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THE USE OF THE POWER OF EXCOMMUNICATION
AMONG JEWS DURING THE TALMUDIC , GAONIC, AND LATER
PERIODS.

by
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Hebrew Union College.
1925

Acic. 11/79

Submitted as part requirement
for graduation from the Hebrew
Union College by

Samuel T. Phillips.

To my dear wife Anna Engel Phillips,
who like Rachel of old, sent her husband,
a year after marriage, to study the To-
rah and to become a teacher and preacher
in Israel --- this thesis is dedicated.

Abbreviations.

1.	art.	-----	article
2.	Bib.	-----	Bible
3.	bk.	-----	book
4.	B. K.	-----	Baba Kama
5.	P. T.	-----	Palestinian Talmud
6.	B. T.	-----	Babylonian Talmud
7.	ch.	-----	chapter
8.	^H Ch. Mish.	-----	^H Chosen Mishp ^a bt
9.	c-p	-----	compare ^{Kp.}
10.	f.	-----	following
11.	J.E.	-----	Jewish Encyclopedia
12.	J. Ency.	-----	Jewish Encyclopedia
13.	Jer.	-----	Jerushalmi
14.	J.E.R.	-----	Jewish Quaterly Review ²
15.	Mish.	-----	Mishnah
16.	M.K.	-----	Moed Katon
17.	No.	-----	Number
18.	N.S.	-----	New series
19.	N.T.	-----	New Testament
20.	p.	-----	page
21.	pp.	-----	pages
22.	par.	-----	paragraph

23. pub. ----- published
24. sec. ----- section
25. vol. ----- volume
26. Y.D. ----- Yoreh Deah
27. Yost: Ges.D.Juden ----- Yost: Geschichte der *Israeliten*
d. Jhr. Judentum
28. *א"ב - פקקי ארבע* ----- Responsen der Geonim;
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and Mittheilungen. Vol.4
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א"ב Ed. Müller -- in period-
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 8. Moed Katon 17a
 9. Kidushin 72a -- 70b
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Introduction.

The subject of this thesis, "The Use of the Power of Excommunication Among Jews" in the Talmudic and Gaonic Periods^{v and later} was treated inadequately^l in the English language. With the exception of the insignificant article on Anathema^v and the recent scholarly investigations of Professor Jacob Mann, very little has been written on this subject. It will therefore be the task of the writer to treat this subject as adequately as possible under the circumstances. In the first chapter, the distinction between the usage of the word Cherem^H in the Bible and in later Jewish literature, is discussed. In the succeeding chapters the use of the ban among Jews, after losing their political and civil authority, is traced. The writer drew many of his conclusions from the scholarly works mentioned in the bibliography and especially from the valuable German source book "Der Bann" by Wiesner. The original sources were consulted whenever possible in the treatment of the subject.

Although the title of the subject only calls for the treatment of the Cherem during the Talmudic and Gaonic periods, the writer decided, by permission of the head of the department of history, under whom this thesis is written, to include also, excommunications in the Post-Gaonic periods, tracing them down to our modern era, where it lost its former power and influence and has become a negligible factor in the lives of our people.

Cherem in the Bible.

The Holy Scriptures do not deal with the power of excommunication. The word **כֶּרֶם** in the Bible has a different meaning than that which it has in the Talmud and later writings. The Biblical books with the exception of the Book of Ezra know nothing of the use of a ban against an individual or a group.

? What
about
כֶּרֶם ?

In the Pentateuch and the Book of Joshua, as well as in other Biblical books, the word Cherem originally means the confiscation of property or the dedication of a thing to God from which no one can receive any benefit. This meaning is similar to the Arabic word 'harama' meaning prohibited or forbidden and in later times the holy place in Mecca has been designated by the Arabs as 'Haram'. It is interesting to note that our modern word 'a harem' is etymologically derived from the root 'harim'.⁽¹⁾ There are numerous examples in the Bible of the use of this word; but only a few striking examples will be given. Leviticus 27:28 states that anything dedicated to the Lord cannot be sold nor redeemed 'for it is holy unto the Lord' **כִּי קֹדֶשׁ לַיהוָה**. Another example can be found in Numbers 18:14. 'Every thing devoted in Israel shall be thine' **כֹּל חֶרֶם בְּיִשְׂרָאֵל לְךָ יְהוָה**. Another illustration is found in Joshua 7:1 in the story of Achan.

(1) ?
word

Although the meaning of Cherem underwent a complete change in

(1). Johann Döllner, Der Bann im Alten Testament und im späteren Judentum pp 1.

to the priests

the course of Jewish history, the original meaning, however, was still used in the Talmudic literature. The following few examples will prove this point. In Mishnah Erachin 8:6 we read: the things dedicated cannot be redeemed but may be given to other priests;

אין חרם אלא לכהנים

likewise, in Mishnah Chala 4:9 it is stated: these are given to every priest, the devoted things, the sacrifices of the firstborn and money from the firstborn's redemption.

כל הנדבקות והקדשות והעשרות והתרומות

At the time of Ezra the word Cherem adopted a new meaning; yet it differed greatly from later Talmudic usage. When Ezra ⁽²⁾ excommunicated the people, he confiscated their private fortunes also, while in post-biblical times the property of the individual under ban was left intact and only the transgressor suffered the penalty.

In the early centuries of the Hebrew State which was founded upon theocratic lines, Cherem became an expression of God's displeasure with all persons, Jew or heathen, who did not subordinate his personal conduct to the discipline of the authorities. It was a method to purify the community and to correct their evil ways. Ezra himself believed that the territory of Palestine was under a ban and if it were to be restored to the dignity of Jahweh's favor, it was necessary ^{that} it be purified from the idolatrous practices which were adapted by the people. ⁽³⁾

But later on, the Cherem was used as an instrument to control the moral and ethical conduct of the members and those who dared

(2). Ezra 10:3

(3) ibid 9:1-12.

to rebel against the decrees ^{of} against the congregation and its leaders were threatened with the loss of personal and communal rights.

However, the verdict of excommunication could be removed if the guilty person would consent to obey the orders of the authorities and abide by their decisions. Hence, we can see that the Cherem was employed by the authorities in those days for the purpose of safeguarding the community and protecting it from ⁽⁴⁾ esoteric disturbances. ?

Much has been written on Biblical Cherem but it is outside the scope of this thesis to discuss it in detail; however, if the reader is interested in the full analysis of the subject of Cherem, he can find it treated thoroughly in 'Der Bann' by Dr. Simon Mandl and in a treatise entitled 'Der Bann im Alten Testament und im späteren Judentum' by Professor Johann Döllner.

One must remember that the Cherem in the Bible had an entirely different meaning than that of the later periods. Cherem in the Bible, excluding the book of Ezra, referred to things forbidden and dedicated to God; while, in post-biblical literature, the term assumed the same meaning as the Greek word 'anathema', or as the Latin word 'excommunico' ⁽⁵⁾ from which our English word 'excommunication' is derived. *excommunicare*

(4). c.J. Ency. art. on Anathema.

(5). Funk & Wagnall's Standard Dictionary.

apo synagogos

Excommunication in Synagogue and Church

As stated in the preceding chapter, the meaning of Cherem underwent a transition beginning with the time of Ezra. There was a gradual change that easily could be detected in post-biblical literature. Even in the New Testament we find that the subject of excommunication is referred to as the punishment of the synagogue, for the person who was excommunicated was named 'apo-synagogi'.⁽⁶⁾ That individual, although he was expelled from the synagogue, was not refused admittance into the Temple at Jerusalem.⁽⁷⁾

The punishment of the synagogue was of two kinds: the anathema, or excommunication; and, the Perinoea, censure or corporal infliction.⁽⁸⁾ The latter punishment will not be discussed in this chapter, since we are only concerned in the treatment of the subject of excommunication. The anathema was the greatest punishment of the synagogue and when inflicted in its severest form it debarred and excluded the offender from all social intercourse with his countrymen.⁽⁹⁾

While it does not appear that the anathema or Cherem was governed by fixed legal principles in its early stages, the authorities used it as a means of protection against improper

(6) N.T. John 9:22; 12:42.

(7) Jennings's Jewish Antiquities bk. 2, ch. 3

(8) Justinian Novel ppl 46 ff. *where?*

(9) Joreh Deah sec. 1 *?*

Novella

conduct in the community. This made the anathema not only a punitive measure, but, also, a safeguard against personal injustice or against immorality either in conduct or one's profession.⁽¹⁰⁾

The influence of the Cherem of post-biblical periods had actuated the early leaders of the Christian Church to utilize the same tool among their followers as a means to bring harmony and order in the group. Thus, there is evident allusion to excommunication in the New Testament. An example of this is found in Matthew 18:15-17, 'If thy brother shall trespass against thee, go and tell him his fault, between thee and him alone; if he shall ~~not~~ hear thee, thou hast gained thy brother. But if he will not hear thee, then take with thee one or two more, that in the mouth of two or three witnesses every word may be established. And if he shall neglect to hear them, tell it unto the Church: but, if he neglects to hear the Church, let him be unto thee as an heathen man and a publican! The person is threatened with excommunication first by a private rebuke and then by a public proclamation of the Church. This method, to some extent, is similar^{to} the Jewish mode of excommunication which will be treated in the forthcoming chapters. The phrase 'to cast out of the synagogue' came to be used in the New Testament as 'to be excommunicated'.⁽¹¹⁾

Since we have discussed the power of excommunication as found in the New Testament, it is interesting to note the theory

(10). Yoreh Deah par. 334

(11). N.T. John 9:22; 12:42; 16:2; 9:34.

of why Jesus and his apostles were not excommunicated by the Christian scholar, Joshua L. Bernard. ✓ According to him, Jesus and his apostles were hated by the priests and rabbis, for surely they must have transgressed laws, the penalty of which was excommunication. He attributes two reasons for the unwillingness of the Jewish Leaders to excommunicate Jesus in particular: first, because the Jewish authorities usually did not like to inflict this severe punishment; and, secondly, (according to the viewpoint of this Christian), Jesus was regarded as a Rabbi and the power of excommunication was not used against a rabbi, except in extreme cases. For the same reasons, the apostles though beaten and persecuted in every way, were not excommunicated. *where?*

Of course, this theory is far fetched, since it is without historical basis. It cannot be proved that Jesus was a Rabbi, nor that he and his apostles played an important role in their time. It was cited merely to show the reasoning of a Christian scholar in his views upon this subject.

mm
The Cherem in the Tanaitic Period

The Cherem developed into a powerful weapon in the course of Jewish history and became a factor to be reckoned with after the destruction of the Jewish state in particular. When the Jewish nation was existing, the authorities carried out law and order thru the offices of the state; but, when the state was destroyed, the authorities lost their political influence, but still retained their own religious administrative power; therefore, they resorted to the punishment of the Cherem which was there only weapon for protection of the communal welfare and stability. The Cherem was, however, in practise even before the destruction of the second Temple (70 C.E.) as it will be pointed out in this chapter.

One of the earliest bans pronounced in Jewish history was
(12)
against Rabbi Akabya ben Mehalalel. This Cherem was issued
against this great scholar in the reign of Herod 1 (40-3 B.C.E.). 2

In a dispute with the Rabbis, Akabya disagreed to their with
decisions concerning four laws. He refused to submit to the convictions of the scholars and was excommunicated until his death.

Before his death, Akabya called his son to his bed and advised him to submit to the decisions of the majority. His son remarked: why didn't you give in? To this question, the

(12). M. Eduyoth 5:6; Jost's Ges.d. Juden. vol. 2, p34.

"He that is excommunicated and dies under the ban of excommunication, stones are thrown upon his coffin".

It is hardly conceivable to believe the authenticity of the statement applying to Akabya. Although they may have disagreed with this learned scholar during his lifetime, they certainly would not have insulted his name by throwing stones upon his coffin. Proof of this conjecture may be found in the discussion of Rabbi Jehuda who believed that it was not Akabya's coffin upon which stones were thrown but upon that of another man by the name of Eliezer ben Chanoch who was excommunicated because he considered the washing of the hands in a light manner. In fact, Rabbi Jehuda even questioned the historicity of Akabya's excommunication. ⁽¹⁶⁾

Eliezer ben Hyrcanus, another victim of excommunication of this century, was one of the pupils of the famous founder of the school at Jabneh, Rabbi Johanan ben Zakkai, and one of the greatest Rabbis of that time. His teacher thought of him so highly that he compared his mind to a cemented cistern which ⁽¹⁷⁾ does not lose a drop. He was also reputed to have been one of the wealthiest men of that period for he inherited a great fortune from his father. In addition to his wealth, he was the brother-in-law of the Nasi, Rabbi Gamaliel usually called Gamaliel 11, Gamaliel the elder, or Gamaliel of Jabneh ⁽¹⁸⁾ (100-130 C.E.)

Just as in the time of Rabbi Akabya, laws of cleanliness and uncleanness were discussed. Eliezer was accustomed to inter-

(16). ibid

(17). Pirke Aboth ch.4:11

(18). Gotthard Deutsch's History of the Jews. pp27-29.

pret the Halacha in a more free and more liberal spirit. However, his colleagues refused to accept his opinions and insisted on their own dogmatic interpretations. The whole dispute centered around the simple problem concerning a portable earthenware oven which had crumbled in many places and the cracks and holes had been filled with sand. ⁽¹⁹⁾ A portable earthenware oven is like an earthenware vessel and can contract defilement. In the latter instance, the vessel cannot be purified and, therefore, must be destroyed.]

Rabbi Eliezer allowed the oven to be mended and disagreed with the other Rabbis who declared it unclean. This oven was called ⁽²⁰⁾ תנור של נחש, the oven of the serpent. The Gemarah asks: why is it called the oven of the serpent? Rabbi Judah said in the name of Samuel that the sages wound the discussion of this subject as a serpent winds itself around an object; and, in this manner, they proved the oven to be unclean. On that day they brought in all things which came in contact with the oven since Rabbi Eliezer proclaimed ^{it} clean and burned them in his presence. Then, they excommunicated ⁽²¹⁾ him.

This was the main cause of the quarrel. Although it was not a matter of life and death, none of the parties were willing

(19) Berachoth 19a

(20). Krause thinks that the word translated 'serpent' is really a proper name, after whom that sort of an oven was called. See his discussion in part 1 of Lehnwörter pp 295 f. Also Krause's Talmudische Archäologie, vol 1, p 88; note 169.

(21) Berachoth 19a

to accede to the decisions of the other. Eliezer was alone on the battlefield and the opposing parties consisted of all the rest of the scholars of the Beth Ha-Midrash; therefore he was excommunicated.

A more elaborate account of the incident of the dispute about the oven which resulted in the excommunication of Eliezer is found in ~~Baba~~ Mezia 59b. A Beraitha is brought by the Gemarah concerning the legendary account of the miraculous power of Eliezer in an attempt to prove the veracity of his arguments.

"Rabbi Eliezer answered all kinds of questions, but his answers were not accepted by his colleagues. Therefore, he said, 'Let this carob-tree prove that the Halacha is as I stated'; and, miraculously, the carob-tree was torn from its place and hurled to a distance of one hundred ells (according to others, four hundred ells. 'The Carob-tree, argued the Rabbis, proves nothing'. He, then, replied: let the spring of water prove that the Halacha is as I have stated. The waters then began to withdraw; however, again the Rabbis refused to accept this phenomenon as a testimony of his halachic decisions. Once more, Eliezer said: let the walls of the Bet Ha-Midrash prove that I am right. The walls were about to fall when Rabbi Joshua rebuked them, saying, 'if the Rabbis of this school are discussing halachic problems, what right have you to interfere?'; and the walls became firm for the sake of Rabbi Joshua's request but never became straight again for the honor of Rabbi Eliezer. Then, he continued: let heaven decide whether I am right or not? Immediately a Bath Kol was heard from heaven saying, 'why do you quarrel with Rabbi Eliezer whose decisions are always right?' Rabbi Joshua retorted: the law is not in the heaven (Deut. 30:12). It is told on that same day, all the cases of purity and impurity of which Rabbi Eliezer proclaimed all of them clean were brought into the Beth Ha-Midrash and destroyed by fire. A vote was then cast and he was unanimously placed under a ban. Now the question arose who inform Eliezer of the decision (of the Beth Ha-Midrash)?" (Baba Mezia 59b).

*Really
had
was
a
main*

*declared
agreed*

Rabbi Akiba, learned teacher and scholar and disciple of Rabbi Eliezer, was appointed to inform Eliezer of his excommunication. The only reason that Akiba gave in his accepting the mission was that if one was unfit to go to deliver the sentence of the Rabbis, Eliezer surely would destroy the whole world. He dressed himself in black and went to the home of his teacher. Rabbi Eliezer, upon noticing that Akiba sat at a distance, inquired: what was wrong? To that question, Rabbi Akiba answered: it seems to me that your colleagues excommunicated you. Eliezer mourned and wept at the humiliation that was placed upon him by his colleagues. According to the Beraitha, the day upon which Akiba delivered the sentence to Eliezer was the severest of all days, for upon everything that Rabbi Eliezer cast his eyes (22) was burned.

The excommunication could not have happened without the notice of the Nasi or knowledge of the Beth-Din; and, in spite of his wealth and influence as a brother-in-law of the Nasi, the ban was not repealed. It seems that Rabbi Gamaliel never attempted to nullify the ban placed upon his brother-in-law and was unconcerned with the pain and agony that the punishment brought.

The attitude of Gamaliel to his brother-in-law is evident in the following narrative: Sometimes later after the excommunication of Rabbi Eliezer, Rabbi Gamaliel made a voyage and a ferocious storm raged over the ocean. His friends fearing that the ship would sink and attributing this tempest as a punishment for the suffering and pain inflicted upon Eliezer by him and the other Rab-

bles pleaded to him to vindicate his action. Whereupon, Rabbi

Gamaliel answered:

וְיָדוּנָה הָאֵל עִלְמָא
וְיָדוּנָה הָאֵל עִלְמָא
וְיָדוּנָה הָאֵל עִלְמָא
וְיָדוּנָה הָאֵל עִלְמָא
וְיָדוּנָה הָאֵל עִלְמָא
וְיָדוּנָה הָאֵל עִלְמָא
וְיָדוּנָה הָאֵל עִלְמָא
וְיָדוּנָה הָאֵל עִלְמָא
וְיָדוּנָה הָאֵל עִלְמָא
וְיָדוּנָה הָאֵל עִלְמָא

"Lord of the world! Thou knowest very well that I did not do this for my own glory nor for the honor of my father; but for the sake of Thy own glory in order that quarrels may not spread in Israel." (23)

In spite of this ban, the people did not consider Rabbi Eliezer as ostracized from the congregation of Israel. It is natural that they should sympathize with the oppressed and persecuted; and, moreover, if those so afflicted were recognized scholars and beloved by the people as Rabbi Eliezer. They, therefore, expressed their sentiments to him in a beautiful legend already quoted on page 2. And instead of obeying the Cherem of the Nasi, they continued to honor and respect him. Even the Romans under whose control Palestine was, admired Rabbi Eliezer more than the Nasi who began to lose his former power.

The wonderful personality of this Rabbi was to a great extent instrumental in weakening the influence of the Cherem. He did not discontinue to teach his pupils; and his friends, who followed his halachic interpretations, paid no attention to the laws and orders of the Nasi. The influence of Rabbi Eliezer was of such consequence that the Beraitha and the Tal-

mud referred to him by the honorary title 'the Great'.

When Rabbi Eliezer was dying, many of his disciple visited him; and, praising him for his splendid contributions, compared his personality to a good rain; another to the sun; and a third called him 'the father and mother of the people Israel'.

Even after his death his memory was cherished by all; in fact, the people of his city still followed the halachic decisions of this great master. And, although, the Romans persecuted and oppressed the Jews forbidding them to observe the commandments of the Torah, an exception was made to this city and its inhabitants were permitted to circumcize their children.

Rabbi Gamaliel, who was, in part, responsible for Eliezer's excommunication, died before his brother-in-law without removing the ban from him; however, Rabbi Joshua removed it even tho it was after the death of Eliezer..

It is known that Rabbi Gamaliel attempted to assert his authority by trying to excommunicate many more of the rebellious scholars; but his court which was not as hasty and tactless as he was and could well see the evil effects of such a drastic policy prevented him from carrying out his plans.

After the fall of the fortified city Bethar (135 C.E.), the young scholars assembled at Usha for the purpose of establishing a new court in order to meet the new social and religious conditions that demanded their attention. They im-

(24) Taanith 31a

(25).Sanhedrin 101a

(26) Sabbath 130a

(27).Sanhedrin 63a

(28).Berachoth 27b

-101
Jer. 1/3
22/1
2
1

mediately realized that an unjustifiable Cherem would ultimately lead to grave results; therefore they issued a Takkanah, a decree or resolution, forbidding a member of the court, (29) as he was called, from being excommunicated. The only punishment for those who refused to follow the decisions of the court was an indefinite dismissal from the Beth Din; however, they were reinstated later. And those who voluntarily remained away from the assembly for a long period (30) of time were excommunicated.

The Cherem was already known as a dangerous weapon among talmudic students for it gave too much power to an individual like the Nasi or any learned scholar; therefore, those who assembled at ~~Usha~~ passed decrees which tended to check the authorities of the individuals so that they were not able to excommunicate those who disagreed with their opinions.

Many years later, Rabbi Meir, a great and learned scholar, was called before the Nasi, Rabbi Judah, the grandson of Rabbi Gamaliel, (135-216 C.E.), because on several occasions, he disagreed with the members of the court, thus, arousing their indignation. He was about to be excommunicated when Bar Kapara, another disciple of Judah, protested against this unjustifiable action and hurled the following epithet at his colleagues: I shall not give my consent to such a preposterous thing until you shall tell me why and wherefore you want to excommunicate him. (32)

(29) & (30) . Moed Katon 17a & Jer. Moed Katon 3:1.

(31) (note: Rabbi Meir declared a leap year in Asia Minor without the consent of the high court in Palestine. Megila 19b)

(32). Jer. Moed Katon 3:1

The same Bar Kappara, who had a poetic soul, took advantage of ridiculing the use of the Cherem by the Nasi for trivial matters at a certain feast given by the Nasi. He taught Bar Elasha, the rich and foolish son-in-law of the Nasi, to recite the following riddle at the banquet:

אמאי נקפה
האיה ברכתי ביתה
אפחדת כל בעלי כנפים
הא נצחיק ונחמד
וישליק קא צמד
הנש יאמרי הו, הו, והלכך נכד צולא

"Do you know the creature that runs boisterously in every house-corner terrifying all the birds? The young folks saw it and hide themselves; but the old folks are not afraid of it. Those that run away cry out: 'woe:woe: But whoever is caught in its claws, suffers the penalty."

With an angry look, Rabbi Judah turned to the scoffer, for he understood well the irony and sarcasm of the verse. He spoke to him threateningly: You are too young now to belong to the old. ⁽³⁴⁾ With that statement, the Nasi evidently ^{not} wish to warn Bar Kappara that if he did remain quiet in the future, he would be excommunicated. ⁽³⁵⁾

There is a story in the Talmud which Rabbi Judah told before his death concerning a city in Babylon by the name of Birtha ⁽³⁶⁾ whose inhabitants were not religiously inclined and transgressed the law of observing the Sabbath by catching

(33). (Note: רבנים referred to קנים, members of the court who could not be excommunicated according to the resolution passed by the scholars at Usha. This was a cynical and sarcastic remark of Bar Kappara aimed at the court and its members)

(34) Moed Katon 17a & Jer. Moed Katon 3:1.

(35) Kidushin 72a

different version 16a

*Notes
To do
with
27
Refers
to death*

*2
P. said
must
not
reduce
him*

2

fish on the Sabbath. Rabbi Acha ben Joshia excommunicated them; however, the sinners paid no attention to the ban and continued to disobey the laws of the Sabbath.

(37)

This story resembles an Arabic legend told in the Koran. The Prophet speaks in the name of God to the People of Israel and admonishes them with the following rebuke:

'You well know what happened to those who desecrated the Sabbath. They were cursed and punished by being transformed into apes and were excluded from human society in order to serve as an example to the present and future generations as a warning to the transgressors of the Sabbath'.

The commentators of the Koran interpret this story in the following manner: In a port city Judeas(?), one could notice large schools of fish swimming near the shore every Sabbath, but they disappeared the other days of the week. Now this was done by God to test the piety of the Israelites. Some of the inhabitants did not want to lose the abundant number of fish so they devised a remedy by which they could catch them without desecrating the Sabbath. The people dugged narrow ditches and placed nets in them so that ^{the} fish whenever they approached the shore on Sabbath were hurled into the ditches by the current from which they were taken the following day. The religious group of the people decided to ignore those who desecrated the Sabbath and warned them against the wrath of God that they were incurring. However, the transgressors laughed at their warning and to show their contempt they caught fish directly from the sea. The religious people moved away from the city so that they would not come in contact with them.

(36). A city on the Tigris several miles near Seleucia
(Mannert 5:2 p 307)

(37). Koran Sure 2.

A few days later some of the people returned and to their surprise, they found the city inhabited by monkeys. They understood immediately that this was the judgment of God who had inflicted this severe punishment on the transgressors of the Sabbath. The monkey government lasted three days. On the fourth day, the city⁽³⁸⁾ was deserted and the god-fearing people returned.

(38) Herbelot Bib. Orient. p 475. cp. Wiesner Der Bann pp 22f

Amoraic

2. The Cherem in the Amoritic Period

As definitely stated in the previous chapter the power of excommunication was used to some extent in the period of the Tanaim, but it received greater impetus in the time of the Amoraic. It became wide-spread at that time and was used as a forceful weapon by the learned aristocracy of Palestine, especially by the Nasi and later by the Exilarch in Babylon, who received his power and authority over the people from the Persian King.

The Cherem was used as a means to influence the people in so far as to make them revere and respect the religious and legal decrees of the leaders of the community. They were thus able to protect their honor as well as their dignity by using this means to carry out their authority.

In this period we find that the Cherem developed into three aspects. The first aspect was called Nesifah. The word נִסְיָה means to reproach or rebuke and still retains the meaning today. To punish the person with נִסְיָה was one of the privileges of the Nasi. The Nasi of any other ḥabura had the power to punish anyone for disobeying him, for insulting him, or for not respecting an older or more prominent person older than himself, or to enforce certain communal affairs. The custom prevailed in Babylon that the person upon whom the punishment was inflicted would be forced to remain in such a position only for one day, whereas, in Palestine, the punishment lasted seven days and in special cases thirty days. Throughout the entire period the

had to isolate himself in his home and to have very little association with people. He could not participate on joyful occasions, nor could he appear in the proximity of the people he had insulted. After the period of נ צ ו י the punishment dissolved itself of its own accord without any need of apology to the person offended and without any ceremony required or implied. ⁽³⁹⁾

The second aspect of the Cherem is called the small Cherem חֶרֶם קטן or חֶרֶם קטן. This Cherem could be carried out by the Nasi himself, by the city court, by a scholar, or, by a student. But these punishments did not always have the same influence or produce the same effects. The Cherem issued by the Nasi had to be followed by all the Jews. The Cherem of the Beth-Din of the city likewise had to be observed by all the Jews. And the person excommunicated, was practically ostracized by everybody; no one was permitted to associate with him. As for strangers, they were only affected by the Cherem as long as they remained in the city. The power of the Cherem could not extend into other cities. A peculiar characteristic of this right is when the Cherem was issued by a greater or lesser scholar it was only in force and obeyed by persons inferior of them in knowledge, but it had no effect upon people greater and more learned than himself, or even upon persons belonging to the same class as himself. A Niddui issued by a Talmid Chochochom was not obeyed by his teacher or even by his friends. ⁽⁴⁰⁾

(39) Moed Katon 16a

(40) Ibid 17a

A similar power of excommunication was exercised by the Druids, the priests, and teachers of the Gallileans. Under the influence of the above powers those punished were to be avoided by all the people. ⁽⁴¹⁾ No one, except his family, relatives, and household servants could associate with the one under the ban, nor could they come near him. The one under the ban had to regard himself as a mourner, mourning after a near relative. He was not to cut his hair nor his beard. He had to walk without shoes. He was not even allowed to wear clean clothes. ⁽⁴²⁾

The small ban lasted as a rule about thirty days, but could also be shortened or lengthened by the will of the city court, or the one responsible for the excommunication. ⁽⁴³⁾ The ban was not dissolved automatically after the lapse of the period as in the case of the Nesifah, but had to be raised by the court or the person that issued it, or by a person with equal or superior rank than himself. ⁽⁴⁴⁾

According to the Palestinian Talmud and the Babylonian Talmud ⁽⁴⁵⁾ there are twenty four cases when a Nasi or a court, or Talmid Chochom has the right to excommunicate others people. These cases are not enumerated in the Talmud in order, but the Palestinian Talmud remarks that these can be found in the various sections of the Mishnah and Beraitha. Maimonidis in Hilchoth Talmud, Torah 6:14 took the pains to collect them from all the scattered places of the Talmud and enumerated the following 24 cases of the small ban:

41) Lubker Real Lexikon p 269

(42) Moed Katon 15b

(43) Ibid 16a

(44) Ibid 16a

1. He who speaks ill of a Talmud Chochom during his life time or even after his death. ⁽⁴⁶⁾
2. He who insults a *שליח*, a court messenger. ⁽⁴⁷⁾
3. If one calls a free born person slave. ⁽⁴⁸⁾
4. He who ridicules a rabbinical decree, and especially one who regards slightly a biblical commandment. ⁽⁴⁹⁾
5. If one refuses to come to court after having been called three times. ⁽⁵⁰⁾
6. If one receives from court a note to pay and if he refuses to pay, after being warned three times, he should be put in ban Monday, Thursday, and the following Monday. ⁽⁵¹⁾
7. If one keeps in his house or in his territory a mad dog, or a dangerous animal, which endangers the life of his neighbor. ⁽⁵²⁾
8. If a Jew has a field whose boundary borders upon the field of his Jewish neighbor and if he should sell his property to a non-Jew, such a person is excommunicated if he does not undertake before the court to make good for all damages suffered by his former neighbor as a result of the sale. ⁽⁵³⁾

(46) Berachoth 19a, P.T. Moed Katon 3:1

(47) Kidushin 70b

(48) Ibid 70b

(49) Eduyoth Mishnah 1, ch. 5.

(50) Baba Kama 112b -- Choshen Mishpot 11:1

(51) Ibid ---- 113a -- Ch. Mish. 100:3

(52) Baba Kama 15b

(53) B.K. 114a. --- Ch. Mish. 175:40.

9. If one testifies against the Jews before a non-Jewish court and his testimony, tho it be invalid in the Jewish court, yet it would be held as valid in a non-Jewish court. But, if through this testimony the Jew loses, or is placed at a disadvantage, the testifier would be accordingly punished by a small ban. ⁽⁵⁴⁾
10. If a butcher, tho he may be a בשרן , does not give the portion of meats designated in Deuteronomy 18:3 he shall be placed under ban. ⁽⁵⁵⁾
11. The punishment of the ban should be inflicted upon an individual who does not keep the second day holidays, even tho the same may have been instituted by the rabbis. ⁽⁵⁶⁾
12. A person who works in the afternoon of היום ראשון . ⁽⁵⁷⁾
13. ~~He~~ who pronounces God's name at an unimportant occasion. ⁽⁵⁸⁾
14. He who induces others to bring sacrifices, or if he brings sacrifices himself at any other place except at the Temple in Jerusalem. ⁽⁵⁹⁾
15. He who causes others to desecrate the name of God thru his behavior. ⁽⁶⁰⁾

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- (54) Baba Kama 113b --- Ch. Mish. 28:3
 (55) Chulin 132b --- Yoreh Deah 61:24
 (56) Pesachim 52a --- Orach Chaim 496a
 (57) Ibid ----50b --- ibid ----- 468a
 (58) Nedarim 7b
 (59) Berachoth 19a --- Bezah 23a
 (60) B.T. 19a --- P.T. M.K. 3:1

16. He, who of his own accord appoints the first day of the month, outside of Palestine, or arranges a leap year himself, shall be placed under the ban. Such exclusive prerogative belongs to the Nasi himself. ⁽⁶¹⁾
17. He, because of his actions causes others to transgress God's commandment, as for example a father who mistreats his grown up son and as a result of his actions loses the respect of his son, is transgressing God's commandment to "Honor thy father and thy mother." ⁽⁶²⁾
18. He who does not allow another to do a Mitzvah. ⁽⁶³⁾
19. A butcher who sells trefah meat from torn and sick animals. ⁽⁶⁴⁾
20. A butcher or Shochet who refuses to show his knife to the rabbi for examination to see if it is free from indentation and is suitable for Shechitah. ⁽⁶⁵⁾
21. He who practices onanism and brings forth semen in vain. ⁽⁶⁶⁾
22. When a married couple, after receiving their divorce, still continues to have business relationships with one another, which might bring them into improper relations through their business relations. ⁽⁶⁷⁾

(61) B.T. 19a --- P.T. M.K. 63a

(62) M.K. 17a

(63) P.T. M.K. 3:1

(64) Sanhedrin 25a --Yoreh Deah 119:15

(65) Chulin 18a --Y.D. 18:17

(66) Nedah 13b --Eben Haeser 23:2

(67) Kethuboth 28a --Eben Ha Ezer 119:9

23. A Talmid Chochochom is punishable with Niddui if he does not behave in a manner befitting him, or when he is suspected of having committed sin. (68)

24. Those people shall also be excommunicated who put in ban others without cause or right to do so. (69)

The Halachic opponents of Maimonides, like the Raavad ז"ל and after him, pointed out that Maimonides did not mention all the cases for which one should be excommunicated. (70) But we can infer that the power to excommunicate a person was in the hands of the rabbis and they could excommunicate anyone who according to their opinion deserved it. The Cherem was pronounced either by the Nasi or by those who had the right to pronounce it. The words *אין בן אדם*, this or that person should be excommunicated, were pronounced. This right is similar in form to that of the Christian church, which used the phrase 'Illum illum excommunico'. (71)

In special or important cases it was announced through the court messenger the nature of the sin of the one to be excommunicated; simultaneously with the blowing of the Shofar the ban was pronounced.

The Cherem was taken off in a very simple manner. The Nasi, or any other official, was empowered to remove it by saying, "The Cherem is removed from you", or if the one under ban was absent, this statement was made: "The Cherem of this one or that one has been removed." (72) X. ben Y.

(68) Moed Katon 17a

(69) Ibid ----- 17a

(70) Yoreh Deah 334:44 Par.

Kind

The third aspect of the Cherem is called the Great Cherem *חֵרֶם גָּדוֹל*. The Hebrew word Cherem *חֵרֶם* corresponds to the Greek word Anathema *ἀνάθεμα*. If nothing could be accomplished with the small Cherem and if the desired purpose was not obtained because of the refusal of the person under the ban to obey or repent for his evil deeds, then the strongest weapon possessed by the Rabbis and court was used as a final means --- the proclaiming of the Great Cherem. ⁽⁷³⁾ This particular Cherem could be imposed upon anyone who refused to follow the right and good path. ⁽⁷⁴⁾

The one who received this punishment was entirely excluded from the congregation of Israel. He could not have any association with his fellowmen, nor was he permitted to enter the Beth HaMidrash to participate in the study of the Torah. No Jew was allowed to be taught by him. He could not work for others. The ban prohibited others from giving him work. ⁽⁷⁵⁾

The great Cherem was almost always under the power and supervision of the Beth Din and no other authority could carry out this duty. The pronouncement of the Great Cherem was as simple as that of the Niddui or Shamta.

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- 71) Moed Katon 16a : 17b
 - (72) Yoreh Daah 334:23
 - (73) Ibid
 - (74) Yoreh Daah 334:23
 - (75) M.K. 16a:17b

*Imposing
Cherem
trained in Lev.
R.*

The use of the small Cherem was employed more frequently than the great Cherem. Every one who belonged to the scholarly group or to the learned aristocracy took advantage of using the small Cherem. Even the *am ha'aretz*, the servant of Rabbi Judah once took it upon herself the power to excommunicate a man who was beating his matured son and whom the son hit back. All who frequented the house of the Nasi respected this Niddui and did not speak a word for a period of three years with the person whom she excommunicated. (76)

The following incident is a good example of the twenty-fourth rule for excommunication as numerated by Maimonides, regarding a person suffering the penalty of being put under ban, because he misused his right in excommunicating a person:

Rabbi Simeon ben Lakish once stood and guarded the vineyard and an unknown stranger approached the garden and took the fruit off the trees in the garden. Rabbi Simeon ben Lakish became angry. He told the unwelcome stranger to leave the garden immediately. However, the person did not move and even pretended not to hear the word of the Rabbi, and continued plucking the fruit. Rabbi Lakish became more angry and exclaimed, "Thou shalt be under the ban because of your audacity". This did not seem to frighten the stranger, who replied in a cold manner, "On the contrary, you really deserve to be placed under ban; just consider what you have done? I plucked and ate your fruit and you could have demanded of me to pay for the damage I have incurred upon you,

but certainly you did not have the right to excommunicate me for such a trivial thing. You should have known that if one punishes another person with a Cherem which he had no right to exercise upon that person he should be placed under ban⁷⁷. Rabbi Lakish was frightened because of the logical utterances of the stranger. He went immediately to the Beth Hamidriash to seek advice as to what he should do. But he received an unsatisfactory reply. "Your Niddui", the sages told him, is not effective since you did not possess the right to excommunicate anyone, but the Niddui hurled at you by the stranger was perfectly justifiable and therefore you must search for that man and ask him to take off the Niddui from you. Should you fail to find him it will be necessary for you to appeal to the Nasi, who is the greatest Jewish authority and he will free you from the ban. ⁽⁷⁷⁾

By a tax imposition which was placed on the city of Tiberias, Rabbi Jeremiah, the tax collector, ordered that a silver candle stick should be taken away from Jacob Bar-Abin. Rabbi Jacob became angry because of the order and excommunicated Rabbi Jeremiah. The latter did the same to Rabbi Jacob. A little later, when the tempers of both had somewhat subsided, each one realized that the other was right and as such, both regarded themselves as being under the ban. It was only until other scholars interefered in the affair that peace was brought about between them. ⁽⁷⁸⁾

(77) Moed Katon 16a

(78) P.T. M. K. 3:1

In the Talmud there are found several references regarding superstitious beliefs centered around the Cherem. The common belief was current at that time that Cherem contained supernatural and destructive powers, for the word כֶּרֶם itself has the numerical value of 248 corresponding to the 248 parts of the body, which are affected, according to the superstitious notion, of the one upon whom the ban is placed.

An angry person, the Talmud tells us, caused a considerable amount of trouble to an old poor scholar. The scholar sought council from Rabbi Joseph, who advised him to excommunicate the trouble maker. The poor scholar, however, was of a weak temper and greatly feared the trouble maker who happened to be rich and wicked. Rabbi Joseph then advised him to send the Cherem by mail, but this the student also feared to do. Then a different plan was devised by Rabbi Joseph. He told the scholar to write the Cherem on a piece of paper and put it in a jar, which should be hid in the cemetery. The scholar was then to blow the Shofar among the graves every day for forty days and pray that the wicked person should be punished. This remedy proved to have effective results, for at the end of forty days the earthen jar burst and the Cherem deposited in it fell out and at the same time the wicked person died. (79)

Another incident concerning superstition is related of a dog who frequently visited the Beth Hamidrash, some-

what quietly and unnoticeable and there he would bite and tear to pieces the shoes and clothes of the students. All kinds of tricks and means were employed to catch the dog, but it was of no avail, until someone conceived the idea of putting the dog in Cherem. The next time the dog came to the Beth Hamidrash his tail suddenly caught fire and was immediately consumed. ⁽⁸⁰⁾ It is shown by this story that the Cherem not only had power and control over the people but also upon all and any living creatures that could be punished by it.

If one dreamt in his sleep that he was excommunicated, such a Cherem had greater power than were it an actual Cherem placed on a person when awake, for it was considered a heavenly thing -- a hint from above. A person who experienced such a vision had to depend upon ten scholars to absolve him from the heavenly ban. In some cases the number of scholars could be reduced to not less than three for the purpose of removing a ban. ⁽⁸¹⁾

In Palestine it was customary to punish a Talmid Chochom by giving him *an p d n* -- corporal punishment, rather than by excommunicating him. The act of beating a person was regarded a lesser shame than a Cherem. To beat a person, or for a person to be beaten is regarded as a common thing in Oriental countries even to this present time. In China, as well as in Persia, it is a daily practice and even those belonging to the higher classes cannot escape the punishment when once imposed. A high official, or even a minister could receive

(80) Nedarim 8:1

(81) Ibid

a few good lashes from his king and would still remain satisfied if the king smiled to him on the same day or presented him with some gift. The matter of age had no effect. Even today the traveler can observe in Persia the beating of old men by young people.⁽⁸²⁾

Rabbi Jehudah, the son of Ezekiel, after long contemplation decided to excommunicate a Talmid Chochom, who conducted himself immorally and acted in a way unbecoming to a scholar. The scholar must have deserved this punishment, for when Rabbi Jehudah was on his death bed the Talmid Chochom came to him asking to have the ban removed. This the Rabbi refused and even after his death the Nasi refused to absolve the Talmid Chochom from the Cherem. This story would indicate that the Rabbis had the right to excommunicate their disciples for immoral and improper behavior.⁽⁸³⁾

While some Rabbis had authority and power to excommunicate their inferiors for worthy reasons, yet in many cases they hesitated to do so. For example, we find that MarZutra, a pious and kind hearted person, was once compelled to excommunicate a Talmid Chochom, but in order to lessen the shame and humiliation of the scholar he placed himself under ban. After a lapse of time he would absolve both the scholar and himself from the ban. It was not uncommon in those days to place one's self under ban, for this practice simply indicated regret and repentance for evil acts.⁽⁸⁴⁾

Many good and pious Rabbis did not like to punish others by using the instrument of excommunication. Whenever they were compelled to do so they afterwards strongly regretted their action. Rabbi Huna once excommunicated a person just

to fulfill his duty, but immediately removed the ban from him.⁽⁸⁵⁾

Rabbi Joshua ben Levi was proud and considered it a great merit that during his entire lifetime he never excommunicated an individual.⁽⁸⁶⁾

The Great Cherem could place under ban all the inhabitants of a city who were comfortably situated and yet refused to take the responsibility of training of their children, or were not sufficiently interested in establishing and keeping up schools of learning.⁽⁸⁷⁾

A Rabbi expressed an opinion in a mystical way that in heaven every sinful person is placed under ban, according to the amount of sin either in the small or the great Cherem. Thus the Jews who made and served the golden calves, were under the ban the entire forty years of their wanderings in the wilderness. Throughout all these long years they did not enjoy a cool northern wind, nor did the sun shine brightly for them.⁽⁸⁸⁾

In another place in the Talmud seven different excommunications are mentioned, which does not seem likely to have been carried out.⁽⁸⁹⁾

(82) Philipson Bibelkommentar zu Exodus 5:14

(83) Moed Katon 17a

(84) Ibid

(85) Nedarim 7b

(86) P.T. M.D. 1:3

(87) Sabbath 119b

(88) Yebomoth 119b

(89) Pesakin 113b

16 seven persons
were excom-
municated
in heaven

The excommunications are as follows:

1. He who does not get married.
2. A person who is married and does not care to have children, although he is able.
3. He who does not bring up his children in God's Torah.
4. He who does not lay Tephillin.
5. He who does not wear ³/₃.
6. He who does not put ³/₃ on his door posts.
7. He who goes barefooted in his house; not wearing shoes or sandals.

Also the great Rabbi Bar Joseph was punished from heaven with a ban, because he was too stubborn in his continuation in praying for rain. ⁽⁹⁰⁾ *Ref*

(90) Chulin 133a and Tanaith 24b.

Tractate Moed Katon
as original source of Cherem.

Only ch.
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The source in Moed Katon regarding various bans and their practice is very extensive and we shall therefore, quote a few Talmudical discussion, upon which Maimonides and other commentators based their decisions concerning individuals, who incur upon them the penalty of excommunication. In the Gemara, we also find in Moed Katon a discussion to a great extent of persons under the ban.

The following may shave (trim their hair) on the middle days: One who arrives from the sea-countries, or returns from captivity, or has been discharged from prison; or one who was absolved by the sages from the ban..... The same class of people were also permitted to wash their garments on the middle days.

"And whence do we know that a great man has the power to put one under the ban? From (Judges V. 23): 'Curse ye Meroz, said the messenger of the Lord'". (It means that he was a great man)."

"And whence do we know that the court has power to excommunicate him and to prohibit to eat or drink in his company, or stand near him within a distance of four ells? From (Judges V. 23) : 'Curse ye bitterly, curse its inhabitants'."

"And whence do we know that his disobedience is made public? From (ibid): 'Because they came not to the help of the Lord'."

"And whence do we know that his property may be confiscated? From (Ezra, V.8): 'And that whosoever should not come within three days, etc.' -- 'all his substance should be forfeited and himself separated from the congregation of the exiles.'"

"And whence do we know that he may be cursed, beaten, his hair plucked, and made to swear? From (Nehemiah XIII:25): 'And I contended with them, and cursed them, and smote certain of them, and plucked out their hair, and made them swear, etc.'"

"And whence do we know that his hands and feet may be bound and he may be tied to the whipping post and be prosecuted? From (Ezra, VII:26): 'Whether it be unto death, or to banishment, or to a fine on goods, or to imprisonment'." --- What is meant by 'banishment'? Said Ada Mari, in the name of Ne'hemiah bar Baruch, in the name of Rabbi Hyya bar Abin, quoting Rabbi Jehudah: "It means, prosecution". What kind of prosecution? Said Rabbi Jehudah, son of Rabbi R. Samuel bar Shilath, in the name of Rav, "It means that he is put under the ban at once:

אמר רבי יוחנן בן חנניאל כל אדם שנתקדש בשם רבו

and if he does not repent within thirty days, the ban is continued, and if he still continues to be disobedient, he is excommunicated after the lapse of sixty-days". Said Rabbi Huna bar China, "But has not Rabbi Chisda stated: 'He is first warned on a Monday, Thursday, and the following Monday'?"

This relates only to cases involving money but, if he is accused of having denounced the authorities, he is at once put under the ban."

אמר רבי יוחנן בן חנניאל כל אדם שנתקדש בשם רבו

A certain butcher was once disobedient to Rabbi Tubi bar Mathna and he was put under the ban by the concurrence of Abayi and Rabba. Subsequently he came to an understanding with his Abayai said: "What shall be done in such a case? Shall we absolve him? Thirty days have not passed as yet, Shall we not absolve him? The Rabbis need him!" And he turned to Rabbi Idi bar Abin and asked of him: "Do you know anything about such a case? And the latter answered him: "Rabbi Tachlipha bar Abima said in the name of Samuel, "The horn that announced that he was placed under ban may announce that he was absolved". And Abayai rejoined: "This is only in cases involving money; in the case of denouncing the authorities, the ban must continue for thirty days". Ameimar said, "The Halacha prevails that if scholars declare the ban over a person, he may be absolved therefrom by three other scholars". Rabbi Ashi said to Ameimar: "Have we not learned in a Beraitha "If one of the scholars who declared the ban over a person, dies, his part cannot be absolved from? Shall we not assume that he cannot be absolved from it at all? Nay! That means that only three other scholars may absolve him."

The Rabbis taught: The ban is declared for not less than thirty days; rebuke, however, is only for seven days: *ביום אחד נאמר*

Rabbi Chisda said: "Our (Babylonian) ban equals in point of time their (Palestinian) rebuke; and their rebuke is only for seven days: *ביום אחד נאמר*

Is that so? Has it not happened that Rabbi Simeon bar Rabbi and Bar Kappara had been studying together and they came across a difficult question? Said Rabbi Simeon to Bar Kappara: "This question must be solved by Rabbi (my father)", and Bar Kappara answered him, saying: "What could Rabbi say to this: 'Rashi says, there is no scholar in the world who could answer this question'?" Rabbi Simeon reported this statement to his father, who became very angry. Subsequently Bar Kappara came to see him, and Rabbi said to him: "Bar Kappara -- *אני גמורק מזה* -- I have never known thee". Bar Kappara understood this reproach, and he reprimanded himself for thirty days.

נאמר ביום אחד

It also happened that Rabbi ordered not to teach disciples in public streets -- *בשם רבי חייא*

Rabbi Chiya disregarded the order and taught his two nephews Rav and Rabba bar Hanna in public streets. When Rabbi heard of this he was angry. Subsequently Rabbi Chiya came to visit him and Rabbi said to him: *קורא את תלמידי*

"Eyya, you are wanted in the street". Rabbi Chiya understood what was hinted at, and he reprimanded himself for thirty days. Hence we see from this, that the rebuke of the Palestinian Rabbis is for thirty days. *ביום אחד נאמר*

The rebuke of a price is different. For how long, however, is our rebuke? For one day only, as seen from the following: Samuel and Mar Ukba were studying together; the latter used to sit (out of respect to Samuel) four ells distant from the former; but when sitting as a court, the reverse would be the case and Mar Ukba would sit on a low platform (for Mar Ukba was an Exilarch), in order that his voice might be heard well. Mar Ukba was in the habit of accompanying Samuel every day to his residence. *ביום אחד נאמר*

One day he was so engrossed in a case, that he forgot to accompany Samuel and the latter, instead, followed him to the house. When they reached the house, Samuel said to him: "Is this sufficient for thee? May I now

return? And Mar Ukba understood that Samuel was angry, and he reprimanded himself for one day.

There was a woman who was sitting in a pathway and was in the habit of stretching out her foot to pick up the barley. A young scholar happened to pass by and she paid no attention to him. And he remarked: "How insolent that woman is!" The woman came before Rabbi Nachman and he asked her: "Did you hear him pronounce the ban?"

And she answered, "No". He then ordered her to be reprimanded for one day.

Zutra bar Tubiah was once arranging Biblical passages before Rabbi Jehudah. When he came upon the passage (Samuel II -- XXIII:1) and these are the last words of David", he said to him: "If these were the last, what were the first?" Rabbi Jehudah remained silent, but when Mar Zutra repeated the question, he said, "Art thou of the opinion that if one cannot explain this he cannot be a great man". And Mar Zutra understood that Rabbi Jehudah was angry and he reprimanded himself for one day.

"Rabbi Tanchum said in the name of Rabbi Hunah, and according to others Rabbi Hunah himself said --

'A disciple who put one under the ban for disobedience, the ban is valid, as we have learned in Beraitha: One who is put under the ban by the master is considered so also toward the disciple. But, if put under ban by a disciple, he is not considered so toward the master'.

Hence, toward the master he is not under ban, but as towards the general public, he is so. Now let us see: to what case is this applicable? Shall we assume that it applies to heavenly things? Is it not written --- (Psalms XXI:30) 'There is no wisdom, nor understanding, nor council against the Lord'? Hence it must be assumed, even for disobedience to one's own self.

Rabbi Joseph said: "Even a young scholar, if only he is certain that his demand against another is just, may render judgment in his own favor."

"There was one young scholar, concerning whom, evil rum-

ors were current. Rabbi Jehudah said: "What shall be done in this case? Shall we put him under ban? The Rabbis need him. Shall we not put him under ban? The name of heaven -- *heavens have been said for* -- will be profaned. And he asked Rabba bar Hanna: "Do you know anything about such a case?" Rabba bar Hanna answered him: "So said Rabbi Jochanan. It is written -- (Malachi II:7): The priest's lips are ever to keep knowledge, and the law, they are to seek from his mouth, for he is a messenger of the Lord of hosts. That means: If the master is equal to an angel, law may be sought from his mouth, but not otherwise. Thereupon, Rabbi Jehudah put him under the ban. Subsequently Rabbi Jehudah was taken ill and the Rabbis made him a sick-call, among whom was also the young scholar. When Rabbi Jehudah beheld him, he smiled. Said the scholar to Rabbi Jehudah: "Is it not enough that you put me under ban that you still laugh at me?" Rabbi Jehudah answered him: "I do laugh at you, but in the world to come I will be proud to say that I was not biased even toward so great a man as you. When Rabbi Jehudah died, the young scholar came to the college and asked to be absolved from the ban, and the Rabbis answered him: "There is not here a man equal in esteem to Rabbi Jehudah to absolve you. Go to Rabbi Jehudah the Second-- (The Nassi) and he may absolve you". The scholar went to him. Said the Nassi to the scholar: "Your case will be investigated and if found favorable, you will be absolved". Rabbi Ami investigated the case and the scholar was about to be absolved when Rabbi Samuel bar Nachmeni arose and said: "Even when the maid servant of the house of Rabbi declared one under the ban, the sages did respect it for three years, and so much the more should we respect Jehudah, our late colleague". Rabbi Zera said: "How did it happen that the old man (Rabbi Samuel Bar Nachmeni) came today to the college after an absence of several years? It is a token that the young scholar is not to be absolved". The scholar left weeping, and on the way he was stung by a bee and he died. He was brought to the vaults of the Pious, but was not accepted. He was then removed to those of the Judges and was there accepted. Why so? For he acted as Rabbi Ilai of the following Beraitha: "If one cannot withstand the temptation, he shall go to a place where he is not known, and shall dress in black and wrap himself in black and do as he pleases, but shall not profane the name of Heaven openly."

not

Rabbi Hunah said: "It was enacted in Usha:

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that if the chief of the court should be delinquent, if for the first time, he should not be put under ban, but should only be told, "Be dignified and stay at home". But if for the second time, he should be put under the ban, *אלו חמין דא* -- lest the name of Heaven be profaned.

Mar Zutra, the Pious, when a young scholar, was delinquent and deserving to be reprimanded, first reprimanded himself and then the young scholar. When he entered his residence, he first absolved himself and then the young scholar.

Rabbi Giddel said in the name of Rabba: "A scholar may first put himself under ban -- for a certain period of time -- and afterward absolve himself therefrom". Said Rabbi Papa: "I may be rewarded, for as a matter of fact I have never put a young scholar under the ban".

Babylon not number Christianity

The Cherem in the Post-Talmudic Period.

500 to 1200 A.C.E.

Does not his include the

As a result of the type of living of the Jews in Eastern countries, the Cherem became stronger and more effective. Judaism came under the influence of its Christian environment and adopted many of its methods regarding excommunication. A Jew who was put in Cherem could not be counted in a Minian, nor could he participate at a Mesuman -- (in the grace after meals where the number of three persons are required) . In some places the people under ban with dealt with in a stricter way, being refused permission to attend services in the synagogue. ⁽⁹¹⁾

The same method was also carried out in the Catholic Church, according to church history. If one under ban entered the church during the mass service, the priest left the altar and immediately stopped the mass service. ⁽⁹²⁾

It was forbidden to buy bread, wheat or fruit from people who were under ban. Books written by one under ban were tabooed. In order to keep one, who is under ban, from coming in contact with Jews, and to remove him from the presence of company, they required that his ⁽⁹³⁾ 13.3 be cut off.

Among Oriental Christians a similar custom prevailed. The Mohammedan Kalif, Motowakel, issued a degree in 857 requiring all Jews and Christians of his empire to wear leather girdles in order to distinguish them from Mohammedans.

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- (91) Rambam Hilchoth Talmud Torah 7; Yoreh Deah 334:2 Responsa Rivosh 173.
- (92) Fessler Kirchenbann p.14
- (93) Sharah Ztedek p.75; Darke Moshe to Yoreh Deah 334.
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If a Christian were excommunicated by the bishop his leather girdle was taken off as a sign that he no longer belonged to the Christian faith. ⁽⁹⁴⁾ *Refused*

The fall of the Chrem, 744
The Chrem, in those days, spread not only to the individual, but also the his family. No one was allowed to circumcumcise his children or permit them to study with other Jewish children. They also refused to bring to Jewish burial his nearest relatives. ⁽⁹⁵⁾ The Rambam came out strongly against these *ר' פולו*. Others followed out Maimonedes' example and disagreed with them. ⁽⁹⁶⁾

Is there was to put this influence on them to obey the ruling of authority his.
This method of dragging the family into the private affairs of one under ban was Christian and goes as far back as the fifth century at which time it was utilized by the church. Cases are found where bishops cursed and punished entire families who had the misfortune of having one under ban among them and who incurred upon himself the hate of the bishop. ⁽⁹⁷⁾

It was usually accepted that the one who spoke or carried on business with one excommunicated was not punished with the Chrem, but in exceptional cases the court exercised its right to punish such transgressions. ⁽⁹⁸⁾ In this respect Judaism showed itself to be more liberal than Christianity which punished any person guilty of the transgression, or of speaking or carrying on the least transaction with one under ban, with excommunication. ⁽⁹⁹⁾

(96) Responsa Peer Ha-Dor 178; Tureh Zohov to Yoreh Deah 334:6

(97) Gibbon - History of the Decline and Fall of the Roman Empire. p. 618

(98) Tur Yoreh Deah 334.

(99) Fessler Kirchenban, p. 18

If one under ban wanted to become absolved from the Cherem he would have to promise that he would obey the instructions of the court. Also, he was required to show that during the entire period of the Cherem he had carried out faithfully all the rules and regulations regarding the bans. Should he refuse to do so, he would remain in the same condition as before. (100)

If it was necessary to punish a person by using the tool of the Cherem, it was not taken into any less consideration should a person refuse to improve his ways, or even if he preferred to forsake Judaism altogether rather than change his ways for the better. It was more desirable to lose such a character rather than to have him remain in the fold of Jewry. (101) The Geon Nitranai, about 748, 9/5/01 says about this question: 'it is not in our power to punish the transgressor with beating נ'קט, or to exile him from our country, or to slay him by one of the four death penalties, but we always have the right to excommunicate such people and to rid them from the congregation of Israel'. (102)

It was considered a duty to get rid of the type of Jew who would set a bad example to his neighbor and who would be an evil influence upon the religious and moral life of others. The later Jewish rabbis however, were more lenient in respect to such an attitude. (103)

(100) Darche Moshe to Yoreh Deah p. 334.

(101) Ibid

(102) Tur Choshen Mishpot 425

(103) Tur Sahab Y.D. 334:1

According to Maimonides, it was customary in his time, that a person who was guilty of a transgression which would have put him to death under the Mosaic law, he would now receive thirty-nine *סלפות* and he would be put under the 'Great Ban', which was never removed from him. ⁽¹⁰⁴⁾

If one committed adultery with a female slave he was punished with *סלפות* in the time of the Gaonim, besides having his hair shaven and being excommunicated. ⁽¹⁰⁵⁾

The method of the Cherem was used later in various ways. If one was suspected of defrauding another, all sorts of remedies were used to frighten that person and make him confess. Such a person would be taken into the synagogue and be placed near the cantor who would carry the scroll of the law in his hands near the holy arch. Then a coffin covered with black cloth would be placed in the synagogue, upon which was placed dried up and blown intestines and a black living rooster. Many black candles were placed around the person and also many sacks of ashes were put at his feet, (The use of twelve burning candles which were thrown away at the end of the ceremony is also found in the excommunication of the Christian church. ⁽¹⁰⁶⁾), as a sign of mourning. Then they would begin to blow the shofar with such great force, that all the intestines burst. The lights were also extinguished by the wind caused by the sounding of the Shofar and then one of the judges would speak in the follow-

(104) Rambam, in his *דרכי משה* פ"ק ד' ס"ח

(105) Sha'feh Tzedek 15 and ff; Jost Gesch. d. Judentum vol. 268

(106) Fessler Kirchenbann p. 13

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Bladders

ing manner: "Just as the flame of the candles were put out, so will the light of your life be extinguished; just as the air escaped from the burst intestines, so may the breath of your life leave you, if you are guilty of the crime suspected." If the person is found guilty, then the president of the court pronounces the following Cherem formula in the name of the heavenly court and in the name of the earthly court: "We put under ban -- (the name of the one placed under ban is mentioned) -- May all the curses enumerated in the Torah come upon you and may the Cherem spread in your 248 members of your body *בשרך ודמך*". All present, together with the guilty person, would then say 'Amen'. (107)

The complete formula of excommunication has not been observed, but the great scholar Bucksdorf, succeeded in copying an old formula from an ancient manuscript. Doubtless it is of a later origin and probably belongs in the epoch when Kabbala flourished. (108)

In this connection we shall quote this important formula in both the original Hebrew and in free English translation.

English translation of Bucksdorf's formula:

According to the opinion of the officials (so and so) should be excommunicated in the two courts, the higher and lower, and by the excommunication of the holy ones above and Seraphim and the Ophamin, and by the excommunication of the entire community, both great and small, he should receive sickness and illness various, and

(107) Rambam and Responsa Peer Ha-De Jost. Gesch. 258

(108) J.E. Article on Excommunication -- in the Russian language. Vol. 2. P. 442.

Bucksdorf

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his house should be a dwelling place of whales, and his lot should be dark. He should be despised by people and his carcass should be for animals and snakes. His enemies and foes should speak of him. His silver and gold should be given to others. All his sons should be invited to the doors of his enemies and the coming generations will mourn over his fate. He will be cursed by all angels; like Korah and his congregation shall he be cursed. His soul shall depart from him hastily by the cry of God. He shall be slain and for the advise of Achitophel he shall be choked. Like the leprosy of Gachasi should be his leprosy. There will be no revival to his downfall. He should not be buried in a Jewish cemetery, nor should his wife be given to others. He shall abide by that Cherem and that shall be his portion. And he shall give his blessing to all Israel and set himself up as an example to all Israel."

אל בית אדוני האדונים והיה בית
 פ"ב (פלאני בן פלאני) בית דיני
 בעלונים ובעלונים אחרים קדיש עלונים
 אחרים שמים לא פנים אחרים כל הקהל
 גדולים וקטנים יהיו עליו מבור אדולות
 אנאנים ות"ס רבים משונים והיה בית
 מן חנים ואלו מלא בעלונים והיה
 לקבל אל אחרונים והיה נבחר לומר
 אפנים וישויו עליו קמים אשונים בסב
 אזהב אחרים נמנים וכל קניו אל
 פתח אליהו והיו מלמנים ואל ואל נשמו
 אחרונים והיה מקולל מפי אדוני קרן

ואכתרונו אפי סנדלון והצניח אפי
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אפי מיכאל וגדונו אפי רפאל ומשמאל
ויבא בקרן צדק ובצדק ביהיה
אברהם ופא נשמה גורו ד' ומור
אומ אונק באחיותא בצדק
אברהם גמזי יהיה צדק אפי
יהיה גמזי אפי אברהם
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גמזי אפי אלהים וברוך אלהים
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Since we quoted a formula from Kabbalistic origin we shall discuss briefly a Kabbalistic notion of excommunication, as found in the Kabbalistic work 'Zohar'. The following is an example:

In the Nogah of heaven there are forty angels, who are the leaders of thousands of hosts of angels, whose entire work consists in punishing with the Cherem, such people who talk with profane language and who are tale-bearers and who come under the category of those, whom the Talmud classes as transgressors. These hosts of angels assemble ten times a day and it is made known everywhere in heaven and in all heavenly places, and in all assemblies by announcing, 'this or that person should be avoided, because he was put under Cherem on account of his evil deeds'. However, should the sinner repent, these angels assemble once more and proclaim, 'The Cherem is taken off from that person'. Only then is the prayer accepted in heaven. If the person does not repent and continues to sin further, he still remains in the Cherem, both in heaven and on earth; God's protection is denied him and even during the night, when all the souls of the sleeping human beings go up to heaven, the soul of the one under ban finds the gates of heaven closed and it wanders into the world of void, without finding a resting place for itself. (109)

According to the great Halachoth, the Shofar is blown three times in heaven every day and the Cherem is pronounced against all people who mock and insult the ה' קדש be-

(109) Fürth edition p 233b -- ה' קדש ה' קדש

You never consulted the Zohar

cause they are busy in studying the secrets of *סודות קבלה*
 .(110)

From this is also taken the custom which is mentioned in the books of Kabbala, that one should try to have his vow dissolved, and we still find today printed in the prayer books, *סדר חטאת*, the order of annulling the vows and also the place for the absolution of the Cherem. --- The sinner, who considers himself under ban in heaven because of his sins, stands in the presence of ten Jews, the minimum three, and says three times the text of the prayer book. He confesses his sin and promises that he will improve his conduct. He has to take off his shoes and sit four ells distance from them, as a sign that he is in Cherem. Then, after sitting alone in such a manner, they will call him to come to them and exclaim three times, 'you are our brother. The Cherem is removed from you, because you have repented. (111)

(110) Jellineck -- Beth Ha Midrash Par. 3 p 84.

(111) *סדר חטאת* p. 227.

The Cherem in the Gaonic Period.

The Cherem was substituted in the place of an oath, which the Beth Din would impose upon a person who was suspected of dealing dishonestly with others, because it was feared to mention God's name. In worldly affairs especially, it was feared that the defendant might swear falsely, for which there was a severe punishment. They therefore excommunicated him on the condition that the Cherem could only be effective in case the person really committed the charge of defrauding or dealing dishonestly with someone. (112)

If they wanted to get an explanation in a doubted case, they declared a public Cherem upon anyone who might know of the object under question and who refused to come immediately and give information about it to the Beth Din. Even near relatives of the defendant were under this category, if they did not disclose what they knew. This method was a new form of the Cherem, which was instituted against unknown persons accused of crime or transgression, concerning which, they did not wish to tell. A parallelism of this form is found in the Christian church. In a Catholic Church, under the Latin name, 'excommunicatio latae sententiae', this same principle was also found to be existing. We shall further see how the usage was made of this kind of Cherem in many other cases.

If heirs of a deceased suspected that money was left among strangers and no testimony could be introduced, the Beth din could issue a Cherem in the synagogue upon all persons who would keep goods of others and refuse to acknowledge. (113)

Every Jew, who had a money complaint, but who did not know the real person to blame, or if he were lacking evidence, he could demand of the court that a Cherem be issued in general against anyone who may harm him.

It is self understood that all unbelievers, free-thinkers and irreligious persons were punished by excommunication. When King Justinian gave permission to some Jews to use Greek translations of the Pentateuch and the Prophets in the synagogue, instead of the Sefer Torah, he also issued a decree prohibiting the rabbis from excommunicating such people making use of the translations. ⁽¹¹⁴⁾

Anan, the founder of the Karaite sect in the eighth century was put under ban, together with all his followers, by the heads of the schools in Babylon. The same thing happened many years later with the Karaites in Palestine. ⁽¹¹⁵⁾

Through the Karaite, Benjamin Hanhundi, who lived in the beginning of the ninth century, the Cherem was introduced among the Karaites, in order that the Karaites may live up to their laws. If a person was called to the Beth Din, the Karaite custom was to curse that person in public for seven days and then he was put under ban. None of the Karaites were allowed to speak to him nor to greet him, nor to give anything to him, nor take anything from him. He was

(112) Maimonides, Responsa Peer Hador, Raavad and others.

(113) Tur, Choshen Mishpot, par. 71 in the name of Rabbi Hai Geon.

(114) Gesch.d. Juden Vol. 5. p. 28, *and*

(115) Raavad in Sefer Ha Kakabla

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to be treated like one deceased until he would improve and repent. Should he, however, refuse and continue to be stubborn and not to care about the Cherem, it was permitted to hand him over to non-Jewish courts to be punished. In that period it was also instituted the right for scholars to excommunicate such persons who insulted them or did not give them sufficient honor.

reference!

The Nasi, or Exilarch, used to send out one of his sons to travel around all cities inhabited by Jews. Every Jew had to honor him and give him presents. If honor and gifts were not bestowed upon him, the son would inform his father about it and the guilty ones were excommunicated. ⁽¹¹⁶⁾

already in Talmud

only happened in one case

In the quarrel that occurred between the Exilarch David ben Zakkai and Saadya Geon, who was elected head of the Academy at Sura, each put the other under ban. The Exilarch felt the right to put another head of the academy in Saadyah's place and in like manner Saadyah selected for himself and ⁽¹¹⁷⁾ followers a new Exilarch.

Even in Spain we find this principle in existence. In Kordova, Spain, Rabbi Chanoch ben Moses, about the year 965, was appointed Rabbi in Dayan. The second party, however, selected as Rabbi the great scholar Rabbi Joseph ben Avitor. Rabbi Chanoch put his opponent under ban and because the party of Rabbi Joseph ben Avitor was weak and smaller, he was forced to leave the city, but owing to the Cherem imposed

and Avitor

Caution

(116) Sefer Yuchasin p 61

(117) Rav'ad Sefer ha kabbalah and

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upon him he could not find a resting place in the whole land of Spain, because all scholars persecuted him.

The following examples of excommunication, during the Gaonic period, ^{is} based upon Dr. Mann's series of articles in the Jewish Quarterly Review, New Series and his books based on the Genizah fragments. ⁽¹¹⁸⁾

In a Genizah fragment published by Schechter in Berliner's Festschrift, part 112, we find that the "Dayan Elijah complained that from the majority of our congregation it is difficult to recover anything unjustly appropriated, unless through the power of the ruler". In order to achieve this end, the Gaonim were compelled to use the Cherem. They would likewise force the heirs of a man, that stipulated that his slaves should be given their freedom after his death, to fulfill the wishes of the deceased. No discrimination was shown. Even the prominent personage of the Exilarch was forced by Rabbi Zadok of Sura to comply with the Talmudic rule to grant freedom to the slaves of his testator, who was a member of his family.

The court had a right to excommunicate any Jew who would take away the client of another Jew. This was to establish the right of the business man to carry on relations with his clients without the fear of interference by unjust competitors. A similar instance is found in the later development of among the Jews in France in Spain. If a Jew was accustomed to lend money to certain non-Jews, he establishes a kebet

(118) The Responsa of the Geonim as a source of History
J. Q. R. -- N.S. Dr. Mann

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and no ⁽¹¹⁹⁾one else can interfere in his money-lending affairs.

In cases of suspicion we find that the Gaonim reverted to the usage on many occasions of the ban. For example, if a Jew suspected another Jew of stealing something from his house, or of having denounced him to the secular authorities, the Beth Din would give him permission of having a ban issued in the synagogue anonymously against anyone who may be responsible for such acts. This permission was called ⁽¹²⁰⁾הכרזת גזירות. The same kind of permission was granted by the court to a person who had a law suit, the witnesses of which, ⁽¹²¹⁾refused to testify. We find, however, that Gaonim like Rabbi Hai, as well as his predecessors were rather reluctant in giving such permission to any claimant. They would only grant permission on request to orphans or their guardians, who claimed that persons unknown ⁽¹²²⁾to them were entrusted with money left to them.

We find that in cases of bankruptcy the creditor was entitled to recover his money from all those people who bought property from the debtor after the date of his loan. The Beth Din would issue to the creditor a document of exactment ⁽¹²²⁾הכרזת גזירות, at the same time causing the original bond issued to the debtor to become invalid. The

(119) J.Q.R. N.S. Vol. 10 p. 330

(120) נ"ט Nos. 1 and 333

(121) J.Q.R. N.S. Vol. IV p.28 Gaonic Document pub. by Aptowitzer

(122) ט"ז No. 22

milder form of the ban was declared against the people who bought the debtors property and refused to pay the creditor his due. If after this time, the excommunicated persons still persisted in their refusal to pay the creditor, the severer form of the ban, which would last thirty days, as was the case of the milder ban, would be declared. If this remedy failed the Beth Din had the right to allow the creditor to appropriate with the help of appraisors, appointed by them, a part of the property which would cover the amount of the loan extended to the debtor. A few instances in which coercion in civil law suits by the means of the ban are discussed in several responsa.⁽¹²³⁾

The Gaonim were very persistent in enforcing witnesses to tell the truth, for if they were found to have given false testimony, they were excommunicated, flogged, and publically declared to be perjurers.⁽¹²⁴⁾

Owing to the opposition against the Karaites, the Gaonim adopted a strict attitude of excommunicating people for minor transgressions, such as working on ~~the~~ ^{the} -- the immediate days of the Festivals, or for holding marriage celebrations on the same days, or for having his hair cut, or for wearing shoes during the seven days of morning.

Sometimes the opposition to the Karaites caused some of the Gaonim to go to the extreme and we find that Rabbi

(123) c/p n"l No. 184 and 233. 3"l -77a No. 32
No. 84 b No. 4, and 87a, No. 17.

(124) See n"l, No. 88 to end 3"l 85b, No. 13;
87a, etc.

(125) 5"l No. 218 to end.

Natronai, in a responsum, threatens any Jew who does not eat warm food on the Sabbath prepared in the traditional manner of דגין, with excommunication.⁽¹²⁶⁾ The reason for this Gaon's action was due to his strong opposition against the Karaites and we find in a passage, preserved in ש"ך (127) that Rabbi Natronai threatened with the Cherem anyone who would dare to shorten the Hagada of Passover by leaving out the Hagadic portions, which tended to show Karaitic leanings.

If a priest renounced his priesthood, he would remain under the ban until he repented.⁽¹²⁸⁾ We gather from this action that in Rabbi Hai's time, there must have been many priests who disobeyed the warnings of the Beth Din and married illegally. 2

We find, in a report of Rabbi Hai, that there existed an agreement among the members of a mystical set not to divulge its secrets to unworthy people, subject to the threat of excommunication.⁽¹²⁹⁾

There are other numerous incidents, in which the authority of the Gaonim was enforced by the use of the Cherem, But these sources are so vast and extensive that it would be almost impossible to treat them here. A list of various sources dealing with the Gaonic period will be found in reference sources quoted in the bibliography.

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- (126) ש"ך No. 34
 (127) ש"ך Ed. Warsaw -- 37b.
 (128) ש"ך R. Hai's Responsum No. 231.
 (129) ש"ך No. 29 and 31.

Pages 58-61 are missing

The power of the Cherem was also exercised by certain Jewish communities in compelling outside Jewish merchants, who carried on business in their communities, to help pay the taxes levied by the government. (135)

The Cherem was employed in other means besides that of forcing people to pay taxes. In one community, a society חתומים bound itself by a Cherem not to pray anywhere else, except in their own synagogue. (136)

In another community a Cherem existed prohibiting the playing of games for money. (137) An instance is found where a Shochet, who slaughtered without permission from the Kehilah, was put into Cherem. (138) In a certain city it was prohibited to do business with old, smooth, or erased coins. (139) It was found that in a certain Kehilah, written contracts had only legal value among its members, if written by the official of the community. Whoever, dared to talk against this regulation was immediately put in Cherem. (140)

As the חתומים of R. Gershon, who was called the "light of the Exile", and those which were issued by the Rabbinical Synods in France and Germany, during the 11th, 12th and 13th centuries, were treated in detail (141), only several of those

(135) Responsa Rashbo -- 662

(136) ע"פ חתומים ש"ל par. 464

(137) Responsa Rivosh par. 178

(138) ע"פ חתומים ש"ל par. 7

(139) Responsa Horosh par. 281

(140) ע"פ חתומים ש"ל par. 9

(141) See, "The Resolution of the Rabbinical Synods during the 12th & 13th centuries. Prize Essay by Samuel T. Phillips -- H.U.C. Library 1923.

up to p.
64 deals
with pre-
Maimon-
ian period
& not post

Permitted
in B. d.
Lyon
in 13th
century

2. died 1070 (other 1028)

excommunications will be mentioned in this work. In the second half of the 11th century R. Gershon of Mayence called together an assembly of German and French Rabbis in the old Jewish city Worms and under the threat of the ban, the following Tekkanoth were enacted:

1. One should not marry two women. (142)
2. A divorce cannot be granted without the consent of both parties. (143)
3. A marriage cannot be contracted without the agreement of both parties. (144)
4. One should not insult a person, who was forced to become converted to Christianity, but who returned to Judaism. (145)
5. A Jew should not rent a house in which a Jewish tenant lives, from a non-Jew who is the owner. (146)

Beside these Takkanoth, Rabbi Gershon issued other Takkanoth, some of which are more or less important. Also the resolutions known as *ר"ל הלכות* which stand for the Rabbinical resolutions passed in the cities of Speyer, Worms, and Mayence, the three largest Jewish communities, which are punishable by Cherem, are found in the same references. *in Ger. for a many*

At a Rabbinical Synod, about 150 years later, a Tekkanoth was passed to the effect that a Cherem should not be issued, except by the consent of both Rabbis and heads of the communities, but not be the consent of one, without the other.

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- (142) Mordecai -- Ketuboth, 291
 - (143) Mordecai -- Yebomoth, 107
 - (144) Mordecai -- Baba Kama, 210
 - (145) Ibid
 - (146) *ד"ר / 110, 628, 111, 112*

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Also in the time of Rabbu Tam, who died in 1171, several other Takkanoth were instituted under the threat of Cherem -- the following of which are the most important:

1. If a woman dies childless in the first year after her marriage, her husband is obligated to return the dowry and other valuable possessions to her parents or heirs. This Takkana was later modified, if she died in the second year after her marriage. (147)
2. This Takkanah was concerning divorces. It often happened that evil people mixed in the affairs of others and when there a divorce in the community they would request to observe it, and in order to display their knowledge, they would point out its invalidity, because it wasn't written correctly and a new divorce was therefore necessary. It did not concern them, whether the woman would remain an *Orla*, since her husband may have left for an unknown place. (148)

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- (147) Mordecai, Ketuboth 156
- (148) Mordecai to end of Gittin.

Are not the former periods the middle ages at least from ab. 500?

The Cherem from Middle Ages to Modern Times.

In the year 1544, the Roman Pope Julius III, ordered all Talmudic books which were to be found in his Italian countries, to be destroyed. He was a profound Jew-hater and he took every advantage possible to oppress and persecute his Jewish subjects in the great commercial city and port, Ankono. *Ancona*

A great part of the merchants there decided to leave the city and settle in Pizzaro, where they were welcomed with open arms by the Herzog of the city. In order to show him their appreciation of his generosity, the merchants of Pizzaro sent out letters to all Jewish merchants in Turkey, Greece, and other neighboring countries, requesting that they should not --- under threat of a heavy ban, --- send their ships loaded with merchandise, to Ankono, where the Pope, the enemy of the Jews, received great sums of money as an extransce tax. Instead, they should send their ships to the port of Pizzaro, where Herzog, the friend of the Jews, rules. *the Duke*

The Jews of Ankono and other Roman cities, considered this action of their fellow Jews as unfair. They stated, in the letters which they sent back that it wasn't advisable to change the port and introduce commerce in Pizzaro, because such an action would make the Pope more indignant and probably cause more oppression upon all his Jewish subjects, as well as endanger and peril their lives. These righteous arguments were of great help; the threat of the ban was of no avail, and Jewish merchants continued to send their ships to Ankono, as before. (149)

(149) . 0"p 28 / 2 in 11/2/21 11/2/21

2 March 1944 on p. 65

Five years later, in the year 1559, preparations were being made in Italy to print for the first time, the important Rabbinical book, the "Zohar", which was only in manuscript at that time. Several Italian Rabbis issued a Cherem against the publishers, the sellers, and the students of the Zohar, since the book represented a study of Kabbalism, which the Rabbis opposed. One of the various reasons for putting the publication under ban was that the Rabbis feared the repetition of an incident which occurred some time ago, when the Pope ordered the public burning of the Talmud, because it was published from manuscript form. The chief argument against its publication, however, was that the Rabbis felt convinced that the study of the Zohar and other such Kabbalistic books tended to lead many people astray. Their opinion therefore, was not to publish the "Zohar", but to hide it in a secret place, so that no one could find it. But the enemies of the Kabbala did not succeed in their opposition and the Zohar was published and became wide-spread in spite of open protestations.

About fifteen years later, in the year 1775, another book was placed in Cherem by opposing Rabbis. This book by Rabbi Azariah de Rosi, called ספר חובות differed very much from the former one, the Zohar, which consisted entirely of Kabbala and was written in difficult language, whereas the latter book, the ספר חובות was written in a clear understandable language with the purpose of enlightening the people.

Rabbi Azariah was the first Jewish scholar, who dared
openly to express his opinion; that one can rely on the Talmud

and Rabbinical authority only when it involves religious matters, but not in historical or scientific questions.. His book, accordingly, was a revelation to the Jewish masses. It contained frank and free research in the historical development of Rabbinic Literature. The Rabbis naturally resented such a book and undertook to fight it. His opponents were not only found in Germany and Poland, where secular education was altogether neglected, but also in Palestine and Italy. Rabbis came out with sharp attacks against his book. Rabbi Moses Provenzali, a learned Rabbi in Mantua, wrote חשדא against the מאמר ענינים. The book was put in Cherem by practically all the Rabbis. Outside of Italy the opposition was much stronger. The great Rabbi Leby ben Bezalel, (the חכם of Prague) decreed that the book מאמר ענינים should be openly burned. In a book that he wrote, he calls Azariah's ideas, "a belief in idolatry". Rabbi Azariah, nevertheless, did not give in, nor retract his statements. He answered in a brilliant manner, the חשדא of Provenzali. The מאמר ענינים was published several times since 1574 and although the fanatic Rabbis thought it a sin to read it, yet the book found respect and appreciation among the more educated Jewish classes. (150)

In the year 1624 we come across the case of Uriel da Costa, or Acosta. Acosta belonged an educated Morano family and was raised as a Catholic. As a young man he broke away from Catholicism and embraced Judaism, but the rigid ^{form} of Judaism as practiced then, soon disappointed him to such an extent that he openly broke the laws. Rumors spread about that he doubted

(150) מאמר ענינים חשדא בן דוד

the immortality of the soul and discrepancies of the Bible with Rabbinic Judaism. He published a book regarding his ideas, which caused a stir in the Jewish Community. The Magistrates openly denounced him. He was forced to pay fines and his book (~~was burned~~) was burned at the stake. The effect of the ban was to isolate him from the community. In 1633 he changed his ideas and offered his formal submission to the authorities of the synagogue. But his attitude of mind was such, that he could not keep his ideas to himself. He allowed himself to be influenced by the Deists and again disregarded the Sabbath and dietary laws. Again a Cherem was pronounced upon him, which he bore for seven years. He finally submitted to the authorities again, but this time he had to come publically to the synagogue and renounce his heresy. As a form of punishment he received thirty-nine Malkoth and everybody present stepped upon his body.

In the case of Benedict Spinoza, (1632 to 1677) we find the Cherem directed against philosophical thinking. Spinoza was a zealous champion of liberty. He was thoroughly versed in the Talmud, Jewish philosophy and Kabbala. He was greatly influenced by Crescag and especially by Descartes. A Cherem was imposed upon him in the synagogue of Amsterdam because he did not believe in the Torah and because his philosophic ideas were not in agreement with the teachings of Judaism. Also, because the Jews thought that his ideas would bring about persecution, since his teachings were directed against Christianity.

In the case of the Hebrew poet, Moses Chaim Luzatto, we find an interesting use of the Cherem. because of his teaching of

the Kabbala that he suffered so much during his life time and caused him to be excommunicated, by several Rabbis from Germany, who first condemned and placed under ban all his works on the Kabbala. In 1733 Luzzatto was suspected that in one of his new Kabbalistic books he hinted that he was the Messiah. At that time the Italian Rabbis appointed a commission to make a thorough investigation. The commission found many Kabbalistic works, as well as mystical signs and symbols in Luzzatto's house. Luzzatto refused to apologize before the commission, nor did he care to account for his deeds. In Venice and other Italian cities he was immediately put in Cherem. This ban was also put in effect against all those who kept or read his Kabbalistic works. After enduring troubles and hardships, Luzzatto settled in Aka, Palestine, where he died from cholera before reaching his fortieth birthday.

The world famous Rabbi and scholar, Jonathan Eibeshütz (1696 to 1764), who was Rabbi of the three communities of Altona, Hamburg, and Wandbeck, was continually accused by his opponents that he was a secret follower of the pseudo-Messiah, Sabbatai Zevi. Even in the year 1725, when Rabbi Jonathan was 129 in Prague, he was openly accused by some of the Rabbis, who gathered in Manheim, that he was in close secret relationship with the followers of Sabbatai Zevi, namely Moses Meir of Zolkow and Leibele Prosnitz and was accordingly excommunicated.

Italy

Akko
(Acre)

Zolkow

2

Rabbi Eibenshutz, together with several other Rabbis, issued an open declaration to the effect that everything is false, and in order to strengthen his defence he proclaimed a Cherem in his synagogue at Prague against all persons who believe in Sabbatai Zevi and his followers. With this declaration and Cherem the Rabbis were satisfied and quieted, but yet they suspected him of secretly carrying on relationship with Sabbatai Zevi. Twenty-five years later the same story repeated itself with greater bitterness and rigor. It was Rabbi Jonathan's inclination toward Kabbala that caused this trouble. Even when he was Rabbi at Metz and later at Hamburg, Rabbi Jonathan issued amulets *shema* in a Kabbalistic way, from which his opponents tried to prove that he was a follower of Sabbatai Zevi and his teachings. This time Rabbi Jonathan was not excommunicated, because he was known everywhere as a great scholar. Even his most bitter opponents dared not attempt such a thing. On the contrary, his chief opponent, the famous Rabbi Jacob Emden, was put in Cherem by the Kehilah of Hamburg, because he spoke, wrote, and published evil things against Rabbi Jonathan, which resulted in his being forced to leave the city of Altona in darkness of the night. He fled to Amsterdam where he remained until he persuaded the government to absolve him from the Cherem and to allow him to return to his native home in Altona.

At that time, another Cherem was issued against Rabbi Jacob Emden, as well as all other enemies of Rabbi Jonathan,

in the city of Lublin, but a short time later, this Cherem was removed and declared invalid by Rabbi Abraham of Lissa, who was the presiding officer of the _____ the Jewish legal body of Poland-Lithuania. However, the Cherem was lifted from Rabbi Jacob, because the Rabbis of Lublin did not ^{have} the right to do so, without the consent of the

אברהם ליסא
הוציא

The conflict between Eibeshütz and his opponents lasted over twenty years, until his death in 1764. Jewry was not honored with a controversy of such nature, and both parties suffered much because of it.

Mordecai Eibeshütz, a son of Rabbi Jonathan, was put in Cherem during the life time of his father, because it was shown that he associated with the followers of Sabbattai Zevi of the city of Pressburg. The fact that he had married into a rich and prominent family of that city did not help in anyway. ⁽¹⁵²⁾

Sabbattai Zeviism carried on its activities until the beginning of the nineteenth century. Then it disappeared completely, leaving no trace behind; like a building, which has no strong or firm foundation and therefore rests insecure until it finally crumbles.

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he is not in Turkey

There remains both one truth regarding this matter; that all the ^{Ulpsh} which were issued since the time of Sabbattai Zevi, had hardly any effect, and its influence gradually disappeared entirely.

In the year 1730, Hassidism began to make its appearance in Slavic countries. Just as in the the case of Sabbattai Seviism, its basis was in the Kabbala. One of the chief differences, however, was the fact that ^{*}it did not deal with a living Messiah, but in its stead, the Rabbi or Zaddic became the center of the whole movement. *Zaddik*

The masses, consisting of common, plain people, were greatly attracted by Hassidism, especially so, since the first founders of the movement lived together with the people and had a decided influence upon them. The Hassidic ways of prayer, their piety and brotherly feeling, with which the first Hassidim distinguished themselves, opened far and wide the hearts of the people and many thousands became warm followers of the movement.

The Rabbis, however, looked differently upon the whole Hassidic movement. They thought that they had to do with a new form of Sabbattaism, and that under the new mantle is hidden the old belief in a living and existing Messiah. The Rabbis, therefore, began to fight the followers of the new sect. The Kabbala itself, they did not attack, because many of the Rabbis themselves were students of this branch of knowledge and secretly occupied themselves with theoretical and practical Kabbala. They were satisfied to attack and persecute the Hassidim alone, whose customs and modes of worship did not find favor in their eyes.

The first Chorem against the Hassidim took place in

Wilna in 1772. It was issued by the famous Geon Rabbi, Elijah, (known as "Der Wilner Gaon") and it was soon proclaimed on the great *קניון*--market, which was then existing in Brod. *Brody*

The Cherem dealt with the Hassidim who wished to introduce new customs among the Jewish people, and who act strangely in their religious worship, as in the form of singing and weeping. The Rabbis were also wrought up, because the Hassidim put on white garments, just as the Priests wore at the service in the Temple.

The Rabbis in their Cherem issued an *אין* *10* *16* against the Hassidic places of worship and came out strongly against the Nussach Sefarad, which the Hassidim introduced in their services. They went so far as to prohibit Jews from taking as a Sabbath guest, any Jew who was in the least suspected to be a follower of the new sect.

That the Rabbis did not accomplish anything with this Cherem, or any other *אין* *10* *16* against the Hassidim is well known now, and in spite of all persecutions, Hassidism spread in all Slavic countries and its influence lasted over one hundred and fifty years, until the present time.

In the 19th century, in the time of culture and reason, the Cherem was utilized against the known Jewish philosopher and scholar, Rabbi Nachmon Krochmal of Lemberg, because he was suspected of having associated with some of the Karaites, from Lemberg in the little town of Kulikov. (153) A few years later, the Rabbi of Lemberg, Rabbi Jacob Orenstein (author of the book *תורת משה*) put in Cherem the great Jewish writer, Dr. Isaac Erter, the author of the famous book *תורת משה* *הענין* *הענין* *הענין* . Together with Erter, several other of his friends were excommunicated. All of them were forced to leave Lemberg and settle in other Galician cities.

This Cherem did not pass by smoothly. The Austrian Government mixed in this affair and compelled Rabbi Orenstein to lift the ban against the Maskilim and also asked him, in the presence of a government official, to deliver a speech in the synagogue, in which he proved by statements from the Talmud and later commentators that it is the duty of every Jew to learn and to study different sciences and languages, especially the language of one's country. (154) In later years, in Galicia, Poland and other Slavic countries *תורת משה* continued to prevail, until the governments intervened and issued strong laws, which aimed to check the use of the Cherem by the Rabbis or heads of congregations.

Nevertheless, the use of the Cherem did not stop. In oriental countries, especially Palestine, the Cherem still

(153) Leteris, in his book "Hafirah" p. 43.

(154) Wiener Blätter -1851 pp. 211 and 52.

remained a strong weapon in the hands of fanatics and over-pious Rabbis. In Turkey and in all countries which belonged to that government, the authorities never interfered in the inner Jewish affairs, as long as the required taxes were paid. Otherwise they did not even take an interest in the existing conditions of the Jewish communities. It is self-understood that the fanatics took advantage of such a situation and threatened everyone with the Cherem, who dared to think or conduct himself in a different way than them. Particular objection was raised to the European schools introduced by European Jews. They put in Cherem the establishments as well as the supporters and even the children who attended such schools. An example of this nature is cited in the case of Constantinople in the year 1854. A Cherem was issued against the schools which the French Jews wanted to establish. Also the same occurrence took place in Jerusalem in the year 1856, when the famous Dr. Ludwig August Frankel established the "Elise Herz Schulen" which still remains in existence today. ⁽¹⁵⁵⁾

A few years later, in 1861, several of the Rabbis in Jerusalem issued a Cherem to the effect that no Jew in Palestine be allowed to teach his son or daughter a foreign tongue, neither at home, nor in a school, nor even in a Talmud Torah.

(155) Frankel -- "Nach Jerusalem" Second Volume.

Years later, in 1881 -- *שנת ה'תרמ"א* -- *הרב דוד פרידמן* the great Rabbi David Friedman, Rabbi of Karlin, came out strongly against the use of the Cherem. He wrote an important book *חומר חרם* in which he showed that the Rabbis committed folly and harm to the Jewish people by employing the Cherem. He even pointed out, with clear arguments and proofs, that the Rabbi of old and today had no right to excommunicate anyone.

The fanatics in Jerusalem, even in our day, often take advantage of the Cherem and use it there against their opponents. It is hoped that the British Government, the present ruler of Palestine, will make an end to such unworthy and unsuitable actions.

In the quarrel between the Sandzer and Sadegorer Hassidim, over fifty years ago, there were plenty *חומר חרם*. First the Sandzer Hassidim issued a Cherem and then the Sadegorer Hassidim in revenge, would issue a Cherem against the famous Sandzer Rabbi, Rabbi Chaim Halberstam and his followers. ⁽¹⁵⁶⁾

Among the Jews in Morocco, Africa, before the country came under the influence of French rule, The Cherem was greatly in use. The known Hebrew writer, Samuel Romanelli, in his book *החומר חרם* depicts in dark colors the situation there. Fanatics and swindlers take advantage of the Cherem and through its use destroy God's beautiful vineyard.

(156) See about this quarrel, in the book, *חומר חרם* by Isaac Ibn, New York -- *החומר חרם* chapter 12.

In America the Cherem was in use among the first congregations. The old congregation *Shearith Israel*, when it introduced new Tekkanoth, 150 years ago, issued a Cherem against everyone who refused to follow or respect them. ⁽¹⁵⁷⁾

Of the practice of the Cherem more was not heard of and it was tended to disappear naturally. However, during the last few years an attempt was made to revive it. Orthodox Rabbis became somewhat stronger and more influential and tried to drag the Cherem from its old grave where it seemingly lay buried and forgotten. Just a few years ago the Rabbi of Washington, D. C. excommunicated all branches of the "Arbeiter Ring" accusing them of not burying an old Jewish woman in their cemetery according to the Jewish law. ⁽¹⁵⁸⁾

In September 1920, a Cherem issued by the Boston Rabbis against the directors of the Peoples Relief Committee and all their helpers, called forth great indignation. The latter collected charity donations for the war sufferers on Saturday. The directors apologized, stating that they were compelled to have the 'relief day' on Saturday, whereas it is against the law to collect donations on the streets in Boston on Sunday, and on a week day, enough volunteers to carry on the work wouldn't be available. The radical papers sided with the 'People's Relief

(157) Publications of the ~~the~~ American Jewish Historical Society. Vol. 21 in the historical sketch of Naftoli Phillips.

Committee', while the Orthodox press congratulated the Rabbis for their firm stand.

- (158) See about this in the daily New York paper "Der Tag" of April 8, 1915. An editorial and a letter from the Washington correspondent appeared a few days later.

The Cherem in Various Countries.

The Jewish paper, the "Ydische Zeitung" published in Vilna (149) brings out very interesting reports concerning the ח'מ'ח, which were frequently made use of in the provincial towns and cities of Poland and Lithuania. They seem to have a great historical value, because they give us a clear picture of the conditions there after the war. The following example is an extract from a report:

"As it is known, the Rabbis in our towns Villages issued a Cherem, that no food provisions be taken out of the towns, so that the high cost of living be lowered."

The Cherem did not solve this problem and very little could be done. In other places as in Ivie, Divinishock, Voloshin and Horodok, a tax was put upon merchandise to be taken out of the town. This act was strengthened by the Cherem. No one had the right to slaughter a ח'מ'ח or fowl, or to export salt etc, unless a half percent of the profit was paid to the ח'מ'ח. This edict was willingly carried out by some people, but did not find favor with others. In Rivinishock, the butchers announced that they wouldn't pay any attention to the Cherem. Merchants of other communities even went so far as to ridicule the Cherem. In Volozhin, where there was much dissention, the ח'מ'ח assembled and excommunicated three rebels. No one was allowed to associate with them, nor talk to them, nor stand within four ells from them.

This time the Cherem turned out to be of a serious nature. If one met the three Jews in the street, he would turn aside; no one would shake hands with them, and if a Jew from another city came there, he was informed of the Cherem and was asked to have nothing to do with them. The excommunicated people were able to withstand the Cherem for three days, but on the fourth day, they were unable to resist it any longer. They knocked at the doors of the heads of the community -- for they were forbidden to enter within -- and asked for mercy; that they be forgiven, promising to obey all the orders of the Kehilla hereafter, if only the Cherem were removed from them. After much supplication, the Kihillah consented to absolve them from the Cherem.

Such conditions which would justify the Cherem are now gone. The Cherem is destined to lose all its powers and vanish as influence in communities.

There are many cases of the Cherem used in Italy, Holland, and other countries, which were not treated here. It is almost impossible to treat so vast a subject as this in a thesis. Before concluding, however, mention will be made of a few important instances of the Cherem and its use, heretofore not discussed.

In Andrianopole, Turkey, a Cherem was issued against any Jew who would sell his wool to non-Jewish manufacturers. At the same time a Cherem was declared that children under ten years of age be prohibited from wearing woolen clothes which were not manufactured in Andrinopole. This Cherem was

removed by the great Rabbi ר' פ' א', because it was only beneficial to the rich people of the community, but nevertheless, the majority of the Jewish inhabitants suffered because of it.⁽¹⁵⁰⁾

The communities in the Turkish provinces of Thessaly, Trikola and Larissa, consented through a Cherem, not to pay more for wool, than the price fixed by them.⁽¹⁵¹⁾

Concerning the renting of houses among Jews, especially from non-Jews, Tekkanoth were established by some communities, under the punishment of Cherem. In some Italian communities there was introduced a Cherem to the effect that without the permission of the Kehillah, no one was to rent a house. In 1546 the Jewish physician Joseph was put in Cherem because he disobeyed such a Tekkana.⁽¹⁵²⁾

In the Portuguese Congregation in London, since the year 1660 a Cherem has been existing against any member who prayed in another synagogue. But in 1842 many of the Portuguese Jews joined the membership of a new modern synagogue. A Cherem again was issued against them, because they transgressed the old Cherem of 1660. When it was realized, a year later, that the Cherem had no effect whatever, and that the former members payed no heed to it, they became more lenient and lifted the ban of 1842, as well as the ban of 1660; and every member was permitted to pray in whatever place he wished.⁽¹⁵³⁾ *reference wrong*

On several occasions a Cherem was issued in Polish countries against such scholars, who would purchase with

(150) Responsa ----- 16 ר' פ' א'

(151) Ibid — 48

(152) Responsa Horano — 51 and 52

money or precious gifts the right to be Rabbi in their community, from the *קרבן*, or from the Christian magistrates.

The great Rabbi Yom Tov Lipman Heller, known as the *ט"ו* *author* *7*
פ"ק *א"ח*, when he came from Prague to Poland, he issued
 a Cherem with the consent of the *א"ל* *א"ח* *א"ח*
 against all Rabbis who purchase their rabbinate from non-Jews. The Cherem was forwarded to all Jewish communities, with the condition that once a year it should be openly read in all synagogues. (154)

There was also a custom in Poland in those days to excommunicate such merchants who went into bankruptcy and who were suspected of having other resources, which which they did not want to settle. Their names were read every Saturday after the reading of the Torah in the synagogue. (155)

In previous times, the government never bothered to protect an author in preventing others from taking away his profits, or protect his rights from having others publish his works without his knowledge. The 'Copyright Law' was introduced in the last half of the 19th century, but this was already an old protecting weapon among the Jews. The Rabbis in their *א"ח* *א"ח* to the books, prohibited by Cherem the republication of works within a period of five, ten, or fifteen years, without the permission of the author or his heirs.

The power of the Cherem dwindled down with the break-

(153)
 (154)

Responsa ----- *א"ח* *א"ח* *א"ח* *where*
 Yost. Gesch. Der Juden *א"ח* Vol III p. 244

ing of the walls of the Ghetto and the emancipation of European Jewry. Moses Mendelssohn, the great Jewish writer and philosopher (1729- 1786) was the first Jew who fought against the Cherem in his books. ⁽¹⁵⁶⁾ His open opposition greatly helped in the fact that governments began to take notice of the Cherem and forbid its use strenuously.

Kaiser Joseph II of Austria, issued in 1783 a decree to the effect that every Rabbi who issued a Cherem against a Jew, would be punished with a fine of fifteen golden ducats. This decree was renewed and strengthened in 1848.

Early in 1797 the Prussian government issued a "General Juden Reglement", which warned strongly and effectively, all Rabbis and heads of communities not to make use, in any way, of the Cherem. The "Sanhedrin" which Napoleon called in 1807 also came out strongly against the Cherem, which was on that account forbidden in all French provinces.

Such prohibitions were later issued in other civilized countries and today there is not a single country in which the Cherem has a legal right or justification.

The Cherem, whose power lasted about eighteen hundred years, has now vanished, nor does it belong anymore to the living institutions of our people. It is a thing of the past and belongs to the past.

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(156) Mendelssohn -- Jerusalem; at the end of first volume and in introduction to Menasseh ben Israels book "Sefer E. Tikkun". Translated into Hebrew by R. Samson Block.

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Conclusion.

It is true that excommunication, which is not mentioned until the time of Ezra, was a severe punishment and whenever inflicted upon an individual, it caused him humiliation and suffering and it debarred the offender from all intercourse with his friends, as no one was allowed to eat or drink with him, nor even to be under the same roof with him. Yet we must realize that the Jewish people were children of their own time; that is, they followed the ways and methods of their neighbors. In fact, Catholicism had more severe forms of excommunication than Judaism. As for Judaism, after the fall of the State and loss of political independence, the only weapon left among the leaders of the community was the Cherem, in order to regulate the communal, social, and economic life of the people. We find that the Jews considered themselves duty bound by law to admonish and reprove an offending brother. However, the offender was always given every possible opportunity to retract his action. As mentioned previously in this work there was first the rebuke which continued for seven days. After this the offenders name and his offense was proclaimed publically in the synagogue for a period of thirty days. If at the expiration of the thirty days the guilty person asked pardon for his sin and gave signs of sincere repentance, he was again admitted as a member of the community. If he was rebellious and did not repent his fault, nor submit to those who had excommunicated him, the excommunication would be continued for

thirty days longer. If after the expiration of this period, the offender showed no signs of change of mind, the excommunication would be extended another thirty days. If no reconciliation was then attempted, the Cherem would be announced and the offender cut off from Israel.

It is true that the Cherem had many ugly features, but it is not the task of this work to justify them. Nevertheless, we must consider the causes which brought about the employment of this weapon. The Beth Din for example had only the Cherem at its disposal to enforce the people to obey their regulations and legal decisions. The Gaonim, who made use of the Cherem, in the Jewish communities of Babylon, were the spiritual leaders of the people and were therefore responsible for the orderly and righteous conduct of the community. They therefore tried to make the Cherem as effective as possible. During that time the ban was handled with as much, if not greater, severity among the contemporary Christian authorities in Babylon. In many cases the Cherem had somewhat a justification, since it secured honest dealing among the people in their business relationships and it promoted the welfare of the community in general.

While the Cherem was to some extent beneficial, on the other hand it was rather harmful and cruel to the guilty person and his family. With the change of times and conditions, it became obsolete and today its power and effectiveness have disappeared in all civilized countries, except in remote and backward settlements.