1:12). Either there is a common fund for us all and you include my part (of bribery) in your part (you pay my bribery, too) or carry your own burden (i.e., pay your own bribe and do not expect me to help pay the congregational bribe if the Congregation will not help me pay my craft bribe); and I will take care of myself and, if it is necessary for me to go (before) the Judge I know that he will favor me because of my favors which I do for him each year.

ANSWER: It seems that if the Congregation gives a reward (bribe) to the Judge that he be a shield and a protection each time it is necessary for them to have his help; this is a common necessity in the Galut to bribe the Gentile Authorities in each and every town, Reuben the painter must also pay (his share) of this (bribe). And, it is impossible for him (Reuben) to separate himself from the Congregation even if he must (also) do this (pay a bribe) in order to work at his craft. However, if they (the Congregation) do not give (bribes) to the Judges except to help themselves in the Gentile courts and Reuben does not need this (protection because his craft bribe covers court protection) he is not obligated to give with them (the Congregation).

RESPONSA

page 19 (1)

responsum 12

QUESTION: Our teacher instructs us, a tax was imposed by the ruler of the city (general non-Jewish local government) on the Congregation and the Congregation "brought out" (i.e., borrowed) the money for taxes on interest for a set period of time and at the end of the ascribed time of the loan they assessed the members of the Congregation. And now there is in the town individuals (Jews) who at the time the ruler had imposed the tax on the town were exempt (from paying their share of the tax) either because they did not dwell in the town (not yet residents) at the time or they were too poor (to pay their share) and (now) they have become rich or those for whom study is their occupation. And now the Congregation wants them to pay their portion of this tax, both capital and interest but they (those who were exempt from the tax) say that they do not (have to pay) a share since at the time that the ruler imposed the tax on them (the Congregation) they (those exempt) were not obligated. And had they not borrowed the (tax) money for interest they would have had to pay their shares immediately; consequently, at the same time (that the tax was imposed on the Congregation) they (those exempt) were not under any obligation therefore they do not have to pay anything.

ANSWER: If the tax imposed by the ruler on the Congregation was for a certain amount which is regularly given each year and the fact is that the Congregation had exempted them for a set period of time from this same tax (since they had paid the tax till a certain future date) behold there are benefits to those that come to dwell (in the town) until that same set time (they do have to pay their portion until the end of the set period) because this same tax was already paid by the Congregation, and they are obligated to pay their share. And if they came (became residents) or became rich within half of (the tax) period, they are obligated to pay half of the (full) share and thusly a third or a fourth, all (the amount of tax they are obligated to pay) is in accordance (i.e., in proportion) with the time they came to (dwell in) the town or that they became rich, because this matter resembles that of renting a house and someone else enters and dwells in the house. This (squatter or subtenant) must pay (that amount of rent commensurate) with the amount of time he dwelled (in the house). However, if this tax (the tax mentioned above) is not a regular fixed tax which is paid for the year (but) rather a new tax they (the ruler) demanded of them (the Congregation) those who came to dwell in the town or who became rich after it was necessary (lit. consented) to give the tax to the ruler are exempt because they (the old members of the Congregation) were obligated (to pay this new tax) before they (the newcomers, etc.) were part of the (tax-paying) Congregation, even if the Congregation (had to) borrow (the money to pay the tax) on interest and paid after

RESPONSA

page 19 (7)

responsum 12

they (the newcomers) arrived, they (the latter) are exempt. And those whose occupation is study (of the Torah) are always exempt (from paying taxes) irrespective of their resident status.

Asher son of Rabbi Yehiel, may his memory be for a blessing.

20

[illegible]

תשובה חייב לי משה להודיע שהם לדין כי כל בעל דין ששמן

[illegible]

עוד שמו חורשי הקהל שרבי משה ואשרי הסביתו עם הקהל והסבתה

[illegible]

תשובה כזה אין. משהו כזה בין בלא בלאו היינו ית לזה מדי

כל אדם שיש לו חלק בזה העולם הזה ויש לו חלק לעולם הבא יצא לו חלק בזה העולם הזה ויש לו חלק לעולם הבא

ומה בענין רבי מנחם מענדל הכהנא שליט"א, אשר גם הוא היה מן החרדים, וזוהי הסיבה, שגם הוא לא היה מן החרדים.

[illegible]

ומה שאמר שיש הקהל הזה כלל הדברים יחדיו על כל המצות

[illegible]

יומה שבעה ימי קדש הם לזכרון היום הזה אשר יצאת ישראל ממצרים ויהי לכם חג זמנך.

[illegible]

החלטה: המועצה המדעית אישרה את התוכנית.

[illegible]

6. Summarize the main points of the text.

[illegible]

RESPONSA

page 20

responsum 17

A Congregation specifically contracted Reuben to dwell with them to teach Torah to them. He did not accept (the position) until two men of the Congregation obligated themselves to give him a (written) contract. The Congregation gave him a written contract signed by seven official signatories of the Congregation who were accustomed (i.e., authorized) to sign documents, whenever money has been collected from the Congregation (contracts, and receipts). This written contract was given to him through the two congregational members who had obligated themselves to him and who worked as agents for the Congregation (in this particular case). It was written in the contract that the Treasurer of the Congregation should give these two men a set amount of money each and every year that Reuben dwells with them (i.e., teaches). And, in reliance of this contract the two men obligated themselves to give Reuben a set amount of money each year that he dwells with them (teaches).

And now part of the Congregation says that the two men, mentioned above, had no right to collect the aforementioned money from the Treasurer based on the contract, as stated above. And they (the two men) say they already obligated themselves to give Reuben a fixed amount of money all the time that he dwells with us.

ANSWER: After the Congregation has contracted with Reuben to come and dwell with them to teach Torah under certain contractual agreements, i.e., all the time that he will dwell with them as it is written in the contract. The Congregation is obligated to give Reuben what it has agreed to give him, and how much the more so since he chose two men from the Congregation who obligated themselves to contract him, and the Congregation gave him a document signed by seven official Congregational signatories who are accustomed to signing receipts, via the two (who had obligated themselves to give him i.e. that which the Congregational Treasurer would give to the two) a set amount of money each and every year, all the time that he (Reuben) would dwell with them. In reliance of this document, they pledged to give Reuben that which they had contractually obligated themselves. These two must give to Reuben all that they pledged to him and the Treasurer is obligated to give (to the two men) the fixed amount of money that they pledged to him (the teacher).

And concerning this (my decision) there is no doubt (i.e., it cannot be questioned).

Asher son of Rabbi Yehiel, may his memory be a blessing.

24

(*) כד במעלה גלגל פ"י היו התנאים כחצ"ס גי'י חצ"ס פדנ"ס דמל"ס

(*) יש במטאג כלל פ"י בין התקנים כחצמ"ס בתי החל"ש מדינה וממשלה

RESPONSA

page 21 (N7)

responsum 23

Concerning that which you asked on the agreements and the ordinances of the Congregation whether it is necessary that witnesses who are not residents of the town testify about them (as they may be more objective). Know that it is not thus customary to bring everytime witnesses who are not (Jewish) residents of the town as it has been agreed to by the Congregation to declare qualified all the (Jewish) residents of the town to testify against those who have transgressed their ordinances.

RESPONSA

page 21 (א')

responsum 27

Jewish people of the town are permitted to go beyond the limits of the law in every case according to the need of the time as a fence of the law (i.e., to protect the law). If there is a poor individual who can not be fined in money they are permitted to punish him with beating and all kinds of persecutions until he abides by the law, and to do (behaves) like the rest of the Congregation as it is mentioned in chapter Elu Megalhin (Moed Katan page 16a) "How do we know that we scold, curse, beat, pull hair, and make him swear; as it is written: 'And I contended with them, and cursed them, and smote certain of them, and plucked off their hair, and made them swear by God...' (Nehemiah 13:25) And from where do we know that we may bind him, ban him, imprison him and persecute him; as it is written: "...whether it be unto death or to banishment, or to confiscation of goods, or to imprisonment," (Ezra 7:26) What is meant by the word "to banish"? Rav Judah says (it means) to persecute.

Consequently a Jewish court in each and every town has permission to chastise and to punish with all sorts of chastisements and banishments those who refuse to obey their ordinances. But if he is a (physically or otherwise) powerful person beat him with the help of Gentiles (i.e., we invite Gentiles to administer to beating). And they (the Gentiles) should say to him, "do what the Jews tell you to do."

With Peace, Asher son of Rabbi Yehiel, may his memory be for a blessing.

RESPONSA

page 21 (R)

responsum 30

An ordinance that was instituted by the residents of the town in a general way, includes all the residents of the town even if (they) instituted it for the needs of the tax (i.e., as a special tax) and some of the residents of the town are exempted from the (regular) tax because they excluded no one.

RESPONSA

page 21 (R7)

responsum]

Concerning the question you asked of a Congregation which decreed a ban on (Kosher) slaughtering except by a Kosher butcher employed (endorsed) by the Congregation, but one man came and transgressed the decree and slaughtered.

(ANSWER): It is apparent that it is prohibited to eat from (the animals) slaughtered by him since the Congregation declared unfit (prohibited) all that was slaughtered (i.e., as if the unauthorized meat was non-kosher) other than that which was slaughtered by the endorsed butcher, lest anyone would feel free to slaughter even if he were not an expert (in kosher slaughtering). And the Congregation is permitted to stipulate and act beyond the limitations of the law to give to the (authorized) butcher the money of the (unauthorized butcher) in accordance with the ordinance and this is not a form of robbery. And thus (the Congregation) is permitted to prohibit what is (really) permitted (kosher) for the purpose of keeping the Congregation far from transgression (lit. "as a fence for the matter"), and what they prohibited is prohibited to all the (Jewish) inhabitants of the town. And how much the more so that this individual who transgressed the decree and slaughtered should be compared to an apostate with respect to the matter (kasrut) since he transgressed the decree in order to slaughter. And even though he is not under the suspicion of eating prohibited food nevertheless (the matter) is reprehensible and it is proper to punish him so people should not eat from his slaughtering (i.e., announce that his meat is not Kosher).

RESPONSA

page 21 (R¹)

responsum 2

In addition (my master) may instruct me concerning (the following case;) A Congregation agreed to issue an ordinance and stipulated (that anyone who transgressed the ordinance) would be excommunicated and this ordinance was scheduled to begin at the beginning of the month of Marcheshvan and continue (in effect) for five (5) years. And when the (appointed) time came, they did not fulfill (observe) the ordinance because they (the Congregation) was deeply involved in financial matters or deeply involved in some other matter and did not pay attention (observe) (the ordinance) until a month later and now some members of the Congregation regretted (the ordinance) and they want to retract (back out of) it (the ordinance). And they say (those who want to retract the ordinance) that the ordinance is voided since it did not begin (take effect) at the determined time.

Please instruct me if it is possible for them to back out (of the ordinance) even though the majority of the Congregation is determined to observe the ordinance from this point (in time) and onward and those that want to retract (the ordinance) are in the minority.

ANSWER: I do not know the reason for its invalidation since neither all of it or part of it (the ordinance) was annulled. Just because it (the ordinance) was not observed at the time scheduled either because of inadvertant or purposeful violation (of the ordinance) should the ordinance be invalid? Who annulled it, that it should be invalid?

[illegible][illegible][illegible]

כלל שמיני

דיני שבועות דין פותחין בטלד ודין שבועה באנס דלב ובחלום
דין אם נאנס ודין שבועה במעט דין גלגול שבועה ודין שבועה
לאזקי מסנא.

[illegible][illegible]

ב נשאלתי על דרכי טעמך הלא למדתי חסד מלפני לזרוע לחתן
מה חייבי לו וכן נכחתי לחתן כבודי לו עד און שלי
מה חייבי לו והנה העני החתן שגם דרכי טעמי חן כי למדתי לי * וכבר
(הנשיא)

[illegible]

תשובה קל להעיל מים אם הוא על סף חזק חלש ואם רוב החזק נחשב לשיט (כל ק"מ) : הכוללת בחזק ובחלש מים גנים לעומת המסבך על חזק הוא מים חזקים הוא לערך נצח חלשם אחר חזק חזק ולא יתכן שיהיו מים חלשים חזקים חזקים יצאו מים על המסבך מים : :

[illegible][illegible][illegible][illegible]

יששכר יצור סודותיו על דבר וחלוף הדברים על דבר שום
בין האדם ולא הדבור - אם בקול המנוח לחזק
התם קדש שגילו המים בדי חלש המים בין השמים והאדם חלש
אם לא חזרו האנשים אין ופניו הרים נעמד על הרמזה ואין
המים נלחם:

י' ושאלתם ראלקן מוה"י' לכתוב ספר וכל ששון מן הימים
 יבטחו לו ספרם יתחילו בבית הכנסה אם הם חס
 ודע שכל ראלקן של המסדה ד"י שומעוהו אם שומען לו :

[illegible][illegible]

RESPONSA

page 22

responsum 3

In addition instruct us concerning a Congregation which placed a ban. Is its validity dependent on the majority or can the minority protest (and reject the ban [or ordinance] for themselves). And whether one should follow the majority even if it is a financial matter and the rich are in the minority?

ANSWER: When a Congregation places a ban, if it is concerning financial matters, (the decision) follows after the majority of the moneyed people as it is in (the case of the caravan (Baba Kama 116b) which was attacked and plundered by a gang in the desert, that the calculation (of individual loss or responsibility) is based in accordance (to individual) financial (participation in the goods of the caravan). And thus likewise here with the "ban" (ordinance) which is concerning a financial matter the majority of the moneyed people must be decisive and it is not possible for the majority of the people (of the Jewish community) who give a minority of the tax money to decree a ban (to tyrannize) the rich according to their (the poor's) will.

RESPONSA

page 22

responsum *

And you asked concerning an individual who was excommunicated for a fixed period of time and within that time period a reconciliation took place, and the cantor of the synagogue by instruction of the Congregation said: "The ban of x is annulled." Is this annulment valid since he had been excommunicated for a fixed time? Know, that the ban is void even if he was excommunicated for a fixed time (which has not yet expired) because he was excommunicated according to the will of the Congregation for a time until a particular time and if they reconsidered (agreed) to release him within that (specific) time behold, he is released!

Asher son of the Rabbi Yehiel, may his memory be for a blessing.

RESPONSA

page 22

responsum 5

And concerning that which you asked of a Congregation which instituted an ordinance (with the penalty of) ban (to enforce their decree) and then voted to annul (the ordinance) but, Reuben objects. Is the Congregation capable (permitted legally) to annul it (the ordinance) without he (Reuben's) consent?

(ANSWER:) It appears to me that (validity of a) decision of the Congregation depends on the majority opinion since in every division of opinion, according to the Torah the majority prevails (i.e., majority rule). Consequently the Congregation has the right to annul (the ordinance) by themselves without the agreement of Reuben, and if one does not agree with the annulment, for him it is not annulled. And this is not similar to the case in (Nedarim 25b) where we say: (If one says:) "Had I known that my father was among you, I would not have vowed in which case they also annulled the vow pertaining to others since if a part of an oath is annulled it is completely annulled" which rule applies in the case when the individual who vowed regrets one part of the vow. In such a case as we say, it is annulled for everybody; however if many individuals vow as one (individual or body) and some of them regret this (action and annul the ordinance) it is not annulled for the others who do not regret (instituting the ordinance).

Asher son of the Rabbi Yehiel, and may his memory be for a blessing.

RESPONSA

page 22

responsum 7

Re the question which you asked concerning the following case: Reuben had to swear to Shimon (in a legal matter). And Shimon asked the Bet Din (court of the Congregation) to write a note stating that any person who knew (and did not testify) that Reuben had transgressed the oath be excommunicated in the synagogue in order to disqualify him (from swearing another time). Can one accept such a request?

ANSWER: God forbid such a matter as this must not happen in Israel, to shame publicly a son of the covenant (another Jew). Even the person requesting the ban must be rebuked because he uttered gossip and slander about him (Reuben) by mentioning about some blemish. Even if one knew that his friend had transgressed a law and testified against him alone, this single witness is flogged because we are not to believe a single (lone) witness, as he brings upon him (the individual he is testifying against) words of gossip and disgrace, as we say in (Pesachim 113) "Tobias sinned and Zigod was punished (flogged): (i.e., the innocent suffer); however if he has witnesses he should bring them and they should testify however we shall not demand to have him (the other litigant to be) excommunicated.

שוות רבינו אשר כלל חמשה עשר

י"ז

[illegible][illegible]

ס' וי' טעמא קול דמי שזכר בנדרים ל"ל תמיד זה נשקרו וחטיו
דמי חת הנדרה הם עמו - ענין כחלו לו שפירושו
כליו מה משה וירמיהו ושמואל בניו לו יום והלכו יצחק חנהל בנדים
לפי' ומלך לבין אשר 1:

[illegible][illegible]

ששאלת כן אכל אדם בשר ביום יום אחד ולא נאכל
 לו חם משה עד וכן קצת היום חם לרשעים מה
 אלא משה נאכל לחם - דהא אכל אדם בשר יום אחד
 ביום בביתו אלא לא נאכל לו חם כל היום אלא נאכל
 חם אלא "חם" נאכל משה, וכן לא אכל בשר
 ביום אחד אלא נאכל חם ביום אחד:

ששאלת אם חייב אדם כנסת לחזו בגדול מחמת כוח בלחזו מחזיו. דע עליו חילוק כי כוח מחזיו אדם כנסת מחזיו כוח כנסת לחזו בגדול מחזיו מחזיו כוח בלחזו מחזיו. ונחשבתו פקד טעם (דף ק"ג). תלוי כח האדם חזק וזו האדם חזק. וזהו פקד זה בעל חזק. תלוי חזק וזהו חזק מחזיו מחזיו חזק בגדול. למה מחזיו חזק וזהו חזק חזק חזק.

יושעאלת
 אלחז נהל במים
 יס סה מדינה
 כל זה סגול סתק וסיה לחז סהא תלמיד סם
 חקן סתמו במים וסדו סקן במים סהא תלמיד סם
 סם מדינו מדי סם מדיס וסל לנסח חקן סגול
 זכין סלו סהא סים סגול וסל ססס ססס סתק
 וסן סדל וסל סים סגול

[illegible][illegible][illegible]

RESPONSA

page 19

responsum 8

Every learned man who studies Torah as his main occupation and who does this study of Torah as his permanent occupation and who works only incidentally for his physical sustenance and consistently meditates on his studies and does not neglect it in order to busy himself with mundane (not holy) matters except to assure himself of a livelihood because he (this learned man) is obligated to do so, (as it states in Pirket Avot) it is "fitting for the study of Torah to be mixed with worldly occupations. All study which is not blended with a worldly occupation is nullified in the end, and result (of such study) is sin!" At all times this learned man's heart is on his study and when he completes his worldly occupation he returns immediately to the House of Study. This learned man both studies and practices his Judaism well, and does not have a bad reputation. This learned man is in the general category of Rabbis since he places his neck in the yoke, meaning here Torah. (This learned man accepts the mandates of the Torah and spends his life both studying and fulfilling its Commandments and Statutes). One should not place upon him (the aforementioned Scholar) the burden of the Kings and the Rulers (he should not have to pay the various secular taxes) in accordance with the following incident: (From Tractate Baba Batra Chapter 1, page 8a)

"Rabbi Nahman the son of Rabbi Heisdah placed a tax on the Rabbis and Rab Nahman the son of Rab Yizchak said to him: you transgressed (by your action of placing this tax on the Rabbis) the Torah, Prophets and the Writings (i.e., the entire Tanach)..." ...and I see that we have to apply in these our generations the following reasoning (using the hermeneutic principle of Kal v'Chomer) that behold, in the days of the learned men of the Gemara when there were learned men numbering in the thousands and even so they were exempt from all forms of secular taxes and property taxes. Therefore how much the more so in these generations when one is incapable of finding "even one learned man in each town or two within a particular family" (cf. Jeremiah 3:14) that they should be exempt from all types of taxes.

And furthermore I was shown a Responsum of Rabbi Meir the Levy, may his memory be for a blessing, and this is the text: "I inform you concerning what I am writing to you, and I am writing it (concerning this problem:) There are townspeople who want to collect from me various forms of secular taxes, corvée responsibilities (public service, like draft, for civil defense and construction), property taxes, and various types of congregational support for which the Jewish townspeople are obligated. Their reasoning is that since I lend money to Gentiles for interest in my home, even though I do not go out into the market place (to do my business) as do other townspeople who do not study Torah. I said to them that since the study of Torah is my main occupation, I stay every day in the

RESPONSA

page 19

responsum 8

House of Study and do not go outside, I should be exempt from all these (financial) matters. (Because) The reason that I loan money for interest to Gentiles is that I should not have to be dependent on public charity. Since I use the entire day for study and learning and do not squander even one hour, I should be exempt (from all forms of taxation).

And I showed to them the case of Rab Nahman (the incident mentioned above, cited in Baba Batra) which states (that one who taxes a learned man) transgresses the Torah, Prophets and Writings. And (I showed them) what Ibn Migash had written in the name of his teacher and what Maimonides, may his memory be for a blessing, and all the Geonim (Great post-talmudic halachic authorities) had written concerning this case.

And my mind will not be satisfied until I see the writing of my master and because of this I beg my master to respond (send an answer to this question) immediately with arguments (responses) from your wisdom. May your peace flourish.

And this is the responsum of Rabbi Meir, may his memory be for a blessing. "I see that in the protestations of those raising objections against the man whose study of Torah is his (the learned man's) main occupation and who does not abstain from the study of Torah except for a short period of time in order to sustain his life (take care of his needs), and want to obligate him to pay all sorts of taxes, there is no legal substance. This is so since all of the instances and discussion on our topic are (focused) on exempting the rabbis from taxes (and it would be wrong to have the legal precedence disregarded... ..Consequently it is apparent to us that the proper thrust of the law, according to our rabbis, is that he is exempt and free from all forms of civil taxes, liabilities, property taxes, Royal Corvée and they (the Jewish Communal Officials) must not collect from him (from the learned man) either in his own home or in any other place from this day forth. This applies to the taxes they had been requested of them in the past from this day onward might be levied in the future (any back taxes, left unpaid, or any future tax to be levied.) If it happens that (this learned man) is forced by decree or coerced by either Jews or Gentiles to pay taxes the minds of the Rabbis will have displeasure (will not rest) /Going against the spirit of the Law⁷. If they do not accept (consider) my opinion. (the Jews asking this question) he (the rabbinical authority) has permission to beat (the Jewish tax-collectors) by non-Jews till they do that which the Jewish rabbinic authority says (i.e. follow my decision). All those who support and strengthen him (The Talmid Hacham) in the matter, behold, they honor the Torah. Upon which it is said, "it is a tree of life to

RESPONSA

page 19

responsum 8

those who hold fast to it..." (Proverbs 3:8) Asher the son of
Rabbi Yehiel, may his memory be for a blessing. David the Cohen
the son of Rabbi Moses the Cohen, may his memory be for a blessing.

RESPONSA

page 19

responsum 9

And this is concerning your question asking about an evil butcher who verbally insulted the reader of the Congregation, a learned man, until he (the butcher) was excommunicated. And this same evil one stated that contrary to (inspite of) it (the excommunication) he would increase his insults. What is his punishment?

His (the butcher's) fitting punishment is, it should be publically proclaimed that he is excommunicated and he should be separated from the community and remain in this state of excommunication for a period of thirty days. Afterwards he should publically beg for forgiveness before the reader of the Congregation.

Peace, your father, Asher

RESPONSA

page 38

responsum 3

And concerning that which you asked of an individual whose presumptive status (i.e., it is taken to be true) is that of an informer (to the Gentile authorities) whether one individual is permitted to witness against him and to bring his testimony (i.e., there seems to be only one witness) towards a judgement according to their laws (secular courts). Know, since the individual has the presumptive status of an informer it is permitted (i.e., to use just one witness to convict the informer). Because thus I heard (the tradition) from Rabenu Meir, may his memory be for a blessing, after an informer has informed, then he is of the presumptive status of an informer, therefore this is permitted.

RESPONSA

page 38-39 (D)

responsum 4

QUESTION: Reuben says that he has a complaint (claim) over Shimon, that he owes him money and furthermore that he (Shimon) had done things to him (Reuben) which were not proper, and has made slanderous statements about him and says that he wants to sue him in a Gentile court. Shimon came to the (Jewish) court and summoned Reuben and said to the (Jewish) court, behold I am ready to come before the (Jewish) court and abide by your decision whatever it may be, and now warn him that he should not slander me and bring claims against me in a Gentile court.

ANSWER: It appears to me that Reuben is but slandering Shimon and has transgressed "Thou shalt not utter a false report" (Exodus 23:1) and therefore all who hear his words and if he sues him before the Gentiles (Gentile court) to him applies the law of the informer (and they should) punish him with their hands (beat him up or kill him) and if he threatens and says "I will go and say before the violent people (thugs) something that may result in damage to Shimon", from the moment that he speaks (thus) he left the community of Israel (Judaism), the children of the covenant (Jews) and permission is given to all who fear the name (God) and who are anxious over His words to punish him.

Asher son of the Rabbi Yehiel, and may his memory be for a blessing.

RESPONSA

page 40

responsum 9

And concerning that which you asked: if it is necessary to mourn for an apostate or an atheist (denies the Jewish God but may be an idol worshipper).

Thus it is taught in tractate Semachot (Chapter 2) "He who separates himself from the ways of the community; the Jewish people must not busy themselves with him (with his burial), nor should they mourn for him (before the burial), or mourn over him (after the burial)."

RESPONSA

page 40

responsum 12

And that which you have written concerning a particular man (a Jew) whose father converted to Islam whose name was Joseph son of Shimon. After his father converted, the man abandoned the name of his father and called himself Joseph son of Shmuel. After a period of time, the man divorced his wife using his new name and they (perhaps a religious court) declared the Get (the divorce document) Kasher (valid).

I am perplexed concerning those who declared the Get valid. For the following reasons:

Even though it is (legally) possible for an individual to change his own name and call himself by another name, as it is stated in the Talmud Tractate Rosh Ha-Shanah 16b; "Three things nullify the evil decree (i.e., repentance, prayer, and justice) etcetera." There are those who say that this is the case even when changing the name, as we find in the cases of Abraham and Sarah. However, how can an individual change the name of his father? Those who will see the Get, on which Joseph son of Shmuel has been written, will say that she, (his wife), is not divorced because the name of her husband is Joseph son of Shimon.

מכתר תולדות

נאט ייז זיגל

יעקב בזק

1971

דיני נפשות בזמן הזה

בפניו. ואף שלא בשעת מעשה, כשדנין עליו להרגו ביד עובד אלילים – אין צריך לקבל עדות בפניו, כי הדבר ידוע, מי שהוא מוחזק מסור ומלשין, הגויים מקרבין אותו בשביל הנאתן. ואילו היה צריך לקבל העדות בפניו, ולדרוש ולחקור בדינו, לעולם לא יעשה ממנו דין, כי ינצל ע"י גויים. כי אפי' כשאינו בסכנה הוא מוסר יחידים ורבים, כל שכן כשיראה עצמו בסכנת גופו, שימסור ויגלה סתרי הרבים ויטכן לכל ישראל:

לכך נהגו בכל תפוצת הגולה, כשיש מסור מוחזק בכך ששלשה (צ"ל: שלוש) פעמים מסר ישראל, או ממונם, ביד גוי, שמבקשים עצה ותחבולה לבערו מן העולם משום 'מיגדר מילתא'²⁰, ושיוסרו האחרים ולא ירבו מוסרים בישראל, וגם להציל כל ישראל הנרדפין מתחת ידו. הילכך, בנידון זה, שהעידו העדים שהיה מוחזק מסור ומלשין, וגם היה בשעת מעשה, יפה עשו שדנוהו לתלות. וכן יאבדו כל אויבי ה' ואוהביו כצאת השמש²¹ וגומה. נאום הכותב אשר בן ה"ר יחיאל ז"ל.

הערות

ראה טור חושן משפט סימן שפ"ח סם הובאה תשובה זאת בתמצית. על דיני נפשות בזמן הזה עיין עוד בתשובה הבאה, והמקורות שצוינו בשלהי התשובה, בע' 95.

ב. דיני נפשות בזמן הזה

(כלל שבעה עשר פרט ח)

יהודי נתפש ע"י הגויים ונאלץ לשלם להם מכספו על מנת להשתחרר מידם. לאחר שיצא מתפישתו קילל במוטבי שם שמים, (כנראה מכעס על אחיו היהודיים שלא דאגו לפדותו מידו הגויים). על מעשה זה החליטו ראשי הקהל לנזור דינו למוות, כדרך שנהגו האומות באותה עת לדון למיתה מי שמקלל שם שמים. המושל עיכב הוצאתו לפועל של פסק הדין, כדי לשמוע חוות דעתו של הרא"ש בנידון. הרא"ש משיב, כי בכל המדינות הידועות לו אין נהוג כלל עונש מוות, אכן במדינת ספרד נהוג הדבר בתוקף רשות מטעם המלכות. הרא"ש מוסיף, כי לא מיחה על כך, אך גם לא נתן מעולם הסכמתו לכך. לגבי המקרה הנידון מתיר הרא"ש לשואליו לעשות באיש כפי הבנתם, אך הוא מציע להחליף את עונש המוות בכריתת חלק מלשונו של המגדף.

7 (שאלה): יודע למורנו שיחיה, שאירע בכאן בקרטבא¹ מאורע קשה עד מאד, אשר כל שומעיו תצלנה אזניו. והוא, שנבל אחד מהנבלים נחבש על תביעה שתבעוהו גויים. ונתפשר עמהם בממון משלו. והלכו קצת מיודעיו

באורים וציורים

20. לעשות סייג ונדר בדבר. ראה להלן ע' 21. שופטים ה, ל"א.

95 הערה 14. 1. קיורדובה.

ר' אשר ב"ר יחיאל (הרא"ש)

לנחמו, ויצא נצב פתח חצרו. ודברו על לבו בענין זה, ואמר אחד מהם: ברוך מתיר אסורים! ובכל זה חרף וגדף וקלל במלכו ובאלהיו^א ופנה למעלה. והדיינין וחשובי הקהל כששמעו זה, נתקבצו והסכימו לעשות בו דין. ושגרו לתפסו, ולא נמצא. ונשתדלו לקבל העדויות שלא בפניו, כיון שברח, ולא מצאו אלא עד אחד, והאחרים נשמטו וכבשו עדותן.

ועתה עמנו בעיר, הנכבד והנעלה רבי יהודה שצ"ו^א ברבי יצחק בן ואקר, וקנא לשם קנאה, ונשתדל בענין, עד שבא לידו מכוער זה. ותפסו בכח המלכות, וחבשו בבית האסורים. וכמו כן גברה ידו על שאר העדים הנשמטין, והכריחם והשביעם וקבל עדותן כראוי בענין גדוף זה.

ואף על פי שהיה הגדוף בלשון ערב, כיון שנבל זה אינו יודע ספר ולא לשון קדש, הסכימה דעת נכבד זה עם הדיינין וחשובי הקהל שיחשב גידוף זה לנבזה זה, כיון ששם העצם בלשון ערב גדוף, כמו שם העצם בלשון קדש ליודעיו^ב, וכדי לעשות גדר בדבר, ולא יפרצו הרשעים קלי עולם להטיח דברים כלפי מעלה. והאיש הזה קשה ורע מעללין מעודו, ולא נמצא בעיר מי שילמד עליו זכות. ויש לו פרשים אלמים, החזיקו ידו. והסכימו כמו עשרה מחשובי הקהל, אנשי המעשה, עם הנכבד רבי יהודה זה, ועם הלמדנים שיש בכאן, ועם זקני העיר, להעבירו מן העולם, וכשהיו הנזכרין במעמד הסכמה זו, הלכו קרובי הרשע ושחדו בממון, לפי הנראה, ותבעו מן הטפסר הגדול דון גואן מנואל^ג, שקבלנו במקומנו זה לאפטרופוס על המלך ירום הודו, להחמיץ דינו^ד. ושגר אחד מפרשיו עלינו שלא נגמר דינו עד אשר נשאל את פיו. והנכבד רבי יהודה זה נשתדל בענין בכל יכלתו ופייס מן הטפסר שלא יעביר עלינו הדרך להוציא דיננו לפני גוים. והסכימה דעת השר הזה שישאר רשע בתפיסתו, עד אשר תבא תשובת מורי שיחיה, כדת מה לעשות.

ועתה ברוך ה' אנו מיחלין פני מורנו שיקנא לשם קנאה גדולה, וימהר שלוחנו זה, קודם שיהפך לבב השר הזה ונשכבה בבשתנו ותכסנו כלימתנו. ושלח לנו בביאור ובהוכחות, דינא מאי, ומיתתו במאי, (ו)היאך? וכמו כן בחסדו יחזיק טובה, ויחזיק ידי הנכבד ר' יהודה, ועל מה שנשתדל בענין זה,

באורים וציונים

1. על פי ישעיהו ח, כא.
א. שמרו צור וגואלו. דון יהודה בן ואקר היה כנראה בנו של הרופא דון יצחק. הוא עבד בשירותו של דון גואן מנואל והשיג ממנו יפוי כח לדון דיני נפשות כדי להאדיר תורת ישראל בעיני הציבור הנוצרי (בער, שם ע' 181).
2. כינוי האל בעברית, ובערבית דומה.
3. דון גואן מנואל החל אז לשטוט את הארץ בתורת אפטרופוס על מלכות קסטיליה.
4. לעכב את דינו, על הפסוק 'אשרו חמוץ' — (ישעיהו א, יז) דרשו חז"ל (סנהדרין לה ע"א): 'אשרי מי שמהמץ את דינו' (שמשחה את פסק הדין ואינו דן בפוזיות)

דיני נפשות בזמן הזה

ועל מה שישתדל לעשות. והש"י (והשם יתברך) יהיה בעזרך מורי ויאריך ימיו בטובה ונחת!

וזו העתקת העדויות שנתקבלו בלשון ערב בפני בית דין של שלשה מקבלי עדותו בפני בית דין אחרי, ביום ראשון י"ו יום לחדש אדר, משנת אלף ושלש מאות ונ"ח למנין גוים שקורין אלצפר⁵:

'העיד בפנינו, אנו חתומי מטה, רבי אברהם ברבי יצחק בן נתן הידוע באלשמש, שבכלל ה' ימים ראשונים מחדש ניומבר שמנינו בו למעלה, הלך זה העד עם רבי אברהם בן אלזוימי לרבי יעקב ברבי יוסף ספאיה לחצר אברהם ספאיה ברבי יעקב, ויצא להם אברהם ספאיה זה לפתח החצר, ונתנו לו שלום, ונשאו ביניהם בעניין חבישת אברהם ספאיה זה. ואמר לו זה העד: ברוך מתיר אסורים! ועל זה אמר אברהם ספאיה זה: מבורך בשמו! וזו הברכה אמרה על דרך מה שאמרו רז"ל 'ברכת השם'. והמלה שאמרה אברהם ספאיה בזה הגידוף היתה שאמר: יברך אללה, בלשון ערב, **א**תפלוני. וזה הפלוני, הוא השם שאין ראוי לזכרו בזה הענין. ועל זה אמר לו זה העד: ברוך דיין האמת! מה אתה אומר?! ואמר אברהם ספאיה: אלולי שהתפללתי לו אני, לא היה נארע לי זה! ובזה היום הנזכר העיד רבי אברהם ברבי יצחק נ"ע⁶ בן אלזויות אל רבי יעקב ברבי יוסף ספאיה נוסח זו העדות הנזכר למעלה, שהעיד ר' אברהם בן נתן, אלא שהם לא נתאמת אצלם שאברהם ספאיה זה, זכר בעת הגדוף בשמו.

תשובה: ישאו רוב שלומים, הנעימים והתמימים, הנחמדים והנכבדים! הפלאותם לשאלני בדיני נפשות, כי בכל הארצות ששמעתי עליהם אין דנין דיני נפשות, לולי פה בארץ ספרד! ותמהתי מאד בבאי הלום, איך היו דנין דיני נפשות בלא סנהדרין?! ואמרו לי כי הורמא דמלכא⁷ הוא. וגם העדה שופטים להציל⁸, כי כמה דמים היו נשפכים יותר אם היו נדונים ע"י גוים. והנחתים להם כמנהגם, אבל מעולם לא הסכמתי עמהם על איבוד נפש! אמנם אני רואה שדעת כלכם מסכמת לבער זה הרע מקרבכם. ובזאת חלל השם בפרהסיא, וכבר נשמע הדבר בין הגוים, והם מחמירים מאד במדבר נגד דתם ואמונתם⁹. וניתוסף החילול אם לא יעשו בו נקמה. ומצינו

באורים וציורים

5. צפר — שם חודש מוסלמי, אלצפר.
6. לשון נקייה והכיונה לחרוף וגידוף כלפי מעלה (סנהדרין נר ע"א).
7. נוחו עדן, נשמתו עדן.
8. רשיון מטעם המלכות.
9. בית הדין היהודי לא רק שופט, אלא
- אף מציל לפעמים מעונש. כנון, אותם שאילו היו מובאים בפני ערכאות הגוים היו נידונים בענשים חמורים. על פי המסוק: 'ושפטו העדה, והצילו העדה' (במדבר לה כד).
10. ראה הערת פרופ' י. בער לקמן בהערות.
11. במקור נאמר: בפני.

ד' אשר ב"ר יחיאל (הרא"ש)

דכדי (נ) שיתקדש שם שמים שלחו יד בבני מלכים בשביל גרודים¹² והלינו נבלתם על העץ. וגם בשביל מיגדר מילתא¹³, סקלו למי שרכב על סוס בשבת¹⁴, וגם כן ראוי הוא שיתקדש השם באבוד הרשע הזה. ועשו בו כטוב בעיניכם.

ואם הייתי בהסכמתכם, דעתי היתה נוטה, שיוציאו לשונו מפיו, ויחתכו רוב המדבר שבלשונו, ותאלמנה שפתותיו. ובדבר הזה ימודו לו כפעלו, וזאת היא נקמה מפורסמת הנראית בכל יום לעינים. ואתם עשו לפי הענין, ככל אשר יראה טוב בעיניכם, כי ידעתי אשר כונתכם שיתקדש שם שמים. וחפץ השם יצלח בידכם¹⁵.

נאם הכותב אשר בן ה"ר יחיאל זצ"ל

באורים וציורים

12. צ"ל: גרורים; במסכת יבמות (עט ע"א) מבואר כי שאל המלך חפץ להפך את השבועה שנשבעו בני ישראל לנבעונים בימי יהושע (יהושע ט טו) ולהשמידם, לפיכך בקשו הנבעונים את דוד המלך למסור להם את בני שאול על מנת שיעשו בהם נקמה. ומסר להם דוד את שני בני רצפה בת איה אשר ילדה לשאול (שמואל"ב, כא ח), ולמה עשה כן? והלא נאמר (דברים כד טו): 'לא יומתו אבות על בנים' ולמה השאירו נבלתם על העץ, והלא נאמר: 'לא תלין נבלתו על העץ' (דברים כא כג)? אמר רבי יוחנן משום רבי שמעון בן יהוידק: מוטב שתעקר אות אחת מן התורה ויתקדש שם שמים בי פרהסיא; שהיו עוברים ושבים אומרים: מה טיבן של אלו הללו בני מלכים הם! ומה עשו? פשטו ידיהם בגדים גרורים! (כלומר, פשטו ידם בגבעונים, שנורו עצמם ונתניו בעל כרחם של ישראל). אמרי:
13. לעשות סייג וגדר בדבר, כדי להרחיק מן העבירה.
14. מעשה באחד שרכב על סוס בשבת בימי יוונים והביאוהו לבית דין וסקלוהו. לא מפני שראוי לכך, אלא שהשעה צריכה לכך... מיגדר מילתא — שאני (דברים שהתירו חכמים כדי לעשות סייג וגדר בדבר, הרי הם עניין שונה ומיוחד ואין לומדים הימנו לעניין אחר) (יבמות ז, ע"ב).
15. כך הוא בדפוסים מאוחרים. ובמקור נאמר: וחפץ השם יצלח כי רכב (עפ"י תהלים מה, ה ועפ"י ישעיהו נג, י).

הערות

על-מקרה זה עיין: י. בער, תולדות היהודים בספרד הנוצרית ע' 188 הכותב: המקרה הוא טיפוסי לתפיסה הדתית שהיתה מקובלת בסביבה הנוצרית לגבי עברות כאלה. ידוע כי לואיס התשיעי, מלך צרפת, קיטל לאלהיו וגור כעמים הרבה לחתוך לשונם של מגדמים כלפי שמים ואף היהודים נהגו כך.

עיין רמב"ם, הלכות חובל ומזיק, פרק ח הלכה יא (דפוס רומי): 'מעשים בכל יום בערי המערב (צפון אפריקה וספרד) להרוג המוטרדים, שהוחזקו למסור ממון של ישראל, ולמסור המוסרים ביד עכו"ם להורגם ולהכותם ולמסורם בידי רשע'. וראה גם תשובת הרא"ש שהובאה בע' 89 לעיל. ועיין עוד: אנציקלופדיה תלמודית בערך 'בית דין' (ג עמוד קנ בעיקר עמוד קענ); שם (כרך ז) בערכים: דיני נפשות, דיני קנסות; י. מ. גינצבורג — משפטים לישראל, ע' ג ואילך; הלכה מסוקה ע' 19 ואילך; ברור הלכה ע' 22 ואילך; סאן — סקירה היסטורית על דיני נפשות בזמן הזה, הצופה לחכמת ישראל חלק א, כרך לוויג בלאו; צבי דור, עונשי ממון ומלקות בספרות התלמוד, סיני (תשכ"ג) קכ—קלט, יצחק גילת, בית-דין מתנין לעקור דבר מן התורה, בראילון ספר השנה ז—ח ע' 117—132.

RESPONSA

page 92-95

Jacob Bazak collection

QUESTION: May be known to our teacher, may he live, that here in Cordova a very unpleasant occurrence happened, "...at which both the ears of every one that heareth it shall tingle." (First Samuel 3:11), this is that an utterly base man was jailed because of a financial claim which Gentiles made against him. And he compromised with them (by paying them) from his own money. And a few people who knew him went to comfort him, and he went outside and was standing at the door of his court yard. And they talked to his heart concerning this matter, and one of them said: "Blessed be He (God) who frees the captives!" And in spite of this (statement) he blasphemed and swore and cursed his King and his God and turned his face toward heaven (paraphrase of Isaiah 8:21). And when the (Jewish) judges and important men of the Congregation heard of this blasphemy they met and agreed to do him justice (to punish him). And they (the Congregation) sent them (agents of the Congregation) to arrest him, but he was not to be found. And they tried to gather testimony in his absence, since he had escaped, and they could only find one witness and the others (i.e., other witnesses) slipped away and suppressed their testimony.

And now there is with us in the town, the honored and distinguished Rabbi Judah, may the Rock and the Redeemer (i.e. God) protect him, son of Rabbi Yitzhak son of Waker, and he acted very zealously for God, and exerted (himself) in the matter, until this ugly person came into his hand. And he arrested him by the authority of the government and threw him in prison. And likewise he (Rabbi Judah) prevailed on the rest of the witnesses who had slipped away, and forced them to swear and received their testimony properly in this matter of blasphemy.

Even though he had blasphemed in the Arabic language, since this base man does not know the Jewish book and not the holy language (Hebrew), this honorable man agreed with the (Jewish) judges and important men of the Congregation that this blasphemy should be considered as such for this base man, since the proper name (the name of God) in the language of Arabic (used in the) blasphemy, is like the proper name (name of God) in the holy language (Hebrew) for those who know it. And in order to make a fence around the matter, and lest the evil ones, the lowest (individuals) of the world break (the fence) to cast words against heaven (i.e., blaspheme); And this man is hard and evil and had committed evil deeds since his earliest days, and there could be found no one in the city who would say something favorable about him; And he has strong horsemen (body guards), who support him, about ten of the important men of the Congregation, men of action, agreed with this honorable Rabbi Judah, and with the learned men who are here, and with the elders of the town, to remove him from the world (i.e., to kill him!). And when these mentioned persons agreed in this matter, relatives of the evil one went and apparently, bribed (the Gentile mentioned further on) with money, and requested of the

RESPONSA

page 92-95

Jacob Bazak collection

high official, Don Juan Manuel, whom we received in our place as the guardian (deputy) of the king, may his glory be high, to sour (thwart) his (the blasphemer's) trial (punishment). And he sent a messenger on horseback to us so that we should not complete his trial until we had asked his (consulted him) (i.e., Don Juan took away the case from the Jews). And this honorable Rabbi Judah tried in this matter all that he could do to and he appeased (i.e., by bribery) the official that he should not cut off our road in carrying out our judicial right (i.e., decide the case according to our law) before the Gentiles. And this official agreed to leave the evil one in jail, until the answer of my master, may he live, would come, what to do according to (Jewish) law.

And now blessed by the Name (God), we beg you our teacher to act very zealously for God, and that you send back hurriedly, this our agent, before this official (Don Juan) changes his heart (in which case) "let us lie down in our shame, and let our confusion cover us..." (Jeremiah 3:25); and send to us with explanation and proofs what is the law, and what is his death penalty, (and) how (should it be executed)? And likewise please express in your grace appreciation, and strengthen the hands of the honorable Rabbi Judah, for what he endeavored to do in this matter, and for what he will endeavor to do in the future. And may God help you my teacher and may your days be lengthened for good and satisfaction!

And this is the translation of the testimonies which were received in Arabic before the court of three (Jewish judges), who received his testimony before another court, on Sunday, 15th of the month of Adar, the year 1358 as the Gentiles count it (the years) (the month is called in the Moslim world) Alsfar.

"Before us, who affixed our signatures below, testified the known Rabbi Abraham the son of Rabbi Yitzhak the son of Natan, on Shamash which is within the five first days of the month of November which we referred to above. This witness went with Rabbi Abraham son of Alzuyami to Rabbi Jacob son of Rabbi Joseph Sophia to the home of Abraham Sophiya son of Jacob. And this Abraham Sophia went out to them to the gate of the courtyard and they greeted him, and they talked about the jailing of this Abraham Sophia. And this witness said to him: "Blessed be He (God) that frees the captives!" And to this Abraham Sophia said, "may He be cursed by His name" (i.e., he used a euphemism, using "bless" to mean "curse" and thereby uttered the strongest form of blasphemy, for he really said, 'may God curse God'.). And this 'blessing' was said in the manner of a euphemism as our Rabbis, may their memories be for a blessing, used to say "blessing of the Name (of God)" (and mean "cursed be the Name (of God)") (Sanhedrin 56a). And the word which this Abraham Sophia said in this

RESPONSA

page 92-95

Jacob Bazak collection

blasphemy was: "Bless (curse) Allah (God) This One," in Arabic. And this, "This One", is God and it is not fitting to mention (the name of God) in this matter. And upon (hearing) this the witness said to him: "Blessed be the true judge (God)! What do you say? (i.e., why did you blaspheme God?)" And Abraham Sophia said: "Had I not prayed to Him (to God) this would not have happened to me!" And on this mentioned day Rabbi Abraham son of Rabbi Yitzhak, may he rest in the Garden of Eden, son of Elaziut, testified before Rabbi Jacob son of Rabbi Joseph Sophia about the text of the testimony as referred to above, which was given before Rabbi Abraham son of Natan, except that they had not verified to them that Abraham Sophia mentioned His name at the time of his blaspheming.

ANSWER: May you be granted great peace, you pleasant, perfect, dear and honored people! You have made me wonder to advise you in a capital case, because in all the lands which I have heard of there is no (Jewish) jurisdiction over capital offenses except here in Spain! And I was greatly astounded when I came here, how could (Jews) adjudicate capital cases without the Sanhedrin?! And they said to me that they have permission from the King. And also the Sanhedrin adjudicated capital offenses in order to save (life), because how much more blood would be spilled if the capital cases were tried by the Gentile courts. Therefore I let them continue their practice (of Jews trying capital cases in Spain in order to save Jewish lives), however I have never agreed with them (Jewish courts) to execute a person. However I see that all of you agree in the opinion that this evil man should be destroyed from your midst. And certainly he desecrated the Name (of God) in public, and already the matter is heard of among the Gentiles, and they (the Gentiles) are very strict against those who talk against their religion and faith. And it would add to the desecration if he were not punished. And we find that in order to sanctify the name of heaven sons of kings were killed because of (killing of) proselytes, and their corpses were allowed to hang on the tree over night. And also for the sake of making a fence for the matter, an individual who rode a horse on Shabbat was stoned; and also it is fitting that the Name (of God) be sanctified by destroying this evil man. And do what seems good in your eyes.

And if I were in your council, my opinion would be inclined to do the following: his tongue should be taken out of his mouth and the majority of the part of his tongue which he speaks with should be cut off, and his lips made dumb. And by this action he would be punished in accordance with his deed (sin); and this act (cutting out his tongue) would be a public revenge obvious everyday (all the rest of his life).

And (punish him) according to the matter, whatever seems proper

RESPONSA

page 92-95

Jacob Bazak collection

in your eyes, because I know that your intention is that the Name of Heaven be sanctified. May God's will succeed in your hands.

Thus spoke the writer Asher son of the Rabbi Yehiel, may his memory be for a blessing.

BIBLIOGRAPHY

- Agus, Irving. The Heroic Age of Franco-German Jewry.
New York, 1969.
- Agus, Irving, A. Rabbi Meir of Rothenburg. Philadelphia, 1942.
- Asher, Rabbenu. מאמרי אדיר. Jerusalem, 1965.
- Ashtor, Eliyahu. The Jews of Moslem Spain, Philadelphia, 1973.
- Baer, Yitzchak. A History of the Jews in Christian Spain.
2 volumes, Philadelphia, 1971.
- Ben-Sasson, H.H. Trial and Achievement. Jerusalem, 1974.
- Cohen, B. Kuntres ha-Teshubot. Budapest, 1930.
- Deutsch, Gotthard. "Asher b. Jehiel," in Jewish Encyclopedia.
Vol. 2, 1909.
- Elon, Manachem. Indices to the Responsa of Jewish Law; the
Responsa of R. Asher b. Yehiel. Jerusalem, 1965.
- Epstein, Isidore. The Responsa of Solomon ben Adreth.
London, 1925.
- Finklestein, Louis. Jewish Self-Government in the Middle Ages.
New York, 1964.
- Freehof, S. The Responsa Literature. Philadelphia, 1955.
- Freidus, A.S. List of Works Relating to the History and
Conditions of the Jews in Various Countries. New York, 1914.
- Freimann, Jakob. "Asher b. Jehiel" in Encyclopaedia Judaica.
Vol. 3, and in Jüdisches Lexikon. Vol. 1.
- Goltein, S.D. A Mediterranean Society. 2 volumes. Berkeley, 1967
and 1971.

- Grayzel, Solomon. The Church and the Jews in the 13th Century. Philadelphia, 1933.
- Hershman, A.M. Rabbi Isaac ben Sheshet Perfet and His Times. New York, 1943.
- Hurwitz, S. The Responsa of Solomon Luria. New York, 1938.
- Landman, Leo. Jewish Law in the Diaspora: Confrontation and Accomodation. Philadelphia, 1968.
- Lauterbach, J.Z. "Sheelot u'Teshubot," in Jewish Encyclopedia.
- Lindo, E.H. The History of the Jews of Spain and Portugal. London, 1848.
- Minhath Kena'oth. Pressburg, 1838.
- Netanyahu, Benzion. The Marranos of Spain. New York, 1966.
- Neuman, Abraham. The Jews in Spain, Their Social, Political and Cultural Life During the Middle Ages. Philadelphia, 1942.
- Parkes, James. The Jew in the Medieval Community. London, 1938.
- Revel, Hirschel. "Asher ben Jehiel," in Universal Jewish Encyclopedia. Volume 1.
- Rivkin, Ellis. "How Jewish were the Marranos?" Paper presented at the Conference of Association for Jewish Studies. Harvard University. October 21, 1973.
- Smith, A.L. Church and State in the Middle Ages. Oxford, 1913.
- Steinman, Sidney. Custom and Survival. New York, 1963.
- Zimmels, H.J. Ashkenazim and Sefardim. London, 1958.