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INCONSISTENCY FOR GOOD REASON:
THE RESPONSA OF RABBENU GERSHOM

Aaron Mark Petuchowski

Thesis Submitted in Partial Fulfillment of
Requirements for Ordination

Hebrew Union College-Jewish Institute of Religion
New York, N.Y.

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INTRODUCTION

As mentioned in my "Acknowledgments," it was in Dr. Michael Signer's Medieval Jewish History course that this student's attention was first drawn to the overall subject of which this thesis forms only a small part. Jacob Katz, in Exclusiveness and Tolerance¹, discussed some aspects of the relationship between Jews and Gentiles in medieval times. Mentioned within the text and hidden in various footnotes, the reader is led to Rabbenu Gershom ben Judah Meor Hagolah. With Dr. Signer's suggestions and guidance, these footnotes were pursued and this student soon found himself immersed in the world of eleventh century responsa literature.

With the responsa of Rabbenu Gershom (conveniently collected in one volume by Shlomo Eidelberg²) as a foundation, this thesis attempts to illustrate two major points.

The first goal is to demonstrate the value of Gershom's responsa in the reconstruction of the history of the Jews of Germany during Gershom's lifetime. Special attention has been given the varied relationships between Jews and Gentiles. With the apparent shortage of other primary source materials, Gershom's responsa assume an even greater value as a vehicle for understanding certain aspects of Jewish life within his era. On the whole, Gershom's responsa serve to validate much of the research of historians into this period. Despite the existence of charters which served to protect and

guarantee the rights of Jews in individual communities, Jews were wise to be particularly cautious in their relationships with their non-Jewish neighbors and associates.

Upon careful analysis of selected responsa attributed to Rabbenu Gershom, this student has been struck by the apparent inconsistency in the application of Jewish law and legal principles within the work of Gershom, probably the foremost authority of his time. In certain circumstances, one is struck by the rigidity and stringency of Gershom's legal reasoning and application. At other times, the leniency within Rabbenu Gershom's responsa is, at first glance, surprising. Therefore, as his second goal, this student has attempted to understand the existence and, indeed, the need for these apparent inconsistencies in the development and application of Jewish law during Gershom's era. It is this student's contention that what might be viewed as "inconsistency" within the responsa of Rabbenu Gershom exists for very good reason.

Jacob Katz's Exclusiveness and Tolerance has assumed various roles within the development of this study. At first, it was a blueprint. At later stages, it was challenged, twisted, turned inside-out and tested. And, as analysis of Gershom's selected responsa was nearing completion (for the purposes of this thesis), it served as a mirror, reflecting many of the directions and conclusions to which this student's study of the primary source had led him.

The responsa of Rabbenu Gershom reveal to the interested student a whole view of the world in which Gershom lived. This thesis is only a tiny microcosm, attempting to illustrate and document the two points mentioned above. There is far more to be uncovered within Rabbenu Gershom's responsa.

CHAPTER I

RABBENU GERSHOM: HIS LIFE AND HIS WORLD

When studying Jewish life in Germany during the eleventh century, one quickly discovers a serious deficiency in the preservation of primary sources. Therefore, one is required to study carefully those texts which have survived the passing of time. Hence, one cannot ignore the legacy of Rabbenu Gershom ben Judah Meor Hagolah because, undoubtedly, his works are foremost among the texts that remain. The reconstruction and study of Rabbenu Gershom's works have been bolstered by the many studies authored by Dr. Shlomo Eidelberg of Yeshiva University over the last thirty years. The numerous articles by Eidelberg, who has devoted himself largely to Gershom and his works, are quite helpful in reconstructing the life and era of Rabbenu Gershom. This study of eleventh century Jewish life in Germany will be concerned primarily with selected responsa attributed to Rabbenu Gershom, and it begins with a survey of the man and his era.

Rabbenu Gershom the Man: His Life and His Works

Rabbenu Gershom has been described by Irving Agus - author of two major studies on this era¹ - as "the most renowned sage of the pre-Crusade period."² Gershom stands as a giant within his own era, independent of the "legendary

nature"³ surrounding practically every aspect of his life. Although numerous articles have been written on the works of Rabbeinu Gershom, little is known for certain about the man himself.

While Heinrich Graetz asserts that Gershom was born in France,⁴ scholars lean toward the assertion, based upon a phrase within one of Gershom's responsa,⁵ that he was born in the German town of Metz. The date of Gershom's birth is also a subject of debate. Some suggest that he was born in 950, although scholarly consensus gives credence to a birth-date in 960. At an early age, Gershom moved to Mainz, the city with which he is most commonly associated. There he eventually headed a yeshivah. It is likely that Gershom earned his living from teaching, as suggested in one of his responsa.⁶

Gershom had a brother, Machir, who is known for his authorship of a Talmudic dictionary in French. This dictionary was apparently known to Rashi (1040-1105) but is no longer in existence. It appears that Gershom's second wife, Bonah b. R. David, was a widow, due to the wording of the ketubah which Gershom wrote. He had a son, R. Eliezer, who also was the head of a yeshivah. There are also references among the rishonim to a son of Gershom who rejected Judaism.

R. Judah b. Meir ha-Kohen Leontin is the only one of Gershom's teachers specifically mentioned by name within his responsa.⁷ Gershom had many students, among them R. Jacob

b. R. Yakor and R. Isaac b. R. Judah, who in turn were two teachers of Rashi. It was Rashi who is believed the first to have referred to Gershom as one "who enlightens the eyes of the exile." As Rashi wrote in one of his responsa:

רבנו גרשום זכר צדיק וקדוש לברכה שהאיר עיני
הגולה וכולנו מפיו חיינו וכל בני גלות אשכנז
וכותים תלמידיו תלמידיו הן ... 8

Hence Gershom came to be known as Meor Hagolah, "the light of the exile."

Gershom is best known for the various takkanot (rabbinic ordinances) that bear his name. They have been analyzed extensively by Louis Finkelstein.⁹ Prominent among them are the ordinances forbidding a person to marry more than one wife simultaneously and forbidding any husband to divorce his wife against her will. In addition to these two, tradition attributes to Gershom authorship of ordinances against insulting penitent converts (Jews who abandon Judaism and subsequently return), protecting Jewish tenants, protecting the privacy of letters, against the emendation of the Talmudic text, as well as various civil ordinances. Some of these are discussed below.

There is speculation that a number of these takkanot were not actually written by Gershom himself. Indeed, some are now known to have been written by subsequent generations of scholars. Furthermore, there is some question surrounding the innovative nature of these takkanot, as some scholars suggest that they merely represented affirmations of practices which had already been in existence. As Salo

Baron has summarized:

Many of the so-called 'ordinances of Gershom' undoubtedly were but formal acknowledgements of changes which had taken place in the preceding generations. 10

The fact that these takkanot were nonetheless attributed to Gershom suggests various explanations. This may indicate that much of their content was based upon comments which were transmitted orally by Gershom. It is also possible that later generations of scholars desired more authority and therefore grounded their decisions in Gershom's name. At the least, it may be inferred that the takkanot were attributed to him because of the high respect in which his views were held and the recognized authority which accompanied his name. Gershom's authority is central to his work and reputation and will be discussed at greater length.

Certainly worthy of mention within a biographical sketch of Rabbenu Gershom is the poetry attributed to him and collected by A. M. Habermann.¹¹ His selichot and piyyutim, according to Eidelberg, were accepted in all German communities.¹² Perhaps the most popular is Gershom's piyyut zekhor berit, which is included among the selichot of Rosh HaShannah. Gershom's poems

reflect the troubles and tribulations of his generation and are noteworthy for their simplicity and naturalness of expression and the emotion with which they are imbued. 13

Gershom also transcribed and corrected the Mishnah and the Masorah Gedolah of the Bible. In addition, there are commentaries on various tractates of the Talmud which are

attributed to him but are not considered his. Gershom is believed to have died in 1028, but that cannot be verified because a tombstone in Mainz, believed to be his, is no longer legible.

Gershom's Responsa: A First Glance

Of greatest importance to this study are the responsa which are attributed to Rabbenu Gershom. Responsa form a unique genre in Jewish legal literature. When new questions arise that have not been treated directly by extant legal literature, they are asked of recognized authorities. These authorities, presumably after careful study of Jewish legal literature and analysis of societal conditions, provide their answers. These responsa subsequently are added to the wealth of legal literature. Responsa are still being written today, as questions must be asked which, of necessity, could not have been treated in earlier, voluminous literature. In Gershom's time, the Bible and Talmud were the only existing literature on which he and contemporary authorities could rely. Therefore, Gershom based his answers on the Bible and Talmud from which he often quoted. Occasionally, his quotations differ from the Talmudic text as we now have it. This is not unusual given the various manuscripts that have been hand-copied throughout the ages until the advent of the printing press.

Gershom's responsa, which were scattered throughout collections of French and German scholars, were collected

and published in one volume by Shlomo Eidelberg in 1955.¹⁴ Eidelberg speculates that there were likely additional responsa of Gershom which have been lost. The seventy-seven responsa in Eidelberg's volume cover a wide range of topics, dealing mostly with civil law. Consistent with other responsa from the same era, the texts lack personal details. The majority do not include the names or locales of those who posed the questions, and Gershom reveals little about his own personal life in his answers. Therefore, the student of this literature is limited in what he can extract from the responsa regarding specific details about those who ask and answer the questions.

Nonetheless, it is from Gershom's responsa that we are able to reconstruct the environment in which the Jews of his time were living. The questions he was asked reflected the nature of the society in which he lived. Gershom's answers, in turn, shed great light upon his perceptions of the societal environment, some of which are reinforced by other literature from and about the period.

Gershom's Germany and the Jews

There are reports that Jews had been in Germany as early as the late third century. Some historians believe that Jews had come to Germany along with the Roman legions. Of these, some died fighting and others left when the Romans departed. By the end of the ninth century, those who remained were in a number of Jewish communities along the Rhine River.

The rabbinic family of Kalonymous, who had come from northern Italy, was already settled in Mainz by the second decade of the tenth century.¹⁵

Rabbenu Gershom was born during the reign of Otto I the Great (936-973), a member of the Saxon Dynasty.¹⁶ During this dynasty (919-1024), Jews were firmly establishing roots in German soil. On the whole, Jewish citizens had rights equivalent to other free people living in Germany. Jews owned land of various types, including fields, gardens and vineyards. Jews interacted with other citizens, including Christians. The extent of Jewish interaction with Gentiles was multi-faceted as revealed by the responsa. It also appears that Jews owned slaves, because in 1090 a law was passed forbidding Jews to own Christian slaves. Jews were involved in numerous trades. Eidelberg suggests that their increased involvement in money-lending was due to the other avenues that were closed to them.¹⁷ But many avenues were open. James Parkes, author of a major study on Jewish life in the Middle Ages, states that

...it was almost impossible for lawgivers and writers of the ninth and tenth centuries to think of 'merchants' without at the same time thinking of 'Jews'.¹⁸

Jews, according to Jacob Katz, "were allowed to trade and to transact business almost without restriction"¹⁹ between the ninth and eleventh centuries. Jews were extensively involved with both local and international trade.

As early as the Carolingian era, it was through the granting of a charter by the local bishop or emperor that

Jews were permitted to settle in French and German communities.²⁰ These early charters were given and received freely, furnishing the Jews with a document of protection that assured them of a free and honorable position within the city. Parkes describes the features of various charters, among them those granted to the Jews of Speyer by Bishop Rudiger Huotzmann in 1084 and by the German Emperor Henry IV six years later, and another granted to Henry IV to the Jews of Worms at about the same time. While these particular documents come from a somewhat later period, it may be assumed that their elements are similar to those of earlier charters. Through these charters, the Jews were granted complete liberty to carry on their commercial activities. They were permitted interaction with the Christian population, including the rights to employ Christians and to sell them meat unfit for their own use. The charters of this period, according to Parkes,

...envisage a community of merchants, engaged in both local and general trade, possessing their own laws and customs, and requiring a certain protection from members of the dominant religion. 21

While we do not have the text of any charters from this period granted to the Jews of Mainz, conditions were presumably the same for this city with which Gershom is primarily associated. Mainz itself included one of the oldest Jewish communities in Germany. While the date of the first medieval Jewish community is uncertain, a church council in 906 declared that anyone killing a Jew must be treated as if

he had killed anyone else. We may then safely assume that there were Jews in Mainz by that time. Archbishop Frederick of Mainz (937-954), who was "more prince than bishop,"²² threatened the Jews with either forcible conversion or expulsion. However, expressions of anti-Jewish sentiment were relatively uncommon, although in 1012 Henry II expelled the Jews from the city. This expulsion was likely inspired by the conversion to Judaism of a prominent personage, Duke Conrad. Parkes imagines that

...such an act may well have aroused sufficient indignation to have led to the expulsion of the community judged responsible.²³

But the expulsion was short-lived, for historians conjecture that within one month the Jews were permitted to return. This is supported by the evidence provided by the ketubah written by Gershom to his second wife, which was composed in Mainz in January 1013, at the latest.²⁴ In 1084, well after the death of Rabbenu Gershom, many Jews once again left Mainz after being accused of setting a fire that caused tremendous damage to the city. Many of those Jews who left in 1084 settled in the town of Speyer.

Worthy of mention within this historical survey is the admonition offered by Irving Agus that the student of this period pay attention to the fact that it was a relatively tiny group of people that was able "to preserve a vast body of oral learning and to transmit it from generation to generation."²⁵ Agus claims that at the beginning of the tenth century there were fewer than ten thousand Jews in northern

France and Germany. Their numbers tripled by the last quarter of the eleventh century. Of these 30,000 Jews, between 6,000 and 8,000 were victims of the First Crusade. Such was the size of the Jewish population spanning the two hundred years within which Gershom functioned.

Gershom's Authority

Critical to any discussion of the legal decisions made by Rabbenu Gershom, and the influence which they carried, is an exploration of the nature of Gershom's authority. As discussed above, the probability that takkanot of later scholars were attributed to Gershom is indicative of the high regard in which Gershom was held in subsequent generations. It is clear that Gershom's authority and repute were well recognized. Eidelberg has succinctly stated that:

His legal decisions were regarded as authoritative, particularly by French and German scholars throughout the centuries, and influenced the major direction of the halakhah in those countries. 26

However, while Gershom's reputation may have grown with the passage of time, it also appears to have been significant during his own lifetime.

The decline of the Babylonian academies represented the end of a centralized authority. No longer could questions of Jewish law and practice be addressed to scholars and legalists situated in these academies. Previously, those scholars had transmitted their decisions and suggestions to peoples living far away - not only geographically - from

those who raised the questions. With the growth of the western communities, the need for local authorities within these communities also grew. The western communities could no longer depend upon the leadership and guidance of Babylonian authorities.

There existed no formal process through which new scholars were automatically recognized as authorities. As James Parkes has written:

...the authority which they possessed was entirely moral; the communities which asked their advice on difficult matters of law and custom were at liberty to refuse it if they wished. 27

But the communities apparently did not refuse the advice which they sought, as evidenced by the responsa literature which has survived. The impact that Gershom and others had upon these medieval communities was tremendous. Having no established power base in which to ground their authority, "it was," as Parkes continued, "only their learning that created the reputation of men like Gershom of Mainz, Rashi and his successors." 28

Agus has written, somewhat paradoxically given his assertion that Gershom was "the most renowned sage of the pre-Crusade period," 29 that Gershom's preeminence in the minds of later scholars was due largely to "historical accident." When the First Crusade swept through Mainz in 1096, it destroyed other sources of scholarship since rabbis and their students were among those killed. Thus, according to Agus, Gershom was "but a very important link, among other such links,

in the chain of transmission of a profound and complex lore."³⁰
 While one cannot deny the extent of destruction brought upon the Jewish community by the Crusades, this student finds it hard to accept this speculation by Agus. For, as Baron has recognized, Gershom was clearly instrumental in performing

...the great historic task of re-establishing the basic uniformity of Jewish practice by a creative reinterpretation of the talmudic law. 31

Whether or not Gershom was "the" authority of the period, his contributions to the Jewish community, both during and following his lifetime, were momentous. The authority which he possessed was earned on the basis of his knowledge of and familiarity with both Jewish law and the general environment in which he lived and functioned.

Gershom's Legal Environment

Among the aspects of his environment with which Rabbenu Gershom was apparently quite familiar was the non-Jewish court system. Eidelberg maintains that Gershom was both acquainted with and influenced by the general German law of his time.³² The practical relationship of the Jewish community to the non-Jewish courts was crucial to the Jewish community and yet, in practice, virtually nonexistent. Guido Kisch has studied German law during this period, and has suggested that

All the efforts of medieval rabbis to keep litigation between Jewish parties before Jewish tribunals most probably were motivated, first of all, by religious reasons, then by the fear of injustice from non-Jewish courts

and by the desire to strengthen judicial power and autonomous authority. 33

Medieval German law recognized the authority of Jewish law and Jewish courts within the realm of conflicts among members of the Jewish communities. As such, it was in the best interest of the non-Jewish court system to support "the principles of rabbinic law that aimed at making the jurisdiction of rabbinic courts obligatory and exclusive."³⁴ In Kisch's careful studies of German court decisions during this period, he did not find a single instance of one Jew bringing suit against a fellow Jew within the non-Jewish courts.

This separation of Jewish legal disputes from the rest of society, as suggested by Kisch, served to strengthen the authority and autonomy of the Jewish courts. This indirect assistance from the non-Jewish courts was invaluable in the establishment of the authority of Jewish courts over their constituency. Jews went to non-Jewish courts only in connection with disputes with non-Jews. The fact that Jews were encouraged to resolve disputes between fellow Jews within the framework of Jewish courts helped to solidify the Jewish community. This undoubtedly contributed to the authority of people such as Gershom. For the rabbis in Germany and northern France during the eleventh and twelfth centuries tried to confront the needs of their Jewish communities by relying upon the sources of Jewish law. As Kisch points out,

According to the principles of mediaeval Jewish law, the jurisdiction of the Jewish courts was compulsory and exclusive for Jewish litigants. 35

In other words, leaders such as Rabbenu Gershom tried to take full advantage of the legal separations that were created between the Jews and the rest of society by attempting to achieve the goal of solidifying the Jewish community from within. There were a number of important components to these attempts. Our discussion of Gershom's selected responsa will illustrate this quite clearly. This general principle, however, merits some development at this juncture.

Gershom's Concern for the Internal Strength of the Community

We will see time and again that Gershom's overriding concern was the strengthening of the Jewish community. Gershom strove to maintain social stability within the Jewish community. One of the primary ingredients in his attempts to achieve the internal strength of the Jewish community lay in the adaptation of extant Jewish law to the environment in which the Jews were living. His use of Jewish law and the enactment of the various takkanot attributed to him all point in this direction.

Among the practices established by his takkanot, as outlined by Finkelstein,³⁶ was the extension of the jurisdiction of the local Jewish courts. They were no longer established in individual communities for the sole purpose of serving the needs of that community alone. Instead, Gershom attempted to join various communities to one another by including within the jurisdiction of a given court the residents of other

communities who happened to come into the city. Thus a link was created among various Jewish communities.

His takkanot demonstrate a concerted effort to elevate the position of the synagogue, so that it could serve as a true center of Jewish life. One takkanah³⁷ concerns the eventuality that a Jew might lend or rent his home to the community for use as a synagogue. That Jew is prohibited from restricting certain members of the community, with whom he may have a disagreement, from using the building, unless he forbids its use to all other members of the community.

Within the synagogue, members of the Jewish community were encouraged to bring up matters of concern. To facilitate this, Gershom permitted the interruption of services by individual members who had issues to raise before the entire community.³⁸ To insure the synagogue's viability even in smaller communities, another takkanah required that, in the event that only ten adult males (minyan or quorum) were present for a service, no one was permitted to leave until the hazzan had completed the service.³⁹

Among the concerns that might be discussed in a synagogue was the announcement of lost property. Anyone who lost an object could publicly declare a herem in the synagogue, thereby compelling any person having knowledge of the finder to inform against him.⁴⁰

These are but a few examples of Gershom's attempts, through his takkanot, to strengthen the Jewish community from within. This objective becomes increasingly apparent in our

presentation of his selected responsa. For the questions which found their way into the responsa of Rabbenu Gershom and his contemporaries were, in the words of Louis Finkelstein,

...not merely matters of prayer-book and forbidden food, but they often involved their relation to the government, their control of their own members, and the adjustment of the Talmudic civil law to the new conditions. 41

Gershom's Responsa: A Closer Look

There is indeed a wide variety of topics that are treated within the responsa of Rabbenu Gershom. Eidelberg, in his index to the seventy-seven responsa which he collected, has grouped the responsa into twenty-five categories, as follows:⁴² prayer, Sabbath and holy days, havdalah, shofar, fast days, Purim, te'refah, forbidden foods, Gentiles, libation wine (yein nesekeh), interest, oaths, circumcision, mourning, matrimony and betrothal, levirate marriage and halitzah, plaintiffs/defendants/payment of debts, robbery, business and sales, inheritance, guarding property, community, wages and teachers, damages and, lastly, slander.

The ten selected responsa which are presented in Chapter Two below contain a sampling or cross section of these categories. They all have in common the involvement of Jews with Gentiles in a variety of situations.

By definition, all of the responsa involve Gershom's interpretation and application of extant Jewish law (halakhah).

In some cases, Gershom is extremely stringent in his application of Jewish law (mahmir), while in others, he is almost surprisingly lenient (mekil). The challenge faced by any legal authority is great, and being among the first of the rishonim ("early authorities") to engage in this process, Gershom was in many ways a pioneer. In order for him to establish and maintain his credibility as an authority, he had to adhere closely to both the letter and spirit of the law. At the same time, one sees in his responsa the importance of incorporating the reality of the contemporary situation. There were numerous factors which played a part in the answers provided by Gershom. Among the realities to be considered was the force of local custom within the Jewish community, of which Parkes has written:

...there was local custom, which gradually formed its own body of tradition out of the necessities of life in a particular Christian environment, beneath particular political conditions, and under a particular climate... Great importance was attached to it, and on many questions it was held to override Talmudic precept. 43

Another major consideration that came into play was the economic situation in which the Jews operated. As will be demonstrated more extensively below, while Gershom could not ignore the existence of certain Talmudic prohibitions, neither could he neglect the reality of the conditions under which the Jews were earning their livelihoods. For example, Gershom was challenged to balance the Talmudic prohibition forbidding the acceptance of idolatrous religious accouterments against that very practice which was prevalent within his

society. This tension, between actual practice and traditional halakhic guidelines and boundaries, is frequently apparent within Gershom's responsa. Gershom's application of halakhah had to include a cognizance of the realistic situation. Jacob Katz has described the role of halakhah during this period as follows:

Its function was that of holding the balance between two driving forces, namely the necessary adjustment to new conditions and the preservation of Jewish identity. ...It was the achievement of the Halakhah that it prevented the community and the individual from being engulfed by the social and religious life of the Christian environment, by setting a limit to what might be conceded to the force of circumstances. ...The Halakhah was called upon to elaborate the details of the socio-religious separation. It did so by relying upon its own historical sources, and by taking into consideration the prevailing conditions. Its task was, in any case, to regulate and control; not to create, in the sense of producing new religious values and suggesting original social settings. 44

Gershom was able to apply the halakhah in a fashion which recognized the required balance of which Jacob Katz wrote. In situations where he could adhere to the letter of the law, Gershom most certainly did. However, in other situations, while certainly not abrogating the halakhah, he did invoke more lenient reasoning and principles to rationalize his more moderate position. There are three primary examples of such application within the responsa discussed below.

The first concerns the legal maxim of ones. According to Shmuel Shilo,⁴⁵ there are two categories of ones within

the halakhah. The first involves situations in which a person is compelled to act against his will due to the threat of death, physical torture or financial loss. Secondly, ones can apply to unavoidable events that either prevent or obstruct the performance of certain acts, or cause them to occur. In situations where ones applies, the person who is victimized cannot be held responsible. In one responsum,⁴⁶ Gershom was confronted with a situation wherein non-Jewish officials forcibly made use of a Jew's oven on the Sabbath. Gershom understood the position of the Jew as anus. As the questionable desecration of the Sabbath laws took place against his will, Gershom decided that the Jew could not be held responsible.

A second legal maxim which is invoked by Gershom is dina d'malkhuta dina. This halakhic rule states that the law of the land in which the Jews are living, and to which all citizens are bound, is binding and applicable. In certain cases, local law can override Jewish law. This rule originated with Samuel, one of the amoraim (scholars who were active between the completion of the Mishnah and the time when the Talmud was finished), and implies a recognition of a "civilized rule possessing good and equitable laws which Jews were bound to obey."⁴⁷ Within one responsum⁴⁸ that concerns the sale by a non-Jew of stolen property originally belonging to a Jew, Gershom invoked this rule to support the return of the property. Here, despite the separation between Jewish and non-Jewish courts, Gershom was able to

draw upon a decree of a non-Jewish court. The decree, that had ordered the surrender of the stolen property, was binding upon everyone, for it was part of the law of the land.

Perhaps the least subtle of the liberal principles invoked by Gershom is one which declares: "It is better that The Jews should err in ignorance rather than presumptuously." This principle, which in essence not only defends but actually promotes the idea that one who is ignorant of the law cannot be deemed responsible for not adhering to it, was invoked only rarely within the Talmud. From one of Gershom's responses,⁴⁹ we learn that Jews were transacting business with Gentiles on their holy days. While Gershom utilized various legal fictions within his answer, he relied heavily upon this principle. It would be best for the people engaged in such practice not to be informed that what they were doing was contrary to Jewish law. Thus, while the transaction of business with Gentiles on their holy days may be technically prohibited, Gershom indirectly condoned the engagement of Jews in this practice. From a realistic perspective, Gershom's decision is easily understood. Clearly, a significant number of Jews were doing something prohibited by Jewish law, which, were they to cease, would have a devastating impact upon their livelihoods.

The contexts in which these three principles are invoked are discussed in greater detail below. They are firmly grounded within Jewish law: Gershom was not composing his own halakhah randomly to fit the needs of his constituency.

He did, however, rely upon these more lenient principles in certain situations. Such were the demands upon an authority like Gershom. His response to the challenges of his time was consistent with the generalization offered by Katz:

...Ashkenazi Jewry found itself confronted with a glaring contradiction between accepted usage and the theoretically valid Talmudic law. In a manner which is characteristic of the earliest stage in the growth of every Jewish centre of settlement, Ashkenazi Jewry developed its customs by adjusting itself to prevailing conditions without having full regard for the niceties of the demands of Halakhah. 50

This characteristic manner will be explored in the following chapter through a presentation of ten selected responsa of Rabbenu Gershom ben Judah Meor Hagolah.

CHAPTER II

TEN SELECTED RESPONSA

We turn now to Rabbenu Gershom's responsa. As noted above, Eidelberg chose to categorize the seventy-seven responsa into twenty-five categories on the basis of thematic content. Of Eidelberg's categories, the following eight are represented by the ten responsa selected for presentation: Sabbath and holy days, forbidden foods, Gentiles, libation wine (yein nesekh), interest, robbery, community and damages.

However, categorization of responsa is neither a pure nor an exact science. Given the nature of responsa literature, and of Gershom's responsa in particular, various topics are treated in any individual responsum. Likewise, the categories imposed by this student, while differing from Eidelberg's, is also unscientific and imprecise. For the purpose of this presentation, the ten responsa have been loosely grouped into more appropriate categories that are intended to reflect the halakhic tendencies and community priorities of Rabbenu Gershom.

Three representative categories have been chosen for our analysis: (1) those responsa which clearly indicate a lenient tendency, (2) one which is particularly stringent, and (3) others which overtly demonstrate Gershom's desire to reinforce the Jewish community from within, through the encouragement of a wholesome and upright standard of behavior.

This analysis centers on a group of responsa that shed light on the interaction between Jews and non-Jews. The nature of the interaction reflected within the responsa is varied. We learn of commonplace business transactions that were conducted between them. The responsa reveal the interdependence between Jews and Gentiles. At the same time, others demonstrate inherent tensions in their relationships. While essentially interacting freely with Gentiles, Jews were anxious about exercising the freedoms granted them by the government which declared them equal citizens. The responsa also reflect the Jewish community's perception that Gentiles viewed them as a monolithic group. Both those who asked the questions and Gershom, in his answers, indicated the extent to which one Jew's actions reflected upon the Jewish community as a whole.

Gershom's Lenient Tendencies

Responsum #8¹

The situation in this responsum concerns a Jew, Reuven,² who owned a baking oven that he kept on his own property, in his yard, adjacent to his house wall. Through his use of the baking oven, Reuven provided support for his family. Reuven had in his employ a non-Jew who fired the oven, benefitting Reuven's customers, both Jewish and Gentile. On one occasion, some officials, identified as "bakers of the chief," contacted Reuven. It is interesting to note the means of

this particular contact. The word "persuaded" (יִשְׁכַּנְּךָ) is used, indicating that this was not a commonplace type of arrangement. The officials received Reuven's permission to enter his property and agreed to pay Reuven for the use of his oven. Thereupon, the officials entered Reuven's property to bake bread.

On Friday night, with the onset of the Sabbath, the officials refused to leave, maintaining their use of Reuven's oven. On Saturday, they were still there, continuing their baking and "doing as they wished." Some additional baking officials joined the first group (seemingly without Reuven's permission) and used Reuven's oven as well. Reuven, fearing that he would "incur their hatred," was unable to remove the officials from his property.

There are two questions emerging from this situation that are asked of Gershom within the responsum. First of all, was there an issue of Sabbath desecration as far as Reuven was concerned? Secondly, may Reuven derive benefit from this situation? As per their arrangement, as payment for the rental of his oven, Reuven received some bread baked by the officials. However, they paid him on Saturday night with bread that had been baked on the Sabbath.

Regarding the question of Sabbath desecration, Gershom explained that Reuven was anus (אָנוּס): the situation was beyond Reuven's control; he had no choice. Gershom reasoned that Reuven could not have removed the officials. As such, in a case of ones, Reuven could not be held responsible for

the fact that his oven was used on the Sabbath, particularly as that eventuality had not entered Reuven's mind when he was coerced into renting his oven in the first place.

Gershom added an admonition accompanied by a specific suggestion. To avoid suspicion and to forestall other Jews from assuming that the officials had used Reuven's oven with his permission, which might result in slanderous talk, Gershom suggested that Reuven go to a Jewish court. There Reuven could publicly describe what had happened. Using a Biblical verse as support for his suggestion, Gershom advised that Reuven "be clear before the Lord and before Israel."³ By explaining what had happened, Reuven would free himself of both Divine and human suspicion.

In answering the second question regarding the appropriateness of Reuven's accepting and deriving benefit from the bread that he received as payment, Gershom was forceful in saying "No." Jews are prohibited from accepting any form of Sabbath payment. As part of his explanation, Gershom cited a discussion in the Talmud.⁴ There, the rental of a Jewish-owned bathhouse to Gentiles was forbidden. As the bathhouse was known by the Jewish owner's name, the possibility of suspicion on the part of other Jews would be great if the Gentiles were to work in the bathhouse on the Sabbath or other holy days. The same reasoning was applied to Reuven's oven, as it was associated with Reuven's name and was, like the bathhouse, situated on the owner's property.

Gershom followed this reasoning with a further reinforce-

ment of the notion that a Jew may never accept Sabbath payment. Even in the case of business partnerships between a Jew and a Gentile, no fictional division of profits is permitted. Gershom suggested a prohibited hypothetical arrangement whereby the Jew might count as his profit that which was earned on weekdays, whereas the Gentile would consider his those profits earned on the Sabbath. This would be a "trade off" in Sabbath profits, and is forbidden in all situations with the following exception. If an agreement is reached by a Jew and a Gentile at the outset of their partnership stipulating that the Jew would actually own the business on certain days (excluding the Sabbath) and the Gentile would own the business on other days (including the Sabbath), such an arrangement would be permitted. However, as Gershom hastened to remind the reader, this situation does not apply in the case of Reuven's oven.

Thus, based upon the fundamental principle that acceptance of payment or rental fees for the Sabbath and holy days is forbidden, Gershom decided that Reuven may not derive benefit from the payment offered to him by the officials.

Responsum #21⁵

This responsum provides us with a wealth of information. First of all, it provides evidence that, during Gershom's lifetime, Jews were involved in money-lending. The responsum further explains that as part of their role as money-lenders,

some Jews were in the habit of accepting priestly garments as collateral for loans. Moreover, Jews were transacting business with Gentiles on their holy days. These assumptions may be made on the basis of the two questions posed to Gershom: (1) May Jews accept priestly garments as collateral and (2) may Jews transact business with Gentiles on non-Jewish holy days? While there are two distinct questions, to some degree, Gershom's answers are intertwined. In the interest of clarity, they are discussed here separately.

A scholar (**החבר**), presumably the head of a local community, had prohibited the practice of accepting priestly garments as collateral. These garments, according to the local authority, were worn during idolatrous ritual and were therefore to be classified as accouterments of avodah zarah (literally: "strange service," a term used in rabbinic literature to refer to idolatry). However, community arguments followed his decision. The garments themselves, some argued, were not actually a part of avodah zarah, and therefore only appeared as accouterments of avodah zarah. While brought to avodah zarah, these garments were not at the center of idolatrous practices, and as such, some contended, a distinction could be made between "pure" and "impure" accouterments.

Gershom disagreed with the local authority, deciding instead that priestly garments are not prohibited as collateral. Citing as support a Talmudic statement attributed to R. Nahman,⁶ Gershom stated that Gentiles in the diaspora are not to be considered idolators, for they are merely perpetu-

ating ancestral customs. It therefore follows that Gentile worship cannot be considered avodah zarah. As such, contrary to the assumption made by the local authority, garments worn by priests during worship ritual should not be considered accouterments of avodah zarah. Gershom declared that, with the exception of any idols themselves that might be utilized within Gentile worship, accouterments of Gentile worship are not to be considered accouterments of avodah zarah. Therefore, there existed no reason for Jews to be prohibited from accepting them as collateral.

Presumably the same local authority (החכר) had prohibited Jews from transacting business with Gentiles on their holy days. Here, too, there was a lack of agreement within the community, and the question was posed to Rabbeinu Gershom.

Gershom again disagreed with the local authority, deciding that Jews, in fact, may transact business with Gentiles on their holy days. The reasoning provided by Gershom is perhaps the most fascinating within the selected responsa discussed within this study (as mentioned above on p. 20).

Gershom admitted that according to the theoretical definition provided within the Talmud,⁷ the transaction of business with Gentiles on their holy days was forbidden. However, Gershom quickly pointed out, in practice, the transaction of business with Gentiles on their holy days was customary. Gershom invoked the Talmudic principle:

מוטב שיהיו שוגגין ואל יהיו מזירין

"It is better that [the Jews] should err in ignorance rather than presumptuously." As many Jewish livelihoods depended upon the conduct of business with Gentiles and some of that business, out of necessity, was conducted on their holy days, it would be impractical to invoke the Talmudic prohibition. After all, as discussed within the Talmud,⁸ from a practical point of view, most days could be considered Gentile holy days, for there is a proliferation of birthdays, saint days, and various other days which are significant because of their importance in the story of Jesus. Gershom contended that the Jews' livelihood would be destroyed if they could not conduct business with Gentiles on these days. Moreover, because of the economic necessity, Jews would most likely defy such a prohibition.

Gershom then cited some Talmudic arguments where the principle "It is better that [the Jews] should err in ignorance rather than presumptuously" was applied. Hand-clapping, thigh-slapping and dancing were prohibited during Jewish festivals. Nonetheless, as some Jews engaged in these activities, reminding them of the prohibition would be pointless.⁹

Likewise, people were prohibited from sitting at the entrance to alleys on Festivals. For, should some object roll out of the alleyway, one might be tempted to carry it back in, and carrying outside the limits of a private domain was prohibited on Festivals. However, in practice, women did sit at alley entrances, and the rabbis said nothing, invoking the principle: "It is better that they should err in

ignorance rather than presumptuously."¹⁰

Gershom demonstrated that this principle had been applied to both Biblical and Rabbinic laws. As an example of the former, Gershom cited the requirement of fasting additional time prior to Yom Kippur. However, in practice, some Jews ate and drank until dusk. Nonetheless, "we do not say anything."¹¹

Thus, both of Gershom's decisions overrode the local authority. Jews may transact business with Gentiles on their holy days, and Jews may accept as collateral accouterments of avodah zarah (with the exception of the idols themselves).

Responsum #22¹²

In this responsum, we learn of a situation in which a Jew paid money to a Gentile, in exchange for which the Gentile agreed to make wine for the Jew. The vessels used were either those which belonged to the Jew and which he cleansed before leaving them with the Gentile, or the Gentile's vessels that were cleansed by the Gentile for the Jew's purposes. After all the arrangements had been made and initiated, the Sabbath or another Jewish holy day intervened. On these days, Jews are forbidden to receive or press grapes. In place of the Jew, the Gentile picked the grapes and placed them in the vessels. The following day, the Jew arrived and found the grapes already placed in the vessels. The Jew, when transferring the grapes to other vessels, found that some wine had been pressed at the bottom of the original vessels.

The question posed to Gershom regarded the permissibility or ritual fitness of that wine which the Jew had found already pressed at the bottom of the original vessels. There appear to be two questions being asked: (1) What is the status of wine made by a Gentile and (2) what is the status of wine which, under these circumstances, had been pressed in desecration of the Sabbath or holy day (and would, therefore, otherwise be prohibited)?

Gershom decided that the wine that had been pressed was permissible and that the concern over the possible desecration of the Sabbath or holy day was neither warranted nor applicable.

Gershom began with his citation of a Mishnah¹³ which deems permissible to Jews milk that has been milked from a cow by a Gentile as long as a Jew had observed the process. Perhaps Gershom is implying that in the situation presented in this responsum, the Jew observed the wine-making process in that it was under his supervision.

The question of yein nesekh is then confronted more directly. Gershom maintained that the wine, inadvertently pressed at the bottom of the vessels, does not fall into the category of yein nesekh. Gershom cited the following Mishnah:

If yein nesekh fell upon the grapes, one may rinse them and they are permitted, but if they were split they are prohibited. 14

As the grapes, in the situation presented within the responsa, were not split, the prohibition does not apply. Additionally, Gershom cited a discussion from the Talmud¹⁵ wherein R. Kahana

prohibited Gentiles from conveying grapes to a winepress. However, R. Jemar permitted Gentiles to carry grapes, either in baskets or barrels. Furthermore, R. Jemar continued, "even though the wine drips upon them, it is permitted."¹⁶

In other words, while there are different opinions in the Talmudic discussion cited by Gershom, he followed R. Jemar who not only permitted Gentiles to carry grapes in barrels, but permitted the wine that may have dripped on them. Thus, while there is no unanimity in the sources that he quoted, Gershom followed the more lenient opinion.

Gershom also decided that the concern over Sabbath desecration was not applicable. He reasoned that the Gentile picked the grapes for his own needs; the Gentile derived the primary benefit. Moreover, Gershom continued, had the grapes been left on the vines, the Jew would have suffered the loss. In a somewhat contradictory comment, Gershom maintained that the loss of the grapes would not have been a direct concern of the Gentile.

Responsum #25¹⁷

This responsum concerns some of the roles played by Jews in various money-lending situations. A number of legal fictions appears to have been employed to facilitate the economic situation in which the Jews were functioning. Essential to an understanding of this responsum is that component of the halakhic laws of interest which prohibits one Jew from charging another Jew interest.

The situation which formed the basis of this responsum must be reconstructed. A Gentile borrower sought a Jewish agent, Reuven, to serve as a middleman. Reuven borrowed Simeon's money for which he was charged interest. Reuven, in turn, lent Simeon's money to the Gentile. As it appeared that Simeon was charging Reuven interest, the question of the permissibility of such an arrangement was posed to Rab-benu Gershom.

Gershom permitted this arrangement, explaining that Reuven was acting merely as an agent and, in reality, not paying Simeon any interest for his money. As the interest charges were being paid by the Gentile, Reuven was faultless because the laws of interest were inapplicable.

Gershom cited an analagous case from the Tosephta¹⁸ wherein a Jewish lender, Reuven, sought a Gentile agent. The Gentile, as the middleman, took Reuven's money and made a loan to Simeon. Although the Tosephta permitted such an arrangement theoretically, it forbade it in practice because of mar'at ayin, the way in which it may appear to those unfamiliar with the arrangements that had been made. Nonetheless, Gershom pointed out, people were engaged in these types of arrangements.

Gershom then provided his perspective on a number of cases resembling the originally described situation.

If Reuven had borrowed money from Simeon and lent it to a Gentile, he was permitted to charge the Gentile a higher interest rate than that which Reuven was being charged by

Simeon. As long as Simeon was informed of the arrangement, Reuven, as the middleman, was entitled to a fee for his services. When the Gentile repaid the loan to Reuven, he redeemed his collateral and paid the pre-arranged interest. Even if Simeon questioned the amount of payment by the Gentile to Reuven, the original arrangements remained in force: Reuven returned the Gentile's collateral and paid Simeon the originally stipulated interest. However, in addition, Reuven was encouraged to swear a comprehensive oath wherein he detailed the arrangements that had been made. Reuven was then free of any suspicion that Simeon may have tried to place upon him.

Should the Gentile, because he was "violent," refuse to repay the loan to Reuven, we are reminded that the loan was technically one made by Simeon to the Gentile. As the middleman, Reuven was not responsible and therefore owed nothing to Simeon.

In another situation treated within the responsum, we find the case of a Gentile who lent money to Reuven. When the Gentile demanded repayment, the Jew was unable to manage monetary repayment and arranged with the Gentile to provide (additional?) collateral. The Gentile in need of the money redeemed Reuven's collateral by giving it to Simeon in exchange for money. When Reuven approached the Gentile to redeem his collateral, the Gentile told Reuven to redeem it from Simeon who now had possession of it. In this situation, Simeon was prohibited from charging interest to Reuven, for

the money that Simeon lent to the Gentile actually was for the benefit of Reuven.

Gershom saw this as a case parallel to the original one treated within this responsum. The Gentile was perceived here to be the middleman, transforming the role of the Gentile, who originally was a borrower, into that of a middleman. As the situation developed, Simeon lent money to Reuven and, according to the laws of interest, Simeon could not charge another Jew interest.

The final case discussed within this responsum concerns Reuven's having borrowed money, secured with collateral, from a Gentile. The Gentile, in turn, using Reuven's collateral, borrowed money from Simeon. Should the "violent" Gentile refuse payment of his loan from Simeon, he must forfeit his collateral, which originally belonged to Reuven. Should Reuven then request the return of his collateral, now in the possession of Simeon, Simeon would be permitted to charge Reuven interest through a legal fiction wherein Simeon is actually "selling" the collateral to Reuven. The money-lending benefitted the Gentile, Gershom points out, and not Reuven. However, Simeon cannot refuse to sell the collateral to Reuven. Should Simeon refuse, his refusal would be tantamount to robbery for the collateral originally belonged to Reuven and it is now in Simeon's possession.

Responsum 67¹⁹

This responsum concerns a situation that is presented

in great detail. A boat sank and all of the passengers, who were Jews, were able to escape. The property, consisting of money, coats and gold, remained on the ship. Salvage efforts were initiated when one of the Jews hired a Gentile to assist him in retrieving the property. Both the Jew and the Gentile were partially successful in their attempts to salvage some of the property. Other property, including one water-filled box, remained on the ship. As it could not be brought ashore, the Gentile broke the box and transferred its contents to another boat, thereby saving additional property.

In the darkness of night, some other Gentiles, who had not been hired by the Jew, retrieved additional property and stole it. Within the community, there were some non-Jewish officials who, having been bribed by the Jews, ordered that whatever property was retrieved must be returned to its owners. Some Gentiles were suspected of not adhering to the decree of the local officials. In accordance with Gentile law, they were forced to undergo ordeal by fire and trial by combat.

The Jewish communities gathered, upset over the loss of property, and issued their own decree which declared the obligation of Jews to surrender any property that they might find, in accordance with the local community custom regarding losses and thefts.

Thirty days later, a Gentile sold to Simeon some of the lost gold that originally belonged to Reuven. Simeon was unwilling to return the gold to Reuven and attempted to apply

the Talmudic statement that a "lost item covered by a flood is permitted to whomever found it."²⁰

The question posed to Gershom concerned the obligation on the part of Simeon to return Reuven's lost property. Gershom responded that Simeon was indeed obligated to return to Reuven his stolen property.

Gershom began his response with a refutation of the applicability of the Talmudic statement. Perhaps, he argued, it might have applied had Simeon himself recovered the gold from the water but, in fact, it was the Gentile who did. Thus, the statement indicating that a "lost item covered by a flood is permitted to whomever found it" could not apply.

Moreover, as mentioned above in Chapter One, Gershom cited the maxim: dina d'malkhuta dina, the law of the land is the law. Local law had demanded the return of the property and had further stipulated that compensation be paid if an item was immediately returned. If the property was not returned, it rendered the finder of the property a thief. This had the effect of disqualifying the finder from receiving any type of reward, since he was required to return the property for free. The Gentile, as he did not adhere to local law, was therefore deemed a thief.

Simeon, having acquired property from a thief, was obligated to follow rabbinic rules concerning this eventuality.²¹ After Reuven identified his property in Simeon's possession, assuming that the community was aware of the robbery (as they were in this situation following the decree), he must swear

an oath regarding the original purchase price. Simeon would have then been obligated to repay Reuven accordingly. Should Simeon have decided to return the property voluntarily, no oath would have been required.

Gershom then turned to the underlying issues of eminent domain and the power of the beth din. In this regard, local law can essentially supercede Biblical law, in much the same way that rabbinic law can override Biblical law. Gershom cited a Talmudic discussion²² concerning the beneficiary of a wife who was still a minor. According to Biblical law, her father inherits her property. However, according to rabbinic law, her husband inherits her property. A discrepancy exists in regard to the point at which the husband becomes entitled to his minor wife's property. Beth Shammai claims her husband becomes heir after she reaches puberty; Beth Hillel claims after her entrance into the bridal chamber; and Eliezer said after the consummation of the marriage through intercourse.

Regardless, the primary issue is the right of a court to confiscate property, based upon the rabbinic dictum: hefker beth din hefker, "the confiscation by the court (deposing of ownerless [private] property by the process of law) is valid."²³ The court has an inherent power to confiscate property based, according to R. Isaac, on Ezra 10:8:

...anyone who did not come in three days
would, by decision of the officers and
elders, have his property confiscated...

R. Eleazar based the court's power on Joshua 19:5 wherein land was apportioned by the leadership of Eleazar the Priest,

Joshua and the heads of the ancestral houses. The Mishnah teaches that

...every group of three which has acted as a beth din over Israel is on a level with the beth din of Moses. 24

That beth din, according to the Talmud,²⁵ consisted of Aaron, Nadab and Abihu.

Gershom thus provided a thorough justification for his decision that Simeon was obligated to return Reuven's property. First of all, the local officials had issued a decree obligating the finder of the lost property to return it. The Jews, through the principle of dina d'malkhuta dina, were obligated to adhere to local law. Moreover, the Jewish communities had passed their own ordinance requiring the return of the property. The basis for the intervention of the beth din in issues of property has been explained. As the decision of the community, acting as a beth din, was valid, Simeon was bound to adhere and could not retain ownership of Reuven's property.

Gershom's Stringent Tendencies

Responsum #20²⁶

While the question has not been preserved within the text of this responsum, it is clear that Gershom's opinion was sought on the permissibility of Jews eating bread made by Gentile bakers. The question was undoubtedly prompted

by some discussion within the community, because the answer to the question, as Gershom hastily pointed out, was found within the Talmudic text.

Gershom cited the Talmudic incident²⁷ wherein Rabbi went to an unidentified place and observed the difficulty that the local residents were having in obtaining bread. He inquired as to the presence of a baker. While there was some discussion as to whether he was referring to a Jewish baker (which was supposed) or to a Gentile baker, the Talmud understood from Rabbi's question that the bread of a Gentile baker was forbidden. The opinion was justified within the Talmud by the following reasoning: the eating of bread made by Gentile bakers by Jews ultimately leads to intermarriage. At the time of the Talmudic discussion, there was apparently great concern regarding the extent of interaction between Jews and Gentiles, and the rabbis, fearing detrimental effects upon the Jews, forbade the eating of a Gentile baker's bread by Jews, lest that lead to further social intercourse.

As noted, Gershom followed what he perceived as the opinion of the rabbis as reflected within this particular Talmudic discussion. Eidelberg indicates in a footnote²⁸ that both the Geonim and Tosfot were more lenient with regard to this particular question. Other authorities merely chose to follow whatever local custom was being practiced.

Gershom availed himself of the general subject matter presumably raised by the no-longer extant question to offer

his opinions on some similar subjects. In discussing two related situations, Gershom wrote that even if the cooking was done within a Jew's house, food made by non-Jews was forbidden. However, if a Jew assisted with the cooking, even in the house of a Gentile, other foods, still maintaining the exception of bread, could be eaten by Jews.

Gershom's Reinforcement of the Community

Responsum #23²⁹

There are four situations presented in this responsum involving varying degrees of contact by Gentiles with wine. In all cases, the wine was in wooden wine casks. One overriding question applied to each of the four situations: Could the Jews make use of the wine ritually or otherwise? From an halakhic viewpoint, a distinction is drawn between the drinking of the wine on the one hand and the derivation of benefit from it, as for example, through sale, on the other.

The first situation involved the setting up of a cask of wine by a Gentile. The cask was not standing upright and consequently the wine was dripping out. As there were no Jews present, a Gentile repositioned the cask.

Gershom decided that Jews were permitted to drink the wine contained within the cask. Gershom cited a Talmudic discussion³⁰ which presented two analogous situations. In the first, an earthenware container holding wine cracked

lengthwise, and a Gentile clasped the cask so that he was able to stop the leak. This wine, according to Rafram b. Papa, could be sold to Gentiles. While Jews could derive benefit through the sale of the wine in this case, it was implied that they were not permitted to drink it. However, in the second situation, more similar to the one raised in this responsum, we learn that if a cask is cracked crosswise, and a Gentile applies pressure on the top to stop the leaking, the drinking of this wine is permitted. For in this latter example, the Gentile would be serving the same function as a brick placed atop the leaking cask.

The second situation raised within the responsum concerns a cask of wine into which a Gentile had thrown a rock. Here, according to Gershom, while a Jew was permitted to derive benefit from the wine through its sale, he was forbidden to drink it. As a proof text, Gershom cited a passage from the Mishnah³¹ wherein an angry Gentile threw a cask into a vat of wine. Interestingly, the Mishnah permitted both the drinking of and derivation of benefit from this wine. Gershom, however, was more stringent, forbidding the drinking of the wine.

In a footnote, Eidelberg³² speculated that Gershom was more stringent than the Mishnah because, in his time, Gentiles did not utilize the spoiling of ritually acceptable wine as an expression of their anger. In other periods, apparently, Gentiles took advantage of their familiarity with laws concerning yein nesekh. In order to harass the Jews, Gentiles

would desecrate their wine. Authorities permitted the drinking of wine in such situations, because the financial loss resulting from a prohibition would have been significant. Such desecration was rare during Gershom's time, however, rendering the problem of financial loss less important.

Gershom, however, continued his citation of the Talmudic discussion of this Mishnah. Within that discussion,³³ R. Ashi suggested that a parallel may be drawn between those items rendered clean or unclean by the touch of a zab (a category referring to one afflicted with gonorrhoea) and those circumstances that would render wine permissible or yein nesekh. Were the wine touched by a Gentile or a zab, it would be rendered yein nesekh and could not be permitted for drinking. R. Huna explained that if the cask was thrown into the vat in anger, the wine could not be yein nesekh. He reasoned that if thrown in anger, it would have been immediately thrown and not touched by the Gentile. If, however, the Gentile had thrown the cask while not in anger, one should presume that he probably handled and touched the wine, thereby making it yein nesekh.

Clearly, while there existed various opinions within the Talmud, Gershom here chose the more stringent interpretation. He either ignored or found inapplicable the distinction drawn by R. Huna.

The third and fourth situations in this responsum concern the transportation of wine in a Gentile ship or in a wagon being pushed or pulled by a Gentile. In both of these

cases, Gershom, without explanation, deemed the wine to be permissible. From this decision it may be assumed that Gentiles were involved in the transportation of wine. Had wine transported by Gentiles been deemed yein nesekeh, the financial loss would have been significant if the practice was widespread.

Responsum #52³⁴

This responsum, while consisting of only two lines in Eidelberg's volume, nonetheless provides much information about the relationship between Jews and Gentiles. Gershom was responding to a situation wherein a "violent" Gentile took Reuven's house by force and subsequently sold it to Simeon. Gershom was asked whether Simeon was obligated to return the house to Reuven. He responded that only if Reuven paid Simeon would Simeon be required to return the house.

Gershom's answer, while not supported by any reasoning in the responsum itself, might be compared to a parallel responsum of R. Meshullam b. Kalonymous (910-985). In Meshullam's responsum,³⁵ a similar situation was described. A "violent" Gentile took Reuven's property, described there as land, fields or vineyards. Simeon subsequently purchased the property from the Gentile. Meshullam said that Simeon was not obligated to return the property to Reuven. As Reuven failed to go to court, he thereby renounced his rights to the property. Moreover, the sale of stolen articles was considered valid under the Talmudic presumption that the

original owner "had abandoned all hope." This is applicable, wrote Meshullam, when the bandit is a Jew, and is therefore also applicable when the bandit is a Gentile.

Responsum #75³⁶

This responsum describes a situation wherein a fire broke out. The fire not only engulfed Simeon's house but it also endangered Reuven's filled wine cask which was situated outside. Some Gentiles took Reuven's wine and used it to extinguish the fire in Simeon's house, thereby saving the house from destruction. Reuven sought payment from Simeon for his wine which had saved Simeon's house.

Gershom was asked whether Simeon was obligated to pay for Reuven's wine. In summary, he responded that Simeon was not obligated to pay for Reuven's wine if the house could have been saved through some other means or if Reuven could collect the money from the Gentiles. However, if there was no other way to save the house or if Reuven could not collect payment for his wine from the Gentiles, Simeon was responsible.

Gershom assumed that Reuven's wine constituted the only possible means by which to save Simeon's house. In theory, the Gentiles were responsible for reimbursing Reuven for the wine which they used. However, Gershom voluntarily provided three explanations as to why the money might not be forthcoming from the Gentiles. He speculated that the Gentiles in question (1) had no money, (2) could not be located, or (3) were unidentifiable.

Given the unavailability of the Gentiles as a source of repayment for Reuven's wine, Gershom asserted that Reuven must extract the payment from Simeon. Gershom argued on the basis of a Talmudic passage³⁷ which, in turn, is based upon Numbers 5:7: "...and he shall give it to him to whom he is indebted." If "A" claims a sum from "B," and if "B" claims a sum from "C," the sum should be collected from "C" and given to "A."

Furthermore, Simeon's responsibility is based upon another Talmudic passage³⁸ in which the following situation is discussed. "A" carried a barrel of wine and "B" carried a barrel of honey. If the honey barrel cracked, "A" would be required to pour out his wine and rescue the honey in his empty barrel, as honey was more valuable than wine. "A" could only claim from "B" the value of his services. A distinction is drawn between the varying rates of honey loss from the cracked barrel. Should it be gushing out, such that a large amount would be lost, "B" must pay "A." However, if it is merely dripping, "B" is not obligated to pay. In the case of the fire, one may assume the quick loss of wine which was analagous to the rapid loss of honey in the Talmudic passage. Therefore, Simeon must pay for Reuven's wine.

Gershom reasoned further on the basis of laws regarding lost property.³⁹ If a beth din exists, the finder of lost property must stipulate before that court the nature of the property and the circumstances under which it was found. The original owner could then claim his loss in full. So, while

there was no stipulation in the case of Reuven's wine, the treatment of lost property and its value was well-known within the community. Thus, in the case of "A" pouring out his wine to save the honey belonging to "B," there existed no argument that the cost of the wine should be paid from the value of the honey.

Gershom also raised a problematic situation from the Talmud⁴⁰ which concerns a swarm of bees belonging to "A." These bees settled in a tree belonging to "B." "A" was permitted to cut off the appropriate bough of "B's" tree and was required to pay only for the value of that bough. But, as Gershom pointed out, the analogy did not hold. Therefore, it was not applicable to the case of Reuven's wine.

Responsum #76⁴¹

The situation which prompted this responsum was not preserved within the text, although Eidelberg has reconstructed it.⁴² Reuven threw stones or mortar which hit some Gentiles walking past. Perhaps in retribution, the Gentiles rampaged through Simeon's house. Simeon sought payment for damages from Reuven. Presumably, Gershom had been asked whether Reuven was responsible for payment to Simeon.

If Reuven was intentionally negligent and caused damage through the establishment of a volatile situation, then, according to Gershom, he was responsible. As support for his decision, Gershom cited a Talmudic discussion⁴³ wherein a

person is deemed responsible if he is the agent in an avoidable accident. For instance, should a person lead others to a place which is known to be dangerous, either because it is infested with wild beasts or because robbers are present, he is responsible for any damage that might occur. Abaye suggested that even in the hypothetical situation where a person takes others accompanied by armed men, sharp-shooters or dogs to such a place, he is still responsible if they were robbed or otherwise harmed. If one leads others to a dangerous place, one is encouraging an avoidable situation, and is thus responsible for damage which might be caused.

Gershom concluded that if Reuven's act was intentional, he was responsible and must therefore pay for the damage to Simeon's house. If, on the other hand, his throwing of stones or mortar was inadvertent, it is considered an "act of God" (**וְכִּי יִשְׁלֹךְ אֶת הַאֶבֶן**). In this case, Reuven could not be held responsible for the damage that occurred and would, therefore, not be required to provide damage payment to Simeon.

CHAPTER III

CONCLUSIONS

There is a wealth of information, much of it self-evident, contained within the ten responsa presented in Chapter II. The value of responsa literature, and of Gershom's responsa in particular, should not be underestimated. While the historical research conducted without the utilization of Gershom's responsa may be valuable, it must be incomplete. For an investigation of the socio-political context as presented within Gershom's responsa yields a rich history in and of itself.

There are some unanswered questions that justifiably impose limitations upon the extent and definitiveness of any conclusions that might be drawn from Gershom's responsa alone. As has been discussed in Chapter I, questions abound regarding the authenticity of the works that have been attributed to Gershom. While this has been scientifically demonstrated by Louis Finkelstein with regard to Gershom's takkanot,¹ this thorough type of analysis has not yet been applied to the responsa which are attributed to him. If Gershom's reputation was such that later scholars attributed to him decisions and ordinances that they had written, it is legitimate to raise the same question with regard to Gershom's responsa. As has been noted, Gershom's responsa,

until their publication in one volume by Shlomo Eidelberg in 1955,² had been scattered throughout various collections of responsa from the medieval period. As they were transcribed and transmitted from one time and place to another, there can be no guarantee that they did not undergo revisions, either by accident or through deliberate alteration.

A second problem lies in the lack of definitive understanding of the process through which the questions progressed before finally reaching Rabbenu Gershom. Not every halakhic question raised during this era found its way to Gershom. Within the selected responsa presented above, we find concrete evidence that at least some questions came to Gershom only after having been answered by a local authority.³ Dr. Martin Cohen has suggested⁴ that this was probably true of all of the responsa of this period. There were local rabbis who handled the daily, more routine questions that were posed. It was only when difficulties arose that the questions were transmitted to recognized authorities such as Gershom. An analogy might be made to those cases which find their way to the Supreme Court of the United States. Such cases have not only been handled by lower courts but, furthermore, they often represent basic types of questions or issues that exist within society. The decisions of the Supreme Court - like those of Rabbenu Gershom, set the tone for dealing with other similar legal questions within society.

However, unlike the decisions of the Supreme Court, the responsa of Rabbenu Gershom probably had little direct impact

on the situation which originally prompted the question. For even if one assumes that those responsa which are attributed to him are indeed his, it is not known how much time elapsed between the actual situation which prompted the question, the submission of that question to a local authority, and the subsequent referral of that question to Gershom. It is unlikely that the individual characters, anonymously referred to as Reuven and Simeon, awaited a ruling from Gershom before the resolution of the particular situation or problem which prompted their question. The fact that individuals involved resolved the problems before receiving Gershom's decisions, does not detract from the value and significance of Gershom's responsa. They clearly were intended to establish precedents.

Therefore, it is evident that Gershom's responsa treat issues of community concern. By understanding some of the problems, we are afforded a perspective of the society in which eleventh century German Jews were living.

As discussed above, Jews were given equal rights through the granting of charters. This is supported by the evidence provided within the responsa. Jews owned property of various types, including houses, baking ovens and other businesses.⁵ Jews employed Gentiles for various purposes, among them to assist with the baking of bread,⁶ the production and transportation of wine,⁷ and the salvaging of property lost on a sinking ship.⁸ It is clear that on certain levels, the Jews

functioned 'normally' within the general society.

At the same time, however, there is ample evidence of alienation within that society. An analysis of the ten responsa selected for presentation (which do not exhaust the references within Gershom's responsa to the relationships between Jews and Gentiles) forces the student of this period to understand the perceived limitations of the equal rights granted the Jews by the charters. The responsa indicate that there were limits to the exercise of those rights insofar as Jews viewed their daily existence. As Jacob Katz has suggested:

The Christian and Jewish communities were virtually two distinct societies. The fact that they nevertheless existed in the same economic and political framework was the source of their manifold problems and shortcomings. 9

These problems and shortcomings could not be ignored. A major component of the reality faced by the Jews was that their economic life was dependent upon their interaction with the Gentiles. This dependence upon Gentiles is clear from the responsa which have been presented. Although frowned upon by the thrust of halakhah, Jews became increasingly dependent upon Gentiles, for example, in the production of wine.

Various problems arose within the Jewish community from the necessary business relations with Gentiles. When "bakers of the chief" somehow "persuaded" a Jewish owner of a baking oven to rent his oven to them, various questions were raised as demonstrated above.¹⁰

There were other internal problems faced by the Jewish community. The competition for Gentile business, which appeared, at times, to be fierce, is one example. Although not treated within the responsa presented above, Gershom made various references to the institution of ma'arufya, a safeguard "whereby no Jew might enter into commercial relations with any person who was the client of another Jew."¹¹

The problems faced by the Jews in the course of their interaction with Gentiles was not limited to commerce. Anyone might feel intimidated by someone rampaging through his house as retribution for some allegedly inadvertent stone-throwing. Yet, as suggested by one responsum,¹² the concern was heightened by the fact that it was a Jew who initially threw the stones that hit Gentiles, and it was a second Jew who seemed to have paid the price.

This is but one example of the non-business problems in the relationship between Jews and Gentiles. For reasons that are not spelled out in the texts, there were certain Gentiles who were perceived as being "violent." Some of the "violent" Gentiles apparently had a tendency not to repay certain loans.¹³ Both Meshullam and Gershom discussed cases of "violent" Gentiles who took property belonging to a Jew.¹⁴ There were Gentiles who stole Jewish property,¹⁵ and others, apparently infrequently, who threw stones into casks of Jewish wine.¹⁶ There were clearly arbitrary and capricious actions carried out against Jews by Gentiles.

At the same time, it would be inaccurate to deduce from

these examples within Gershom's responsa that all Jews were afraid of all Gentiles. There are many examples within the responsa that suggest that there were also many healthy relationships between Jews and Gentiles. The Jews not only played a role in the world of commerce for their own benefit but, as repeatedly demonstrated by the responsa, their participation was both crucial and beneficial to the Gentiles within society.

Gershom, in responding to the realities of his environment, was challenged to consider both the inherent tensions and the mutual benefit resulting from the varied relationships between Jews and Gentiles. It is important to understand that Gershom did not try to further alienate the two communities. He did not suggest that the Jews function independently from the larger society in which they lived. Rather, the primary role that Gershom assumed was one of reinforcing the Jewish community from within, while simultaneously enhancing the relationship that the Jews had with the Gentile members of the society.

Gershom, through his responsa, suggested that were the Jews to exhibit the proper type of behavior, it would benefit both the Jewish community and the larger society in which they lived. By reinforcing the teachings of halakhah, particularly during a time when new Jewish communities were beginning to flourish independently from the former Babylonian center, Gershom provided structure and strength to the Jews

of his time. His interest in elevating the role of the synagogue, his desire to uphold the domain of Jewish law, and the importance that he placed on the power of the community to act as a beth din are some examples of the reinforcement that he provided to the Jewish community.

In dealing with the relationships between Jews and Gentiles, particularly in areas of commerce, Gershom was forced to balance the economic realities against the sometimes conflicting thrust of halakhah. As demonstrated, for example, he could not regard Christians as idolaters, for that would have necessitated compliance with details of halakhah that would have severely hampered the livelihoods of the Jews. Jacob Katz has succinctly stated that:

...voluntary abstinence from business dealings with Gentiles for certain periods, or restrictions involving certain types of merchandise, would have had disastrous consequences for the Jew's economic existence.¹⁷

Gershom succeeded in maintaining the balance which was demanded by the socio-political realities of his era. At times he chose to side with more lenient opinions expressed within the Talmud, invoking liberal principles from the halakhic legacy that he had received. However, while Gershom might have given modern meaning to some older principles, he did not create new ones. His decisions firmly fit within the boundaries imposed by Jewish law. Although he may have disagreed with local authorities, and while subsequent gen-

erations of Jewish legalists may have been more stringent than Gershom in certain situations, it would be incorrect to imply that Gershom was a radical who abandoned the tradition of Jewish law.

Indeed, as demonstrated by one responsum¹⁸ included above, wherein Gershom prohibited the eating of bread made by Gentile bakers, Gershom was also capable of bringing a very stringent perspective to his responsa. Another responsum,¹⁹ not presented in the above chapter because it does not deal with Gentiles, demonstrates that Gershom adhered, at times, quite rigorously to the letter of the law. There, the situation involved a Jew who, on the Sabbath, agreed to a purchase price for a horse. While he did not actually pay for the horse on the Sabbath, he did receive possession of it. Gershom was asked about the extent of the punishment that this Jew should receive for desecrating the Sabbath. Explaining that his answer was motivated in part by the fact that the community was lax in its Sabbath observances, Gershom recommended severe punishment. Invoking the principle that to prevent infringements of the law one can "make a fence around the Torah," Gershom actually extended the letter of the law to make it more unlikely that people would break the stipulations of the law itself. In short, Gershom recommended that the Jew should be lashed for agreeing to a purchase price on the Sabbath.

Both within individual responsa and when comparing this student's categories of 'lenient' and 'stringent' tendencies,

one might be tempted to conclude that Gershom's responsa are characterized by inconsistency. However, the reputation enjoyed by Gershom, both during and following his own lifetime, was based upon his adherence to the principles of law of which he was a keen master. Moreover, Gershom was able to utilize creatively his knowledge of halakhah when confronting the realities of his time.

The vibrancy and reinforcement of the Jewish community were paramount above all other concerns. In order to establish and maintain the quality and integrity of Jewish life in his time, Gershom assumed and filled the role of developing halakhah to suit the situation.

That which might be perceived as inconsistency within his responsa, exists, as has been demonstrated, for very good reason. The application of law to contemporary situations is a formidable task, and Gershom fulfilled it. His knowledge of halakhah and its principles, his familiarity with the society in which he lived, and his desire to uphold and reinforce the Jewish community are demonstrated repeatedly within his responsa. His brilliance enabled him to intertwine these various components into the rich legacy which compose the responsa of Rabbenu Gershom ben Judah Meor Hagolah.

NOTES

INTRODUCTION

¹ Jacob Katz, Exclusiveness and Tolerance: Studies in Jewish-Gentile Relations in Medieval and Modern Times (New York: 1962).

² Shlomo Eidelberg, The Responsa of Rabbenu Gershom Meor Hagolah (New York: 1955). Hereafter cited as Eidelberg.

CHAPTER I

RABBENU GERSHOM: HIS LIFE AND HIS WORLD

¹ Irving Agus, The Heroic Age of Franco-German Jewry (New York: 1969) and Urban Civilization in Pre-Crusade Europe (New York: 1965).

² Irving Agus, Urban Civilization in Pre-Crusade Europe (New York: 1965), p. 38.

³ Shlomo Eidelberg, "Gershom Ben Judah Me'or Ha-Golah," in Encyclopedia Judaica (Israel: 1972), Vol. VII, p. 511.

⁴ Heinrich Graetz, Divrei Y'mei Yisrael, Part III, p. 374, cited in Eidelberg, p. 12.

⁵ Responsum #32 in Eidelberg, pp. 98-100. The numbers used in reference to Gershom's responsa are those as designated in Eidelberg.

⁶ Responsum #73 in Eidelberg, p. 169.

⁷ Responsum #31 in Eidelberg, pp. 96-97.

⁸ J. Mueller (ed.), Teshuvot Hakhmei Zarefat Ve-Lutir (Vienna: 1881), cited in Eidelberg, p. 16.

The translation of the Hebrew is as follows:

"Rabbenu Gershom, may the memory of the righteous and holy be for a blessing, who enlightened the eyes of the exile, and upon whom we all depend and of whom all Ashkenazi Jewry are the disciples of his disciple."

⁹ Louis Finkelstein, Jewish Self-Government in the Middle Ages (New York: 1964 - Second Edition), see especially pp. 111-138.

¹⁰ Salo Baron, The Jewish Community: Its History and Structure to the American Revolution (Philadelphia: 1945), Vol. II, p. 70.

¹¹ A. M. Habermann, Rabbenu Gershom Meor Hagolah: Selichot U'phizmonim (Jerusalem: 1944).

¹² Shlomo Eidelberg, "Gershom Ben Judah Me'or Ha-Golah," in Encyclopedia Judaica (Israel: 1972), Vol. VII, p. 513.

¹³ Ibid., p. 513.

¹⁴ Eidelberg.

¹⁵ Eidelberg, p. 7.

¹⁶ "Saxon Dynasty," in Encyclopaedia Britannica: Micro-paedia (Chicago: 1983), Vol. VIII, p. 936.

¹⁷ Eidelberg, p. 11.

¹⁸ James Parkes, The Jew in the Medieval Community: A Study of His Political and Economic Situation (London: 1938), p. 44.

¹⁹ Jacob Katz, Exclusiveness and Tolerance: Studies in Jewish-Gentile Relations in Medieval and Modern Times (New York: 1962), p. 5.

²⁰ Ibid., p. 5.

²¹ James Parkes, op. cit., p. 162.

²² Ibid., p. 26.

²³Ibid., p. 35.

²⁴Eidelberg, p. 12.

²⁵Irving Agus, "The Oral Traditions of Pre-Crusade Ashkenazi Jewry," in Studies and Essays in Honor of Abraham A. Neuman (Leiden: 1962), p. 1.

²⁶Shlomo Eidelberg, "Gershom Ben Judah Me'or Ha-Golah," in Encyclopedia Judaica (Israel: 1972), Vol. VII, p. 512.

²⁷James Parkes, op. cit., p. 241.

²⁸Ibid., pp. 241-242.

²⁹Irving Agus, Urban Civilization in Pre-Crusade Europe (New York: 1965), p. 38.

³⁰Ibid., p. 40.

³¹Salo Baron, op. cit., p. 69.

³²Shlomo Eidelberg, "Gershom Ben Judah Me'or Ha-Golah," in Encyclopedia Judaica (Israel: 1972), Vol. VII, p. 512.

³³Guido Kisch, "Relations Between Jewish and Christian Courts in the Middle Ages," Historia Judaica, Vol. XXI (1959), pp. 88-89.

³⁴Ibid., p. 91.

³⁵Ibid., p. 87.

³⁶Louis Finkelstein, op. cit., p. 33.

³⁷Ibid., p. 130. (Takkanah #3).

³⁸Ibid., pp. 111-138. (Takkanot #2 and #4).

³⁹Ibid., pp. 137-138. (Takkanah #11).

⁴⁰Ibid., pp. 130-132. (Takkanah #4).

⁴¹Ibid., p. 4.

⁴²Eidelberg, pp. 177-183.

⁴³James Parkes, op. cit., p. 242.

⁴⁴Jacob Katz, op. cit., p. 46.

⁴⁵Shmuel Shilo, "Ones," in Encyclopedia Judaica (Israel: 1972), Vol. XII, pp. 1397-1402.

⁴⁶Responsum #8 in Eidelberg, pp. 61-63.

⁴⁷Shmuel Shilo, "Dina De-Malkhuta Dina," in Encyclopedia Judaica (Israel: 1972), Vol. VI, p. 51.

⁴⁸Responsum #67 in Eidelberg, pp. 154-158.

⁴⁹Responsum #21 in Eidelberg, pp. 75-77.

⁵⁰Jacob Katz, op. cit., pp. 28-29.

CHAPTER II

TEN SELECTED RESPONSA

¹ Responsum #8 in Eidelberg, pp. 61-63.

² Reuven and Simeon are fictitious names often used in rabbinic literature. In some of his responsa treated within this thesis, Gershom uses these names. Additionally, they are used within this thesis for reasons of clarity even in discussions of responsa wherein Gershom did not utilize the names.

³ Numbers 32:22.

⁴ 'Abodah Zarah 21b.

⁵ Responsum #21 in Eidelberg, pp. 75-77.

⁶ Hullin 13b.

- ⁷ 'Abodah Zarah 7b.
- ⁸ 'Abodah Zarah 8a.
- ⁹ Bezah 30a.
- ¹⁰ Ibid.
- ¹¹ Ibid.
- ¹² Responsum #22 in Eidelberg, pp. 78-79.
- ¹³ 'Abodah Zarah 39b (Mishnah).
- ¹⁴ 'Abodah Zarah 65b (Mishnah).
- ¹⁵ 'Abodah Zarah 59a-59b.
- ¹⁶ 'Abodah Zarah 59b.
- ¹⁷ Responsum #25 in Eidelberg, pp. 85-86.
- ¹⁸ Tosephta Baba Mezi'a, Chapter V.
- ¹⁹ Responsum #67 in Eidelberg, pp. 154-158.
- ²⁰ Baba Kamma 114a (Mishnah).
- ²¹ Baba Kamma 114b.
- ²² Yebamoth 89b.
- ²³ Marcus Jastrow, A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature (New York: 1950), p. 862.
- ²⁴ Rosh Hashanah 25a (Mishnah).
- ²⁵ Yebamoth 89b.
- ²⁶ Responsum #20 in Eidelberg, p. 74.
- ²⁷ 'Abodah Zarah 35b.

- ²⁸Eidelberg, p. 74, footnote #6.
- ²⁹Responsum #23 in Eidelberg, pp. 79-80.
- ³⁰'Abodah Zarah 60a-60b.
- ³¹'Abodah Zarah 60a (Mishnah).
- ³²Eidelberg, pp. 79-80, footnote #7.
- ³³'Abodah Zarah 60b.
- ³⁴Responsum #52 in Eidelberg, p. 122.
- ³⁵Cited in Irving Agus, Urban Civilization in Pre-Crusade Europe (New York: 1965), pp. 132-134.
- ³⁶Responsum #75 in Eidelberg, pp. 171-172.
- ³⁷Pesahim 31a.
- ³⁸Baba Kamma 115a.
- ³⁹Baba Mezi'a 30b (Mishnah).
- ⁴⁰Baba Kamma 81b.
- ⁴¹Responsum #76 in Eidelberg, p. 173.
- ⁴²Eidelberg, p. 173, footnote #1.
- ⁴³Baba Mezi'a 93b.

CHAPTER III

CONCLUSIONS

¹ Louis Finkelstein, Jewish Self-Government in the Middle Ages (New York: 1964 - Second Edition), see especially pp. 111-138.

² Shlomo Eidelberg, The Responsa of Rabbeinu Gershom Meor Hagolah (New York: 1955). Hereafter cited as Eidelberg.

³ Responsum #21 in Eidelberg, pp. 75-79.

⁴ This was one of numerous suggestions made by Dr. Martin Cohen in private discussions regarding this thesis.

⁵ See, for example, Responsum #8 in Eidelberg, pp. 61-63.

⁶ Responsum #8 in Eidelberg, pp. 61-63.

⁷ Responsum #22 in Eidelberg, pp. 78-79, and Responsum #23 in Eidelberg, pp. 79-80.

⁸ Responsum #67 in Eidelberg, pp. 154-158.

⁹ Jacob Katz, Exclusiveness and Tolerance: Studies in Jewish-Gentile Relations in Medieval and Modern Times (New York: 1962), p. 11.

¹⁰ Responsum #8 in Eidelberg, pp. 61-63.

¹¹ H.H. Ben-Sasson (ed.), A History of the Jewish People (Cambridge: 1976), p. 438.

¹² Responsum #76 in Eidelberg, p. 173.

¹³ Responsum #25 in Eidelberg, pp. 85-86.

¹⁴ Responsum #52 in Eidelberg, p. 122, and Irving Agus, Urban Civilization in Pre-Crusade Europe (New York: 1965), pp. 132-134.

¹⁵ See, for example, Responsum #67 in Eidelberg, pp. 154-158.

¹⁶ Responsum #23 in Eidelberg, pp. 79-80.

¹⁷ Jacob Katz, Exclusiveness and Tolerance: Studies in Jewish-Gentile Relations in Medieval and Modern Times (New York: 1962), p. 30.

¹⁸ Responsum #20 in Eidelberg, p. 74.

¹⁹ Responsum #9 in Eidelberg, pp. 63-64.

BIBLIOGRAPHY

- Agus, Irving. Heroic Age of Franco-German Jewry. New York: Yeshiva University Press, 1969.
- ". "The Oral Traditions of Pre-Crusade Ashkenazic Jewry" in Studies and Essays In Honor of Abraham A. Neuman, Meir Ben-Horin, Bernard Weinryb, Solomon Zeitlin, ed. Leiden: E.J. Brill, 1962.
- ". Urban Civilization In Pre-Crusade Europe. New York: Yeshiva University Press, 1965.
- Baron, Salo W. A Social and Religious History of the Jews. Philadelphia: Jewish Publication Society, 1957. Second Edition. Vols. V - VI.
- ". The Jewish Community: Its History and Structure to the American Revolution. Philadelphia: Jewish Publication Society, 1945.
- Ben-Sasson, H.H. (ed.) A History of the Jewish People. Cambridge, Mass.: Harvard University Press, 1976.
- Chazan, Robert. Medieval Jewry in Northern France: A Political and Social History. Baltimore: Johns Hopkins University Press, 1973.
- Danby, Herbert (ed.) The Mishnah. Oxford: Oxford University Press, 1933.
- Eidelberg, Shlomo. "Gershom Ben Judah Me'or Ha-Golah." Encyclopedia Judaica. Israel: Keter Publishing House, 1972. Vol. VII. 511-513.
- ". "'Maarufia' in Rabbenu Gershom's Responsa." Historia Judaica, XV (1953). 59-66.
- ". The Responsa of Rabbenu Gershom Me'or Hagolah. New York: Yeshiva University Press, 1955.
- ". "רבינו גרשם מאור הגולה - חייו ופעולותיו" Zion, XVIII (1953). 83-87.
- Falk, Ze'ev W. Jewish Matrimonial Law in the Middle Ages. London: Oxford University Press, 1966.
- Finkelstein, Louis. Jewish Self-Government in the Middle Ages. New York: Philipp Feldheim, 1964. Second Edition.

- Habermann, A.M. Rabbenu Gershom Meor Hagolah: Selichot U'phizmonin. Jerusalem: Mosad Harav Kook, 1944.
- Jastrow, Marcus. A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature. New York: Pardes Publishing House, 1950.
- Katz, Jacob. Exclusiveness and Tolerance: Studies in Jewish-Gentile Relations in Medieval and Modern Times. New York: Schocken Books, 1962.
- Kisch, Guido. Jewry-Law in Medieval Germany: Laws and Court Decisions Concerning Jews. New York: American Academy for Jewish Research, 1949.
- , "Relations Between Jewish and Christian Courts in the Middle Ages." Historia Judaica, XXI (1959). 81-108.
- , The Jewry-Law of the Medieval German Law-Books. Part II: The Legal Status of the Jews. New York: American Academy for Jewish Research, 1941.
- , The Jews in Medieval Germany: A Study of Their Legal and Social Status. New York: Ktav, 1970.
- Parkes, James. The Jew in the Medieval Community: A Study of His Political and Economic Situation. London: Soncino Press, 1938.
- Rabinowitz, L. The Social Life of the Jews of Northern France in the XII-XIV Centuries. London: Edward Goldston, 1938.
- "Saxon Dynasty." Encyclopaedia Britannica: Micropaedia. Chicago: Encyclopaedia Britannica, 1983. Vol. VIII. 936.
- Shilo, Shmuel. "Dina De-Malkhuta Dina." Encyclopedia Judaica. Israel: Keter Publishing House, 1972. Vol. VI. 51-55.
- , "Ones." Encyclopedia Judaica. Israel: Keter Publishing House, 1972. Vol. XII. 1397-1402.
- Simhoni, J. N. (Naphtali b. Shemu'el). "רבנו גרשום מאור הגולה." Ha-Shiloach, XXVIII (1913). 14-22, 119-128, 201-212.
- Zuckerman, Moses Samuel (ed.). Tosephta.