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THE INFORMER IN MEDIEVAL SPAIN

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by

Philip M. Posner

Thesis submitted in partial fulfillment  
of the requirements for the Degree of  
Master of Arts in Hebrew Letters  
and Ordination.

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Referee: Dr. Alexander Guttman.

To My Parents, Isadore and Anna Posner

whose love and guidance

have helped shape a dream into reality

## DIGEST

The informer was a traitor and an enemy of Jewish society throughout Europe. The Jewish community of Spain, in the three-hundred years preceeding its expulsion, was continually threatened by informers, and therefore looked upon them as highly dangerous criminals.

There are basically two words in Hebrew for informer, but they are not absolutely synonymous. The informer's crime consisted of either denunciation, kidnaping, or both. The informer's accusations and calumny threatened not only the individual Jew, but exposed the community as a whole to the greatest of economic and political dangers. Further, the informer threatened the security and morale of the Jewish community.

The motives for informing included a desire for financial gain, status, and/or revenge. The unstable conditions of Jews in medieval society aggravated these basic reasons for informing.

Many of the Spanish Jewish communities in Spain possessed legal jurisdiction over the criminals in their midst. These powers of jurisdiction over the informer were, however, extremely varied because they were a result of special royal privileges that were granted by the various monarchies of Spain.

The legal status of the informer was based in large part on the fact that the community viewed his crime as precipitating an emergency situation; and therefore, in his case, the customary legal procedures were either <sup>suspended</sup> ~~abrogated~~ or restricted. The rationale for the suspension of the usual judicial procedures was based on the practical

necessity of getting the informer convicted, so that there would be no more victims of his informing in the future. The Rabbis and the courts, therefore, accepted very few extenuating circumstances. On the whole, whether one was innocent or guilty was not as important to the Rabbis, as were the consequences of his informing.

The various methods used for punishing the informer were numerous and took various forms from that of a mere fine, to the death penalty.

The informer's punishment was usually inflicted with the sanction of the government, but it was not uncommon for informers to be dealt with illegally.

The fact that the Spanish Jewish community possessed extremely broad privileges of jurisdiction over the informer, occasionally encouraged unjust treatment of informers in Medieval Spain.

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## Introduction

Ever since the first men came forth to organize themselves into a society, there have been, no doubt, those whom Jeremiah the Prophet described as "....whispering terror on every side;"<sup>1</sup> They are the informers, the delators, who even in modern times periodically rise to terrorize innocent people for the sake of personal gain.

Throughout our history, the Jewish people as well have been continually plagued by the menacing whispers of the informer, the Malshin or Moser. Nowhere was this more true than in the medieval community of Spain, where there were those who were ready and willing to cry again, in the words of Jeremiah, "Denounce him, let us denounce him."<sup>2</sup> These informers caused untold tragedy to the Jewish people who had made the sunny Iberian peninsula their home for over a thousand years.

Heinrich Graetz, the father of modern Jewish historical scholarship, wrote that informing was "once almost unknown among Jews."<sup>3</sup> Nevertheless, it is difficult to imagine a period in Jewish history when informers did not plague the Jewish community. Graetz himself speaks of the disastrous results of the Bar Kokhba uprising, which he ascribes in some measure to the "Jewish renegades" who, by informing to the Romans, betrayed the "stratagems and devices" planned by the Jews in their struggle against Rome.<sup>4</sup>

Further, judging from the many statements concerning the informers that were written in the Talmud, it would seem that



they continued to menace the Jewish community some three centuries after the Bar Kokhba revolt: Informers were denied the world to come, and were condemned to eternal damnation.<sup>5</sup> The use of Scrolls of the Law, phylacteries, or Mezuzot written by an informer was prohibited.<sup>6</sup> In civil suits arising from damages caused by the informer, the latter received the status of robber ~~→~~ gazlan.<sup>7</sup> And lastly, informers were disqualified as witnesses and their oath declared untrustworthy.<sup>8</sup>

In reality there was no country of Jewish habitation which was completely free of this canker in the mouth of its Jewish community. Their sinister activities threatened Jewish life and property everywhere.<sup>9</sup> The only difference was the degree of danger experienced by the various Medieval Jewish Communities.

In German countries the informer, though probably no more numerous than in Spain, was of special danger. For there, unlike Spain, "...not only did the government and the feudal lords welcome every bit of inside information against an individual Jew or an entire congregation, (so) that they might thereby extort money from the victims, but they actually gave protection to the renegades."<sup>10</sup> Thus in Germany the Jew was not only endangered by the informer, but was victimized by a government that was only too willing to profit from the Jewish communities' unstable situation.

That the Jews of the Franko-Rhine area were very much

aware of their dilemma can be seen by an unusual Takkanah (command statute) given in the name of Rabbenu Tam (1100-1171). According to the law, "a person who apprehends that he will shortly be defamed" may interrupt the afternoon prayers even on the Sabbath until "justice is done him."<sup>11</sup> Further in such a case, one may, according to this Takkanah, "announce a herem (a ban) to compel the defamer to reveal to him what he said to the ruler."<sup>12</sup> The original intention of this Takkanah must have been to enable the victim to know what the informer said to the ruling power so that the victim might plan his defense accordingly.<sup>13</sup>

In Spain the threat of the informer, though certainly serious, as we shall see, was different than that which manifested itself in Germany. But even Graetz admitted that in the three-hundred years preceeding the final expulsion of Jews from Spain, not only was informing known, but had become "exceedingly rife."<sup>14</sup> That Spain was indeed "rife" with informers can be ascertained by the interesting fact that one of the Hebrew words for informer, "Malshin," found its way into the Spanish language as "Malsin," "Malsindad," or "Malsineria." Further, the other word for informer, Moser, or Masor ( מוסר ), occurs frequently in the royal ordinances of the Spanish archives, along with the word delator ( דלטר ).<sup>15</sup>

The earliest known accounts of informing among the Jews of Spain comes to us from the late 11th Century. In the first case, although the informing did not actually occur

on Spanish soil, its consequences were of great importance to the Spanish Jewish Community. For it was due to the denunciation of Isaac Alfasi by informers in about 1089 that this great Rabbi was forced to leave his North-African home and flee to Spain.<sup>16</sup> The other early case of informing involved the "great Talmudist" of Lucena, Joseph Ibn Migas (1077-1141), who caused an informer to be stoned before the close of a certain Day of Atonement which fell on a Sabbath.<sup>17</sup>

Although Rabbis like Joseph Ibn Migas possessed the power to impose the strictest of sentences on those who were accused of informing, nevertheless it is also a fact that Rabbis were often themselves the victims of the informer's lies.<sup>18</sup> For "no one was too highly placed to be beyond (the informer's) poisoned fangs." Men of leading importance in their communities--Jewish bailiffs, court physicians, diplomats, ministers of finance--and distinguished rabbis like Alfasi, Nissim Gerundi, Barfat and Hasdai Crescas, were all the targets of venomous denunciation. They were thrown into prison, their lives were in grave danger, and both their fate and the fate of their communities was at stake.<sup>19</sup> Thus, for example, R. Isaac Barfat wrote of his and R. Nissim Gerundi's incarceration:

...It is nearly five months since wicked men arose among us who invented a false charge against our great teacher, R. Nissim, with the result that six honorable men of our community, among whom were included the sage Don Hasdai, (and) my brother and I, were surrendered to the government and we are still innocently being kept in hostage.<sup>20</sup>

The informer then, "was despised as a traitor and dreaded as an enemy... of Jewish society throughout Europe. Spain was certainly no exception, and, in fact, in all probability he was "the most dangerous criminal in the Spanish juderia."21

## Chapter One

### Definition and Some Specific Offenses

There are basically two Hebrew words for the general term "informer:" "Malshin" (מלשין) and "Moser" (מוסר), or "Masor" (מסור). Both Moser and Masor come from the same Hebrew root, but Masor has the connotation of one who is a professional informer.

Few words, however, have exactly the same meaning, especially legal terms. Malshin and Moser are no exception, and therefore, though they generally mean informer, there is nevertheless an important difference between them. In drawing a distinction between them, it should first of all be realized that they are often used together\* in the same sentence separated by a conjunction, in both the Responsa and in community statutes. Further, these words appear not only as nouns<sup>22</sup> but as verbs,<sup>23</sup> thus lessening the likelihood that they are absolutely synonymous. For if they possessed exactly the same meaning, then one would have to ask, why are both words used together? Secondly, it should be realized that though, as we shall see, they are often used synonymously both in regard to the informer's actual deed and the punishment involved, both words, nevertheless, have their own root meaning.

Malshin, no doubt, comes from the noun לִשָּׁן --tongue-- and thus Malshin expresses the idea of one who commits his crime via the spoken word, and so his informing is a matter

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\*See p. i, paragraph 3; p. viii, paragraph 1; of the appendix.

of threatening or denunciation. Moser, comes from the verb מִסַּד --to turn, or hand over--and thus Moser expresses the idea of one who either turns information over to someone orally or physically, or who actually hands over someone, or his property in a physical way. Moser, therefore, is the more general term because it not only refers to oral informing, but also includes the physical delivery of a Jew's person or his property. Thus when "Lea accuses Ruben of turning her over to violent men"\* the verb that is used is from the root MSR ( מִסַּד ), and not from L-Shen ( שֶׁן ). Similarly when a certain informer "threatens to hand over to violent men the property of Jews" the verb again used is מִסַּד, and not שֶׁן. By themselves, however, the examples cited above do not conclusively prove that only a Moser actually delivers property or people over to non-Jews. The actual proof is that it is incorrect linguistically to use the word Malshin to describe one who physically ( מִסַּד ) turns over people and property.

The fact is, however, that though Moser and Malshin have slightly different connotations, the similarities of how they are used far outweigh their differences, and thus both words properly refer to the informer whose actual offenses we shall now discuss.

First of all as we've previously stated, the informer, both as a Moser and especially as a Malshin, was one who denounced either the Jewish community or a Jewish individual

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\*See case 4, bottom of p. viii.

and, or, his property. His denunciation could be made to anybody, anywhere--church, violent persons, inquisition, community official, even the King or Queen--all were ready to listen. Thus Rabbi B. Zerah Duran in a decree of excommunication against an informer defined him as one "who denounces Jew or Jewess whether in the house or outside..."<sup>24</sup>

An example of "in the house," that is, internal denunciation, occurred in 1311 in Saragosa, where various Jews were accused, though not convicted, of denouncing members of their own community. The informers charged that after a certain Jew had been baptized, he was forced to recant by a relative of his.<sup>25</sup> They also claimed that when a Jewish youth saw his father on the way to visit a female Moslem slave, he decided to turn Christian, whereupon his father had tried to poison him; and that when a certain Jewish girl became pregnant by a Christian, her brothers took her outside the city limits and killed her.<sup>26</sup>

In 1324, in Calatayud, one of the larger towns in Aragon, with a large Jewish quarter,<sup>27</sup> an apostate who had changed his religion four times informed to the Inquisition and extorted large sums of money from the Jews of Calatayud by threats of further denunciation.<sup>28</sup> One further example of denunciation occurred in 1381 when a Jewish notable (familiar) of the Queen's household, Moses Hanoah, denounced a number of communal trustees (neemanim) at a legal inquiry instituted by the King's son.<sup>29</sup>

The denunciation by informers to violent men was also very common, as can be seen by the Responsa of R. Asher ben Yechiel.\* The mere threat of denunciation was serious enough to be considered an offense of informing in and of itself, and as we shall see, brought severe punishment to the informer who threatened to inform ( שהוא יזם במלש'נות ).\*\*

In addition to general denunciation, which in itself was, as we've seen, a serious offense, there was also the offense of the lying informer, or calumny ( מלש'נות שקר ), or ( מסור לשקר ). In the case of general denunciation, however, it is not always clear whether the informer actually stated vicious falsehood, or actually was merely reporting what was true. Thus in the case of Moses Hanoch, to whom we have already referred there is the possibility that his denunciation of the community leaders might have been warranted. Of course, whether it was warranted or not, it nevertheless often caused serious consequences for the Jewish community. In the Moses Hanoch case, the consequences of his denunciation were serious enough to cause the King (Pedro IV) to deliver a sharp rebuke to the neemanim for what he considered to have been a "miscarriage of justice."<sup>30</sup>

Because of the possible consequences of denunciation in general, the Rabbis seemed to have made little differentiation between denunciation and what they called lying denunciation, Masur l'shaker, or calumny. In their eyes the consequences

\* See pp. i, ii, vii, and x.

\*\* See pp. i, ii, viii, and x.



of either general denunciation whether true or not true,<sup>31</sup>  
endangered the very existence of the Jewish community.<sup>32\*</sup>  
That either lying denunciation or calumny qualified one as  
an informer is clearly stated by Asher b. Yechiel in the  
case of a certain Ruben who was "bringing forth calumny and  
suspicion," and concerning whom R. Asher said "whoever hears  
his words...may apply (to him) the law of the informer...."\*\*\*

Another offense that caused one to be labelled as an  
informer was airing one's grievances in public, and or  
seeking justice from the general authorities instead of  
from the Jewish courts and communal officials.<sup>33</sup> Thus  
early in the 11th Century Alfasi ruled that one who caused  
damage to another through public accusations in the presence  
of gentiles was a Moser.<sup>34</sup>

That this kind of denunciation was also a serious prob-  
lem to the Jewish communities of Spain can be seen by a  
statute that was adopted by the aljama (Jewish community) of  
Lerida:<sup>35</sup>

Because there are those who lay charges  
before Gentiles, the fence (around) de-  
nunciation (Malshinoot) is being broken  
down, and so Jewish money is being dim-  
inished by useless expenses. Therefore  
the community has agreed to set up  
fences and statutes to remove (this)  
iniquity from its midst....<sup>36</sup>

.....

It shall not be permitted for any Jew  
or Jewess in our community to file

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\* See pp. iv, and v.

\*\*\* See p. viii.

any charges<sup>37</sup> (לפי דברי שם) with the bailiff or any other (officials) which may result in personal injury or property damage; (nor may such a person) utter any denunciation (malshinoot), whether written or oral, explicitly or inferentially, except that which (is absolutely relevant to his) claim or claims....<sup>38</sup>

The preceeding examples represent the most common and serious offenses exhibited by the informer. But there are others which, although not informing in the strict sense, constituted a serious offense nevertheless. An example of this kind of semi-informing was the revelation of so called Jewish secrets. R. Solomon Alami\* wrote that: "...the (oppressive) decrees (of 1412) and the calamities (of 1391) which have lately befallen us have been brought about by the rebellious sons of our people, who revealed to the heathen, whose bonded slaves we were, all our secrets and evil ways toward them."<sup>39</sup> There is little doubt that R. Alami is referring to the many apostates who upon conversion informed on their once Jewish brethren, and who were therefore considered as informers by Jews. It is very likely, therefore, that the revelation of secrets by apostates constituted a serious offense.

Further information of this kind of informing is given to us by Professor Yitzhak Baer who tells us of a Jew named Yuce Talavera, who complained to the King's Court--and therefore qualified as a denunciator--that the Jewish

\* Also known as ben Lahmish, who was the author of an epistle on morality entitled Iggeret Musar.

community of Segovia was plotting to assassinate or assault his brother, an apostate, and that the aljama (community) had produced witnesses who gave false testimony about him. Yuce further alleged that Jews had caused the death of three apostates, and that he himself feared for his own life because "the Jews felt absolutely justified in killing anyone who revealed their secrets."<sup>40</sup>

Similarly, the Jew who degraded Judaism in the presence of non-Jews was also committing a form of informing which, though serious, probably did not by itself constitute an act of informing in the usual sense.\* Shortly before the massacres of 1391 the Jews themselves informed the King of the activities of Moses Faquim, one of the wealthiest men in Majorca, and a confirmed Averroist and political talevearer, who blasphemed against all religions.<sup>41</sup>

He would go to Christian churches on the pretense of wishing to embrace Christianity and comport himself accordingly. Then, on coming out, he would boast to the Jews of what he had done. At the very time when he was drawing closer to the Christians and their religion, he was seen walking barefoot on the Ninth Day of Ab as if mourning the destruction of the Temple like any other Jew. He drank the wine of the Christians and ate pork, transacted business on the Sabbath and resorted to the Christian courts. In order to hold up both Judaism and Christianity to ridicule, he would play at being a Moslem by holding Moslem religious services for his Moslem slaves in his magnificent

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\* See p. x.

residence in the Jewish quarter,  
and jest with them about the Jewish  
and Christian religions.<sup>42</sup>

In addition to these acts, Moses Faquim was involved in several acts of denunciation,<sup>43</sup> and it was no doubt, this role as a denunciator that classified him as an informer; although obviously the Jewish community also felt sufficiently threatened by his acts of religious blasphemy that they deemed it necessary to report him to the King.

This community renegade was also involved in another offensive act that qualified him as a semi-informer. He had slandered his own father by accusing him of a deed that rendered his father liable to the death penalty.<sup>44</sup> Although Yitzhak Baer is probably correct in stating that informing "does not properly refer to the slandering of individuals,"<sup>45</sup> it nevertheless is a form of denunciation which was sufficiently repugnant to Jewish authorities that it at least warranted being called a form of semi-informing.

Thus, Abraham Neuman in his history of The Jews in Spain, tells us of a calumniator who cast aspersions on a wealthy family by asserting that one of their ancestors had been a slave.<sup>46</sup> The seriousness with which this act was regarded can be seen by Rabbi Ibn Adret's emotionally charged reaction to this "act of monstrous villiany:"

When your letter reached me and I  
opened it, I stood terrified. The  
author of this wicked rumor, what-  
ever his motive, has sinned grievously  
and deserves severer punishment than

one who slaughtered his victim in cold blood. For a murderer slays but two or three souls, but this man has defamed thirty, forty souls and the voice of the blood of the whole family cries from the earth, groaning aloud. The defamer should be excommunicated. While the sages of the Talmud stated long ago, "He who calls his neighbor slave shall be considered an excommunicate," it is not sufficient to leave the culprit under the general reproach of the ancient ban, but he should now be excommunicated by a living court, and I shall confirm their act and affix my signature to such a document.<sup>47</sup>

Up to this point, the various examples of informing that we have offered come under the description of denunciation, and therefore refer to the Malshin in particular but may also apply to the actions of the Moser. The last and final offense of the informer which we shall discuss, however, refers, as has been previously explained, only to the Moser.

In the responsum of R. Asher b. Yechiel we read of Lea who accused Ruben of turning her over to violent men.\* This is a classic example of Moseroot, the act of an informer, for this is not a matter of denunciation, but of actual physical delivery of a person to violent men. The act of Moseroot, however, is not restricted to the delivery of a person, but also includes the physical delivery of a Jew's property. Thus R. Isaac Barfat, in discussing the informer's punishment, refers to him as a moser (deliverer)

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\* See pp. viii, and ix.

of both נַפְשׁ, life, and הִמּוֹן, property.<sup>48</sup> And R. Asher in his responsum refers to the "one who pursues (his victim) in order to hand over (deliver) his property into the hand of violent men."<sup>\*</sup>

In this sense a moser is in actuality a deliverer, a kidnapper, more than an informer. But the general term informer is used by the rabbis because a moser may also refer to one who turns over information about Jews, thus R. Asher also speaks of an informer who informs, מְבַרֵּר, in the sense of turning over false accusations.<sup>\*\*</sup>

Further, the term moser is also used in the sense of one who turns information over to violent people which might lead to a Jew's property being taken away from him.<sup>\*\*\*</sup> The malshin, however, as we have seen, may also cause one's property to be taken away, and therefore a distinction may be made between a moser and a malshin only when the moser actually physically delivers a Jew or his property over to the non Jewish authorities, or to violent men.

The moser and malshin's offenses are not limited to one particular act. They include, as we have seen, a number of offenses, all of which come under the general heading of informing. We may conclude, however, our definition of the informer by defining him as one who betrays either one

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\* See p. iii, second paragraph.

\*\* See p. vi, first paragraph.

\*\*\* See p. iii, second paragraph.

or more individuals or the community\* by denouncing them or turning over information about them to the non Jewish authorities, which might, or actually does, jeopardize the person or property of a fellow Jew, or even the community at large. "The flagrant offense lay in dragging in an outside jurisdiction, which notoriously had no sense of mercy or justice where Jewish (life) and property (were) involved."<sup>49</sup> This, however, brings us to the question of why the informer's crime was considered such a serious one by the Jewish community.

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\*SEE p. 1, second paragraph.

## Chapter Two

### Seriousness of Informing and Why

The threat posed by the informer can only be appreciated when one understands the panicky state of mind of a Jewish community which lived in constant dread of lurking danger. Continually insecure due to its dependence on a benevolent King who might die at any time, and a church that, at the very best, treated it with disdain, the Jewish community viewed every minor incident as a possible threat to property and limb, and looked at major difficulties as a possible menace to the community's very existence.

At any period in the history of the Jews in Spain, the Jewish community could only depend on itself for its own self protection. Thus, for example, at the time of the reconquest when Moslems and Christians were busy conspiring against each other they could in case of discovery save themselves by turning to their co-religionists who had power in North Africa and Europe. The Jews, however, enjoyed no such foreign protection, and had to rely on each other for their collective safety. Treachery in their midst was, therefore, the most serious of crimes, for the anger of an enraged ruler not only struck the offender, but the entire Jewish population of the country.<sup>50</sup>

The moods, for example, of a King like Pedro IV of Aragon, who reigned from 1336 to 1387, were often unaccountable. His suspicions were easily aroused and under the



instigation of corrupt informers, he was ready to throw his most trusted Jewish confidants into jail threatening them with death and torture while the entire aljama trembled in fear of expulsion.<sup>51</sup>

Fearful then of doing anything that might arouse the wrath of the King or some other important personage, the medieval Jewish community often went far out of its way to keep informers from involving it with the non-Jewish community. In one Takkanah of R. Samuel b. Meir,\* we are told of a Jew who had been struck by another Jew. The victim's son seeing his father bleed became furious and denounced the assailant to the non-Jewish authorities. R. Meir, obviously fearful of the possible consequences of involving the Christian authorities, refused to recognize the informer's filial indignation as an acceptable excuse; and stated that "even if the informer's father had bidden him to denounce the assailant, he should not have done so."<sup>52</sup>

The informer, however, was not only a menace to the community because he exposed it to the greatest of economic and political dangers, but he also represented a constant source of danger to his fellow individual Jew. The informer was often times guilty of a form of treason because by his denunciation he caused, either covertly or overtly, individual Jews to be economically or personally persecuted, and, or, delivered over to a relentless foe. This Tosafist of Northern France, 12th Century.

was true even if the denunciation resulted in nothing more serious than the loss of money by a fellow Jew. Thus R. Isaac Barfat stated that "there is (always) danger for any Jew to be delivered into the hand of Gentiles, even if it is (only) over (such a slight) matter as straw or stubble, for when a Jew falls into their hand they show no mercy toward him."<sup>53</sup>

Every Jew, no matter how important, was endangered by the informer's denunciating words. Just as Rabbis like "the aged Nissim Gerundi, Isaac ben Sheshet (Barfat), Chasdai Crescas...were (all) victimized by the conspiracy of some miserable calumniator, so an attempt was made to ruin the rabbi of Alkalea de Cinca, En-Zag Vidal of Talosa, by representations to the Queen of Aragon."<sup>54</sup> Even Maimonides, the most famous Rabbi-philosopher of his day, was continually harrassed by informers who "...appeared against him and brought him to the brink of death."<sup>55</sup> During the terrible persecutions in Majorca, 1391, Rabbi Simon Duran, whom Graetz incorrectly\* calls "the first Spanish-Jewish Rabbi to take pay," lost a portion of his large fortune. The remainder of his fortune, say Graetz, "...was sacrificed in bribing the informers who threatened to deliver him as a judaizing Christian to the Dominican Moloch."<sup>56</sup> Similarly a cloth merchant in Saragossa, named Isaac Ibn Acfora, lost his fortune because of a libelous charge of

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\*See Newman, op. cit., II, 91.

theft that was made against him, in all likelihood by an informer.<sup>57</sup>

The price paid by Rabbi Duran was nothing, however, compared to what the general Jewish population of Majorca had to pay due to an informer named Astuc Sibili. Having "lived in strife with many members of the (Jewish) community," and fearful of becoming involved in a blood accusation that was based on a rumor that Jews during Holy Week had crucified the Moorish servant of a Jew, Astruc appeared before a court composed chiefly of Dominicans and Franciscans and denounced his fellow Jews. Apparently of his own accord, he acknowledged that the servant had been crucified, and accused several Jews as being the murderers.

Although Astruc tried to keep himself clear of any complicity in the matter, he and three others were condemned to be burned at the stake unless they consented to be baptized, in which case, they would then merely be hung. Unfortunately several Jewish families, no doubt justly fearing a repetition of the earlier massacres, attempted to flee. They were pursued, found, and brought back to the city; and their flight was interpreted as proof of the guilt of the entire community. Thereafter, "the whole community, men, women, and children--two hundred in all--went over to Christianity to escape a horrible death." Astruc Sibili, the informer, had not only caused his own death, but his community's as well. As Graetz says, "Thus

ended the Jewish community of Majorca."58

The destructiveness of the informer is, in addition, readily seen in a letter written by a poet named Abraham Bederse. In his letter to the Aljama of Barcelona, Abraham pleaded with the Jewish leaders of the Barcelona community to intercede with the Bishop of Huesca, the Royal Chancellor, on behalf of his community of Perpignan:

You know (he says) the hardships  
which have overtaken us--your  
ears have heard of them and your  
eyes have seen them--when misfortune  
befell us and troubles multiplied  
because of tale-bearers. They  
continuously put our affairs to  
grief, dissipated our wealth so  
that the rich sank low, and they  
caused death wherever they had the  
power....59

Abraham's letter, written towards the end of the reign of James I (1213-1276), also reflects the already changing political and social situation of the Jews of Spain. The worst--the destruction of Jewish life and property in the uprisings of 1391--was yet to come. Nevertheless, the Dominicans and other Church Militants had already begun working toward their goal of making Spain into a strictly Catholic state.60

Characteristic of this period then, was a mounting tide of bigotry that had begun with the miracle tales which were circulated in Saragosa in 1250. These stories, long common in medieval Europe, told of Christian boys being allegedly murdered by Jews and represented the earliest

examples of blood libel on Spanish soil.<sup>61</sup>

More harmful in the long run, however, for the future of Spanish Jewry was the religious agitation carried from France into Spain by the Mendicant Friars who sought, via slander of the Jewish religion and various disputations, to convince the monarchy and the upper and lower classes that the Church should be allowed to extend its prosecution of heresy to cover the Jews.<sup>62</sup> Considering, therefore, the external threats posed by the rise of mass anti-semitism and the Church which was bent on the destruction of the Jewish community's religious individuality and at the very last, its autonomy, Abraham Newman is probably correct in stating that "inner dissension was the gravest (internal) menace that faced the (Jewish community)."<sup>63</sup>

The misfortunes that the poet Abraham Bedersi referred to were, therefore, not only serious because as he says, the informers "dissipated our wealth," but because they seriously threatened the inner security and moral of the community at the very time when it needed more unity and cohesiveness than ever before. Thus, while threatened by the external aggressive pressures of the Church and an increasingly hostile nobility, the Jewish community was at the same time victimized by the informer's destructive tongue. The community, however, suffered not only because of his denunciation and slander, but even after he had been punished, had to bear the anger of the informer's family and

friends whose desire for revenge was often implacable.\*

There is little doubt, therefore, that the informer added greatly to the insecurity and breakdown of moral experienced by the Spanish Jewish communities in the last century and a half before their expulsion. It is not at all surprising that Hasdai Crescas, in his Or Adonoi,\*\* wrote that, "...denunciators and informers who forsake their people in its hour of need have no share in the world to come."<sup>64</sup>

The informer, moreover, not only weakened the aljama's internal moral, but threatened, and in at least one case, destroyed the legal autonomy which was its "wall of protection and strength."<sup>65</sup> In Castile, Joseph Pichon, or Picho, who had been, according to Graetz, the Receiver General of taxes for King Don Henry II, was accused of being an informer and was secretly executed by his Jewish enemies with the aid of a government official.<sup>67</sup> Whether Pichon had justly deserved the death sentence was very unlikely. In any event, the new King, Don Juam I, Henry's son, was furious upon hearing of Pichon's death, not only because Pichon had been one of his father's confidants, but also because he had been executed on the day of the young King's coronation festivities. He immediately ordered the execution of those Jews involved. Even the government official, whom Graetz claims was the Chief of Police, was ordered to be put to death for his involvement in the crime. At the

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\* See p. xv.

\*\*Published in 1410.

intercession of some nobles, however, the Police Chief's life was spared and his punishment was commuted to the chopping off of one hand.

By far the most serious result of Pichon's death was, however, the fact that "the King at once deprived the Rabbis and Jewish Courts of (further)...jurisdiction in criminal cases...." And at the first meeting of the Cortes in 1380, he made this restriction a permanent statute.<sup>68</sup>

In conclusion then, the informer was not only a dangerous criminal because of the damage he caused to individual Jewish life and property, but because he continually threatened the security and moral of the Jewish community. In the words of Rabbi Jonah Gerundi, "They (the informers) ravage the Lord's vineyard;" and in addition, Gerundi was no doubt correct in stating that "they (also) beguile others into sin."<sup>69</sup>

## Chapter Three

### Informing--Motives and Causes

In discussing the various reasons that prompted Jews to inform on fellow Jews, it is first of all necessary to realize that "the informer was distinctly the unhappy product of the juderia (Jewish quarter) and of the general conditions under which Jews lived in the Middle Ages."<sup>70</sup> The general insecurity of the Jewish community, their dependency on powers other than their own for the maintenance of their very lives, their increasing seclusion and unpopularity in the waning years of their settlement in Spain; all of these conditions provided fertile ground from which sprang the specific reasons for informing.

Although Rabbi Solomon Ibn Adret stated that it was "because of the corruption of the generation" (that) several people had begun to learn (the) destructive occupation (of informing),"<sup>71</sup> his statement was, no doubt, a necessary theological rationalization. In reality, the prevalence of informers was not primarily a result of a corrupt generation, but rather was caused by the social and economic conditions common to Medieval European countries. These conditions, together with uprisings and anti-Jewish legislation, bred the internal insecurity and therefore "inner dissension" that encouraged informers to ply their trade.

Usually informing was an indirect result of anti-Jewish



legislation, but occasionally the legislation directly encouraged the informing. In October of 1408, the regents of the infant King, John II, issued a decree that in large part revived the earlier anti-Jewish decrees of Alfonso the Wise:

It is my pleasure that henceforth no Jew of whatever station or rank shall presume to farm any toll, tax or duty which the subjects of my kingdom have to pay within a year from the date hereof, or hereafter annually, whether it be the revenue of excises, monedas, tithes, tolls or any other tax; neither shall they be inspectors, collectors or receivers of the same; nor shall they be security, publicly or privately, for any person connected therewith; nor shall they themselves farm any tithes or other temporal or spiritual dues, belonging to archbishops, bishops or masters of the military orders or any other lords who receive dues from their vassals or subjects. Nor shall they be pledgers, collectors or receivers of those dues and revenues.<sup>72</sup>

Any Jew who performed these illegal functions was to be penalized by twice the sum of the revenue he had received; and if he did not possess the amount, his property was to be confiscated and he was to receive fifty lashes.<sup>73</sup> Further, to "put teeth" into the law the edict also stated that "the informer and the court of law concerned in a case should secure each one-third of the confiscated estates."<sup>74</sup>

Historically, and this is no less true in our own day, the motive for informing has been for either financial gain, status, and/or in order to gain revenge. This was also true

in the Spanish juderia. We have already referred to one apostate who extorted large sums of money from the Jewish community by threats of further denunciation, p. 37, and have spoken of Simon Duran, p. 14, who spent a good deal of money to bribe various informers. In the case of Joseph Pichon, p. 18, there is little doubt that the motive for his informing was vengeance. While still in the favor of Don Henry II, he had been accused of embezzlement by jealous Jewish courtiers. He was imprisoned by the King, and then paid a fine of 40,000 doubloons. A few years later he sought revenge by accusing his enemies of a crime. His enemies, in turn, used this act of vengeance to label Joseph Pichon as an informer, for which he was killed.<sup>75</sup>

Another situation that often precipitated denunciation and informing was the appearance of Jews in Christian law courts. It wasn't until the 13th Century, with the establishment of the Lerida Ordinances, that the Jewish communities forbade Jewish litigants from appearing in Christian law courts.<sup>76</sup> Even in those Jewish communities that had their own legal jurisdiction, individuals were still at liberty to bring their disputes before the civil law courts. This obviously implicated the two parties involved and the community in useless and unnecessary heavy expenses.\* In Castille, for example, a debtor charged with default had to pay to the Crown a sum amounting to one-third

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\*See p. 5.

of his debt as a fine for damages that resulted from bringing a case into a civil court.<sup>77</sup>

The danger in bringing a case before a civil court was that there always existed the possibility of one party denouncing the other, either directly or indirectly, in the course of the arguments. Thus, what began as merely civil litigation, all too often degenerated into unjustified denunciation with all its attendant evils.<sup>78</sup>

The Inquisition, of course, aggravated and accentuated all these basic reasons for informing. As the political and social situation of the Jews worsened, informers were bound to increase, and their increase had a deleterious effect upon the moral status of a large number of Jews, both in Aragon and Castile.<sup>79</sup> Thus, for example, we have referred to the notorious Astruc Sibili, p. 15, whose motive for informing was evidently caused by a sense of fear that had been aroused by an accusation of blood libel, and a feeling of dislike for the Jewish community.

The informing of Astruc Sibili was only indirectly caused by the Inquisition. However, in a great number of other cases of informing, the Inquisition was directly involved because it either encouraged informing, or actually commanded, via the Monarchy, that Jews and Apostates inform. Thus Yitzhak Baer tells us that in the late 1490's the Inquisition charged the Jewish Community of Huesca, in Aragon, with having welcomed converts and penitents into its midst,

and, in particular, that some twenty-five years previously it had arranged the circumcision of a converso, named Juan de Ciudad. "How the Inquisition learned about (this) incident," writes Baer, "is not clear; there were, however, no lack of informers in the town."<sup>80</sup> "A certain apostate Jew, for example, was said to have threatened--after the Jews had tried to have him consigned to the flames--that he would roast several of them by various means and would burn the whole community."<sup>81</sup>

From the day that the Inquisition was established until the Edict of Expulsion was issued, all Jews who were aware of Jewish practices by Conversos were duty bound on pain of excommunication, to testify to that effect before the courts of the Inquisition.<sup>82</sup> An anonymous Jewish chronicler relates that:

Before the expulsion, the King of Spain had stretched forth his hand against the Marranos, and investigated their secrets, because they observed part of the laws secretly, and he ordered the Jews in every city to proclaim in the synagogues that whoever knew of any Marrano who gave oil to the lighting of the synagogue, or money for any holy purpose, must reveal his name on penalty of excommunication. Thus the preachers made proclamation in the synagogues in the presence of the royal officials, and they adjured the people with formula: "If he did not utter it..." and with the order of the king to inform against them; and they decreed the ban against everybody who would not give information. Oh, how that sword of excommunication wrought

havoc among the Spanish Jews, who wherever they turned found hardship and misfortune.<sup>83</sup>

Although this kind of forced-informing does not fit into our definition of informing or denunciation precisely because the information was obtained through coercion, it nevertheless has been dealt with because it shows how the Inquisition was so often, in the late period of the Juderia, a direct cause of informing. Further, though forced-informing is not informing in the usual sense of the word, it's effect--the destruction of life and property and the demoralization of the Jewish community--was, sad to say, exactly the same. It was obviously with a profound feeling of tragedy that Graetz described for us the awful implications of the edict that turned a large portion of the Jewish community into informers:

In the name of God they were asked to become accusers and betrayers-- the friend of his friend, the brother of his brother, and the son of his father. Terror, and the assurance that the betrayed should never know the names of their betrayers, loosed the tongues of the weak-hearted, and the tribunal soon had a long list of heretics upon whom to carry out its bloody work.

.....  
It was a summons to the most hateful vices of mankind to become allies of the court: to malice, hatred and revenge, to sate themselves by treachery; to greed, to enrich itself; and to superstition, to gain salvation by betrayal.<sup>84</sup>

It is a fact of history, however, that all too often

"one transgression encourages another," and so too in the case of informing. Many conversos, motivated by the desire for revenge against those who had informed on them, pursued those guilty of informing and delivered them over to the Inquisition--"Turning," in Graetz's words, "the tool against its makers."<sup>85</sup>

## Chapter Four

### King's Involvement and Communal Autonomy

One of the unusual aspects of the Jewish community in Spain was the considerable involvement of the King and the royal family in the life of their Jewish subjects. Of course, the royal family's interest was largely motivated by economic considerations. Thus Pedro III, of Castile, ordered the Jewish community of his kingdom, to produce a complete record of the books, receipts and tax rolls, covering a period of five years. These records then motivated him to conduct an investigation of the officials and the government of the Jewish communities.<sup>86</sup>

The King also dealt with disputes that arose with the Juderia, and if he could not deal with a situation personally, he referred it either to his advisers, or to well-known Jewish personages.<sup>87</sup> Occasionally, the King's interest was even directed to something of a cultural or religious nature. Abraham Neuman writes that the whole Spanish court, including the ladies of the court, "showed surprising interest in the lot of the Hazzan, sometimes to the chagrin of the congregation."<sup>88</sup> Further, Neuman states that the honor of being called to the Torah on a religious holiday for an a'liyah had become so important in Spain, that on at least one occasion when the possessor of the honor died without a son to inherit it, Pedro IV claimed The a'liyah for his personal physician.<sup>89</sup>

The King, moreover, was particularly willing to give

his powerful support to the Jewish community for its war against informers. It was, of course, to the King's interest to encourage the prosecution of any criminal within the juderia, and the informer was, in this respect, certainly no exception. In fact, a price was set upon the head of every informer who was convicted and executed. This blood money was paid by the aljama to the royal treasury, and in addition the property of the victim was usually confiscated to the Crown.<sup>90</sup> The amount of money paid to the King was evidently considerable, for we know that in 1408 King Martin of Catalonia, waived a fee of fifty pounds which was owed to him by the Jewish community<sup>91</sup> of Lerida for its execution of an informer. Although the Juderia often had to pay enormous sums in order to maintain the Kings support for its prosecution and conviction of the informer,<sup>92</sup> the King also recognized the incendiary character of the informer and the menace that he represented to the community.<sup>93</sup>

What makes this willingness on the part of the King to help the Jewish community so surprising is that often the informer's denunciation served the interests of the State and the general Christian population. Thus in the case of the informer, Astruc de Porta, there is little doubt that the information given by de Porta was of interest to the King and other nobles.\* Nevertheless Pedro III not only saw to it that Astruc was tried and sentenced, but the

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\*See R. Adret's responsum on the informer, Astruc de Porta: Appendix pp. xii-xx.



King was responsible for the severe punishment that Astruc received.

It is not within the purview of this thesis to discuss the various reasons why the rulers of Spain granted so much more autonomy to their Jewish communities than did other European rulers. Nevertheless, the fact is that the autonomy of the Jewish community was so real that some have referred to it as "a fully constituted municipality" in its own right.<sup>94</sup>

Among other powers of self government, the aljama, Jewish community, also possessed its own legal jurisdiction. Though, as we shall see, the extent of its jurisdiction was limited, and varied in the different kingdoms and communities. In some communities the King or the Baron would appoint bailiffs to assist the Jewish tribunal in its administration of justice. These bailiffs or "merinos," however, executed justice, inflicted penalties, and exacted fines according to the instruction of the Beth-Din (Jewish Court).<sup>95</sup>

The Jewish Courts usually consisted of one or more Berurim (Judges), though it was also common for three judges to act as a kind of executive council. In Aragon, however, at least in the 14th century, the power of judging was in the hands of twenty notables who determined the punishment of all recalcitrants and informers.<sup>97</sup>

Communities like Lerida, Barcelona, Perpignan, and

Sarogossa all had their own courts. These courts could adjudicate criminal and civil cases in which Jews were involved as either informers or litigants, and could impose the proper penalty.<sup>96</sup> In Sarogosa the Jews could even adjudicate civil cases between Jews and non-Jews, although the non-Jew did not have to submit to the Court's decision unless he had previously agreed to do so before two witnesses in the presence of the civil town clerk.<sup>98</sup>

The main task of these courts was to maintain religious discipline and to prosecute informers. Thus, although there were a great many dissimilarities in the kinds of jurisdiction that was granted to the Jews of Aragon, Valencia, Castile, and later Catalonia and Majoria, all of them possessed at the very minimum the power to prosecute the informer.

Of all the courts in Spain, it was the Jewish courts of Castille and Aragon that evidently possessed the widest range of authority, even though the monarchs exercised a large amount of supervisory control. By the fourteenth century Castillian powers of criminal jurisdiction exceeded those granted to Jews in any other country in Europe, outside of Aragon. They not only possessed the authority to impose a sentence of death on informers, but on murderers and adulterers as well.<sup>100</sup>

The awesome judicial power of the courts of Castille is no where better exemplified than in the communal

statutes that were passed in Valladolid in 1432. It was there, in the lower northern part of Castille, that Don Abraham Bienveniste, agent of John II and Chief Rabbi (Rab de la Corte), convoked the trustees and scholars of the Castillian communities "and a few good men who frequent the court of our lord the King" to a communal synod."<sup>101</sup> The third section of these statutes specifically deals with denunciation and slander, and begins first of all by explaining why it was necessary to re-enact laws of this subject:

Since it is the desire and the merciful will of our king...that civil and criminal cases shall be tried under the laws of the Jews, and since he commanded in his charter of privileges that the honorable Rabbi Don Abraham shall try such cases, he and the judges whom he may appoint in his stead, great benefits will accrue to the communities from this: first, the Jews will thereby observe their Torah; second, they will relieve themselves of the many costs and losses which they incur when they go to the Gentile courts; third, they will benefit because the Gentile judges--though they are very learned and upright men--are not familiar enough with our laws and judgments to be experts and authorities on these matters; and fourth, because the lords, judges and "alcaldes" are thereby put to much trouble; and the communities of Castille have at all times had statutes and regulations in the matters in question. Moreover, since our Lord the King has commanded, in the above-mentioned privilege scroll, his judges and magistrates not to interfere in litigation between one Jew and another...<sup>102</sup>

This introduction is followed by the text of the

statutes themselves:

- 1) No Jew or Jewess was permitted to summon another before a secular or ecclesiastical judge who was "outside our Torah," i.e. not of our faith, unless it was a matter of taxes or other rights that were owed to the King, Queen, Church or lord of the locality.<sup>103</sup> If, however, the defendant was a violent man who did not recognize the jurisdiction of a Jewish court, the judges could permit the plaintiff to summon him to appear before a Gentile court;<sup>104</sup>
- 2) No Jew may defame another Jew or Jewess in such a way that might endanger him if the matter were known to Christians; and even if there was no Christian present, or no one was injured, this was still considered a crime;
- 3) No Jew was permitted to hand over (moser) the person or the money of a Jew or a Jewess to a Christian man or woman.<sup>105</sup>

In formulating these statutes on the informer, the Jewish representatives very wisely avoided the extremely difficult and complicated problem of prosecuting an informer whose information might supposedly be in the King's interest:

.....punishment shall not apply to one who gives information to our lord, the King, for his benefit, even though (it might) harm some Jew. Such a one is not to be called either a defamer or an informer since it is the duty of all Jews to look after the service of the King.<sup>106</sup>

The confidence which these representatives had in the

King, and in their right to protect themselves via the King's law is amazing. For even though, as we have seen, they made an exception in the case of honest information being passed on to the King, they permitted no further invasion of their autonomy and insisted on their right to prosecute a lying informer even if his informing was for the King's benefit:

If, however, the informer to the King makes false accusations against another Jew, he is to be punished severely because he lied to the King, and he is a false witness and a defamer. For this reason every possible punishment should be inflicted on him.<sup>107</sup>

Lastly, what makes these Castillian statutes of particular interest is that they were approved by John II a mere twenty years after similar laws against the informer had been revoked during the persecutions from 1380-1412; and just sixty years before the final expulsion of Jews from Spain. That the Jewish community could be allowed such community and judicial autonomy in 1432, as represented by these statutes, and be expelled in 1492, shows the incredibly rapid decline of the Jew in 15th Century Spain.

In Aragon, the aljama of Calatayud was granted jurisdiction over the informer as early as 1229 by James I, and confirmed by James II in 1305.<sup>108</sup> In addition to this early authorization for criminal jurisdiction, James I provided the Calatayud community, and evidently other

communities in Aragon with some very new and important rights for the defendant who was brought to court due to an informer's denunciation. These rights included: The keeping of a written record of the court proceedings, the right of defense counsel, liability of the accuser and the informer to retaliation (law of talio), written publication of testimony, limitation of torture, and the right of appeal to the King's tribunal.<sup>109</sup> It was due to these laws that the poet Bedersi (p. 16) expressed the hope that the informer would now think twice about informing before committing his crime:

.....But one day, God, who did not want us to perish but rather to thrive to our work, inspired our great and glorious lord, the King (James I) to regard our affliction (caused by the informer) and take pity on us, and in the abundance of his grace to grant us the privilege of "talio," whereon we hung our weapons, our bow and our sword.... This (law) will shut the mouths of those who would incite against us. This privilege will prevail against all trouble, and every tale-bearer will no longer tread an easy path. This will cut off every glib lip; this will gouge out every spying eye.<sup>110</sup>

One of the important facts that must be considered when speaking of Jewish judicial autonomy in Spain, and therefore the informer, is that the Spanish Jewish communities did not possess the kind of tight and disciplined inter-communal organization that existed in the Jewish communities north of the Pyrenees. The reasons for this

difference were numerous: The Jews in Northern Europe could not possibly keep in close contact with the Geonim, and tended, therefore, to develop an autonomy that was unknown in the South, which led to a tighter communal organization than that which existed in Spain. Also, even though the Spanish Jewish community had many great leaders like Samuel Ibn Nagdela, Hasdai Ibn Shaprut, and Don Abraham Bienveniste, these men no doubt minimized the opportunity to come together with the Jews of other monarchies in Spain, because such unity might encourage accusations of non-patriatism within their own individual countries. Finally, the almost constant struggle between the Christians and Islamites in Spain made it, no doubt, very difficult for any inter-communal union to take place.<sup>111</sup>

Whatever the causes, the fact remains that while R. Gershom, R. Tam, and others were attempting to construct a well-organized French and German Jewish community, no such effort was made in Spain until 1354,<sup>112</sup> when the Jewish communities of Spain held, to our knowledge, their only Jewish inter-communal conference. This conference, however did not even include, according to R. Isaac ben Sheshet Barfat, the participation of Castille. The Vallodolid Conference of 1432, to which we have previously referred, only involved the communities within the territory of Castille.

We cannot be sure what finally caused the Jewish

communities of Catalonia, Valencia, and Aragon to send their representatives\* to Barcelona for this conference in 1354. It is likely, however, that the meeting was in response to the first large scale anti-Jewish disorders that occurred in Aragon, as a result of the Black Plague of 1348. Some of the communal statutes agreed upon in Barcelona refer to anti-Jewish trials and to the torture of Jews in an effort to obtain confessions to false charges.<sup>114</sup> At this conference in Barcelona, representatives of the Spanish communities, finally, for the first time, agreed that the extirpation of informers was public business and pledged themselves to supply the funds necessary to carry out the provisions agreed upon.<sup>115</sup> For the first time then, the informer was recognized by the general Spanish Jewish community as a public threat, and the communities involved joined together to do away with this public enemy.

.....Furthermore it was agreed, that while it was impossible to carry out Jewish law, especially where it involved capital punishment, still it was well to "cleanse away every Malshin and informer who will be found in any one of the cities or to pour out evil on him in accordance with his wickedness in the judgment of the Commissioners and to make him known as a Malshin and drive him forth. Provided however, that the defamation is in regard to a public matter, from which there may result, Heaven forbid, harm to all our people, but not if it is merely a private de-

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\*R. Moses Nathan of Tarrega, Cresques Solomon of Barcelona, and Judah Eleazar of Valencia.



famation from which no harm can result."116

The crime of informing here refers to information that is likely to threaten the community, and does not refer to private quarrels between individuals.

It is of interest to note, further, that though no representative of the Jewish community of Majorca is mentioned as having attended the Barcelona conference of 1354 in either Barfat's responsa or in the Takkanah itself, the Jews of Majorca, according to the Jewish Encyclopedia, also adopted the above resolutions. It is nevertheless quite fantastic for the Jewish Encyclopedia to also maintain "that as a result of the representations of the leader of the community (of Majorca), King Sancho in 1319 issued an order banishing forever from the island all Jews who proved to be informers or disturbers of the place."117 That a King Sancho in 1319 issued such an order is a possibility, but that his order had anything to do with the 1354 conference is rather far-fetched, since in 1319 the conference was still thirty-five years away!

Finally, there is little doubt that in his responsa, R. Isaac ben Sheshet Barfat (1326-1408) is referring to these communal statutes of 1354 when he writes:

.....that it was (the fulfillment) of a great commandment when all of the holy communities of Spain--Aragon, Valencia, and Catalonia--agreed to form a (communal) pact to eradicate informers from the world, and to fulfill among themselves those laws

that will destroy (this) evil from  
their midst.<sup>118</sup>

The fact that there was only one such conference as the Barcelona Conference in the history of the Spanish Jewish community, and that its effect was limited and temporary, further substantiates the lack of any uniform legal jurisdiction in regards to the informer. Even within the same kingdom the various aljamas dealt with him each in their own way, and smaller communities often possessed, due to the King's favor, broader and more detailed privileges.<sup>119</sup>

There were within kingdoms aljamas that had the privilege to mete out capital punishment to various criminals including the informer, and there were other communities that did not have this broad jurisdiction. Some communities were denied the right to try capital cases, yet were permitted to deal summarily with informers.<sup>120</sup> In Aragon, prior to 1377, Calatayud, Alcolea, and Jativa could impose the death penalty on criminals and informers; while Saragosa, Teruel, Majorca, and Huesca had this jurisdiction only over informers.<sup>121</sup> Even though the privileges accorded to the aljama of Valencia did not include capital punishment or corporal punishment, as seen by the Responsa of R. Barfat,<sup>122</sup> it is quite probable that Valencia and other communities like her could petition the King for his royal consent to sentence an informer to death. Castille, on the other hand, could evidently sentence a criminal to death even

without special royal permission.<sup>123</sup> It is revealing to note that even in Aragon where the authorities did possess the right to inflict capital punishment, they nevertheless spoke with the King to make sure of their authority before they sentenced the informer, Vidalon de Porta, to death.\*

The powers of jurisdiction that were granted to Huesca by John I were extremely broad. The official heads of the aljama and six additional men who were appointed to try informers, could do so "with or without published evidence, with or without counsel for the defense...in accordance with civil, canonical or Jewish law..." or they could, in fact, ignore these law codes entirely.<sup>124</sup> The sentences imposed by the judges of Huesca on the informer could not be appealed, and the royal officials were required to put them into effect immediately. Once the informer had been punished, even the King himself was not entitled to question whether or not there had been a perversion of justice. The accused could not make use of any document which might suspend the proceedings, and any person who presented such a document on his behalf was liable to death by hanging.<sup>125</sup>

Six years earlier, in 1377, all the Jewish communities of Aragon were granted laws of a similarly incredible nature: The heads and judges of the aljama were permitted to try informers orally or in writing, and could sentence them to exile, mutilation, or death at their discretion.

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\*See p. xiii.

They could impose such sentences "with or without trial, with or without witnesses, solely on circumstantial evidence which they considered sufficient on the basis of the judgment of a Jewish 'doctor' or 'doctors,' scholar or scholars, who had reviewed this matter and handed down a decision." The sentence had to be carried out within two days, with no appeal or postponement allowed.<sup>126</sup>

Generally speaking, therefore, these far reaching laws and criminal privileges encouraged each and every community to act towards the informer strictly as it saw fit. Fortunately the monarchy, no doubt with the advice of Jewish leaders, recognized how unwise it was to entrust these grave decisions to each and every aljama, and to the possible prejudice of its leaders. In September, 1390, Queen Violante, in an attempt to unify the Judicial procedure, appointed R. Hasdai Crescas to judge all cases involving informers in the kingdom of Aragon with authority to impose penalties, including capital punishment.<sup>127</sup>

Nevertheless, this appointment did not entirely put an end to the rights of individual jurisdiction by the various communities.<sup>128</sup> In fact, their powers of jurisdiction continued to be both varied and substantial until the years immediately preceding the expulsion.

## Chapter Five

### Legal Status

In discussing the informer's legal status, it is essential to understand that his status was based on opinion and rulings which reflected the deep fear that the medieval community felt towards him. As we have pointed out, this fear of the informer was caused by the realization that his informing could likely result in persecution and exploitation of Jews at the hands of the gentile majorities.

"...When a Jew falls into the clutches of Gentiles, his life as well as his property is in jeopardy; he can expect from them neither pity, mercy, nor restraint. The Gentiles are happy to have a Jew in their power; and especially when commissioned by another Jew, their cruelty is boundless. They consider it entirely legitimate and even praiseworthy to rob, maim, and even murder a Jew. Therefore, a person who delivers a fellow Jew into the hands of Gentiles is directly responsible for all their cruelties..."<sup>129</sup>

The Jewish community reacted to informers as one must act in an emergency.<sup>130</sup> His legal status reflects this sense of emergency, for in his case the customary routes of dealing with a Jewish criminal were either abrogated or restricted. Even the definition of an established informer as a legal term is posited both by legal precedent and on the basis of necessity. An established informer according to R. Adret, "Is one who is known to be such by the people, for (there is) no (longer) a court of twenty-three (to determine via the presentation of evidence before

it) who is an established informer....\*\* The informer is also, however, someone in a legal sense, who "has on at least three occasions informed to violent people."\*\*\*

It is especially in the area of legal procedure that one can see how the informer's criminal status was determined by necessity. Hence both Rabbis Adret, and Asher b. Yechiel wrote that a confirmed informer may be, if warrented by necessity, punished or killed at any time, even without a court trial.\*\*\*

Even in those cases, however, where a court trial was necessary, virtually all of the usually required procedures were suspended.<sup>131</sup> Contrary to the generally accepted Talmudic rule that witnesses should be heard only in the presence of the person against whom they were testifying, the Rabbis in Spain permitted the trial of the informer in absentia.\*\*\*<sup>132</sup> This was even more surprising when one realizes that in Aragon, according to R. Barfat, there was a government proviso to the effect that no investigation of a charge of informing was to be held unless the accused was there to face his accuser, and to hear the charges made against him.<sup>133</sup> Further, according to the decrees of Pedro IV, "The court (also) had to provide the accused with a copy of the minutes of the inquiry."<sup>134</sup> R. Barfat evidently felt

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\* See p. xx.

\*\* See pp. vi, and vii.

\*\*\* See pp. iii, iv, x, xi, and xvi.

\*\*\*\* See pp. iii, iv, x, xi, and xvi.

that an inquiry should be held unless some specific danger<sup>135</sup> justified its absence; or unless this was not the first time the person had been accused of informing, and/or he was known as a "man of violence," i.e. not ordinarily amenable to communal discipline.<sup>136</sup>

The act of informing is by its nature secretive. The informer conspires with non-Jews by telling them something that they obviously want to know. This realization on the part of the Rabbis, that informers "are drawn upon by the gentiles for their benefit"\* caused them to abrogate another well-established legal principle. Jewish criminal procedure generally requires an unusually detailed inquiry into the witnesses' recollection of the time, place, and all the fact and circumstances surrounding the crime. The Hebrew words for this procedure are "Drisha" and "Chakirah," investigation and examination.<sup>137</sup> In the case of the informer, however, these rules were ignored by some of the Rabbis: Thus Asher b. Yechiel wrote, "There is no need to hear testimony, (or to conduct an inquiry) for were it necessary to hear testimony..., and to examine and investigate his case, then he would never be sentenced because he would be saved by the gentiles."\*\*

It is important to realize, however, that R. Asher was not completely opposed to the presentation of testimony.

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\* See p. vi.

\*\* See p. vi.

He was, rather, just selective as to when testimony should be accepted. If the testimony that had been gathered was damaging enough to convict the informer, then it should be used. If, however, there was not sufficient testimony, it could be ignored and the confirmed informer could still be killed.\* In several of his responsa therefore testimony was gathered. In fact in one of his responsa he even states that he "has not (yet) received (the) testimony..." on a particular case, but that "when the matter has been clarified for us--(when testimony has been received--then) it is permitted to punish him.\*\* Obviously, however, there were cases, due to circumstances of time and place, where the Jewish community was not able to do away with testimony. In our responsum of R. Adret, the community was not only ordered to gather testimony by the King, but "he commanded all communities to pronounce the ban on whoever knew of testimony" and did not come forward with it.\*\*\*

One of the most unusual requirements of Jewish law is that in order to obtain a conviction or legally punish a criminal, it has to be shown that the accused received "hatra'ah," a legal warning,<sup>138</sup> immediately prior to the commission of the criminal act,\*\*\*\* telling him of the

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\* See p. xii.

\*\* See p. x.

\*\*\* See p. xiv.

\*\*\*\* See p. iv ("Ha-gozel Batra," p. 117a).



grave consequences of his act.<sup>139</sup> The rabbis of the medieval period who lived in Spain, and who viewed informing as an extraordinary event, held that warning is not necessarily a prerequisite for the conviction of an informer. Rabbis, however, like Maimonides, Joseph Caro, and Duran, who did not live the major part of their lives in Spain, all held that one must forewarn the informer.<sup>140</sup> Duran provides us with an interesting reason for requiring a warning. He states that Ha'tarah is necessary in order to ascertain whether the man is really determined to inform, or is merely moved by anger and is therefore a "Shogeg," one who is not acting willfully.<sup>141</sup>

R. Asher b. Yechiel, R. Barfat, and probably R. Adret, though we can't be sure, disagreed with the previous three Rabbis. R. Barfat, though agreeing that one should give Ha'tarah if one can, recognized that there may be no opportunity to warn the informer; and, therefore, it may be dispensed with under those circumstances. R. Asher b. Yechiel was more extreme, and held that it was not necessary,<sup>142</sup> although he does refer in his responsa to informers being warned. According to a decree of Pedro IV, the court had to designate two periods of thirty days each during which the accused had the right to present his refutations (defensiones).<sup>143</sup> Though there is no evidence in R. Asher's responsa of informers having this right, it is clear in Adret's responsum that not only did Vidalon de Porta argue

for further claims of innocence,\* but after he was executed his relatives had the right to obtain a mandate for appeal from the King.\*

R. Barfat, however, favored a different approach to the defendant's right to be heard. Instead of appeal, he urged the advisability of granting the accused a preliminary hearing before admitting any evidence against him.<sup>144</sup> What was particularly unusual about R. Barfat's innovation was that usually in Jewish law, the testimony of the accused was not admissible, because his guilt or innocence was established solely by the evidence given by the witnesses.<sup>145</sup> However, R. Barfat was evidently motivated by the thought that since Jews tried such cases by government permission, they must reach decisions that would be understood by the government. The implication is that the authorities would not comprehend a court that did not accept the testimony of the accused.<sup>146</sup>

R. Barfat further increased the legal rights of the accused informer by ruling that he was entitled to a legal adviser, and that it was the duty of the community to furnish him with a representative or counsel to argue his case.<sup>147</sup> It is likely, however, that R. Barfat (1326-1408) only formalized, by his ruling, a custom that was already being practiced. R. Adret (1235-1310) wrote in his responsum that he was sending to the Rabbis of Northern France "the depositions (of the various witnesses) who had

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\* See pp. xv and xiv respectively.

testified; some of whom (testified) in his presence, and others (who had testified) in the presence of he who (the accused) had appointed to argue (the case)" for him.\*

In discussing the informer's legal status it is necessary to understand that the main rational for the suspension of the usual judicial procedures was based on the practical necessity of getting the informer convicted so that there would be no more victims of his denunciation in the future. The Rabbis and courts, therefore, accepted very few extenuating circumstances. We have already mentioned (p. 13) that "filial indignation" was no excuse for informing, and that a woman informer was of the same legal status as a man (p. 32). Thus in a case where a claimant suffered a financial loss due to a woman informer, he was given the right to be reimbursed from her personal estate, and her husband could not interfere. Further, if a woman informer died during the lifetime of her husband, the latter was deprived of inheriting the entire estate because it properly went to the party who had been affected by her informing.<sup>148</sup> Even heirs were liable to the claimant, if the death of the informer occurred after judgment in favor of the plaintiff had been rendered by the court.<sup>149</sup> In most cases, however, heirs were not responsible for their father's crime of informing and were not subject to the payment of any fines that he had incurred.<sup>150</sup> Maimonides

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\* See p. xvi.

even ruled that it was forbidden to destroy the informer's property "...because his property belongs to his heirs."\*

The only extenuating circumstances that were accepted as not informing, involved one whose informing had been extracted under compulsion or duress by Gentiles,<sup>151</sup> or if it was evident that he did not intend any harm.<sup>152</sup>

R. Solomon b. Adret also held that one could seek the aid of secular courts to prevent another from not paying his just debts, without being classified as an informer.<sup>153</sup> Also, of course, the delivery of an informer to the authorities was not, in itself, an act of informing.<sup>154</sup> Lastly, as we have previously mentioned (p. 32), according to the Castillian conference of 1432, one was not classified an informer if he gave correct information to the court or the church, if it was for their benefit.

On the whole, however, the truth of one's informing was not as important to the Rabbis as were the consequences of the informing. In conclusion we would have to agree with Professor Vishny that to a large extent the legal status of the informer was based on "rabbinic decisions and communal decrees (which) were designed to protect against any informing, even truthful,"<sup>155</sup> no matter what the cost.

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\* See p. xx.

## Chapter Six

### Punishment and Rationale

The Rabbis of Spain, as does society in general, viewed punishment as an effective way of dealing with criminals within their midst. R. Adret, for example, wrote to the Rabbis of Northern France:

It is incumbent upon you to construct a (protective fence) around the lion (i.e. the informer) lest he come and cause both our land and your's to become a bitter and plundered house. For if we don't confront them with (both) shepherds and (their) staffs, (these) hyenas will (surely) increase.\*

The various tools used to combat the informer were varied and numerous, and his punishment so common, that Maimonides stated in his Code of Laws that "In the cities of the West the punishment of informers is a matter of daily occurrence."<sup>156</sup>

In one of his responsa, R. Barfat says, "It has been the custom in the communities of Aragon, Valencia, and Catalonia to proceed with severity against informers."<sup>157</sup> The punishment of the informer was evidently considerably more severe in Spain than in Europe. However, in all Jewish communities it was graded according to the degree of guilt, and according to the amount of danger the authorities felt the informer represented.<sup>158</sup> At the rabbinical synod of Mayence, in Germany, 1223, the Rabbis formulated a graduation of penalties for informers as follows: 1) He was

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\* See p. xvi.

compelled to make good the loss he had caused, 2) If he was a landlord, he not only lost the right to prevent the admission of prospective residents, but even his own right of domicile, hazakah, 3) He was to be disqualified as a witness, 4) His oath was held to be untrustworthy, and 5) Until amends were made, he was under excommunication of all communities.<sup>159</sup>

In Spain, according to the Lerida statutes,\* the penalties for informing began with a minimum fine of five hundred maravedis,<sup>160\*\*</sup> though R. Barfat in one responsum stated that the fine was a litre of gold.<sup>161</sup> The berurim, community leaders, could if they agreed inflict corporal punishment, and a sentence of death. Even in a case where a charge of denunciation had been dismissed by the court, the accused was subject to a middle penalty, which was left entirely to the discretion of the berurim.<sup>162</sup>

The Jewish community of Tudela, the largest in Naverre, in 1363 passed a resolution--which was reviewed fifty years later for a further period of fifty years--which reflects similar severity: Any person, whether Jew or Jewess, convicted of informing against a congregation or any of its members was to be excommunicated in all the synagogues of the city for a period of fifty years, during which time he or she was not to be tolerated within the city proper. The informer was also to pay into the public treasury a fine of

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\* See p.22.

\*\*A copper coin, worth about one-third of a cent.

one thousand gold maravedis.<sup>163</sup>

We have previously discussed<sup>\*</sup> the legal jurisdiction that was granted to the Jewish Courts of Castille. These Valladolid Statutes also show that the Jews of Spain possessed, even as late as 1432, incredibly broad powers of punishment over the informer:

Any Jew or Jewess defaming another Jew or Jewess in such a way that harm may result to the Jew or Jewess, even though no Gentile is present, shall be fined for each time he or she used defamatory language, 100 maravedis, (half to be paid to charity and half to whomever the judges designate), and shall be imprisoned for ten days. If any harm results from the defamation, the guilty one shall be compelled to pay in addition to the above, all the damages that have been suffered because of the defamation. If the defamatory speech was made in the presence of Gentiles the punishment is imprisonment for twenty days and a fine of 200 maravedis. If any harm results in this case the defamer shall be compelled in addition to undergo the said punishments, to make recompense for all damage suffered through the defamation and he shall be excommunicated for ten days. If any bodily harm results to the defamed because of the words of the defamer, the offender shall receive corporal punishment to the extent ordered by the Rabbi.

If any Jew or Jewess is alleged to have caused the apprehension of another or the seizure of his property by some Gentile man or woman, but the matter is not substantiated by witnesses being merely supported by the weight of circumstantial evidence, the judge shall

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<sup>\*</sup>See pp. 30-1.

have the duty with the counsel of the Rabbi, to order the defamer apprehended and punished bodily in accordance with what seems proper to the scholars.<sup>164</sup>

It is of interest to note that Pedro IV of Aragon, in a decree fifty-five years earlier than the above statute, defined what were "proper" categories of corporal punishment, as death, the amputation of limbs, or "any other punishment not inconsistent with reason or law."<sup>165</sup> The remaining punishments mentioned in the Valladolid Statutes are the most severe of any meted out to informers in Spain, and for that matter, probably anywhere else as well.

If the alleged defamation is confirmed by one witness as well as incriminating circumstances, or if he confesses to it, there shall be branded on his brow the word malshin.

If the crime is proven through the testimony of two witnesses, the defamed shall receive for the first offense one hundred lashes, and be driven from the city in accordance with the decision of the Rabbi and the judges and the leaders of the city above-mentioned. If he is guilty of a third offense, as established by the testimony of two proper witnesses, the Rabbi of the Court may in accordance with Jewish law, order his death through the judiciary of our lord, the King.

If he cannot be put to death, or branded on the brow, or flogged in the above-mentioned manner, they shall denounce him in every place as an informer and a defamer so that all Jews may keep aloof from him. He shall be declared in all Israel as the "Man of Belial, the man of blood," no one shall permit him to



marry his daughter nor shall he be accepted in the Congregation of Israel for any religious matter so long as he resists the execution of justice as here ordained.<sup>166</sup>

In all likelihood, however, the Jewish community generally found such extreme punishments as branding the informer on the brow to be repugnant; and, therefore, Rabbi Finkelstein is no doubt correct in stating that, "It does not seem (likely) that these Takkanot were ever put into effect."<sup>167</sup>

Nevertheless, many of the Jewish communities of Spain as early as 1229 possessed the power of capital punishment, as can be seen by the numerous examples already cited. R. Adret wrote, "And so the practice of putting the confirmed informer to death with our hands (in a direct manner) is common in many places in Israel...and similarly in... Castille...Aragon...and in Catalonia itself, in the previous generation (and) in our generation, there have been instances in which informers have been killed."\* Rabbi Isidore Epstein believes that "the words 'with our own hands' indicate that the Jews, fearless of all consequences would execute these criminals."<sup>168</sup>

It would be more factual, however, to say that though on rare occasions Jews executed informers, they almost always turned the informer, in the words of Maimonides, over to the hand of the Gentiles (" בְּיַד גֵּוֹי ").<sup>169</sup> Professor Newman writes that Jews resorted to the arm of the central government from the bailiff to the local

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\*See p. xx.

acalde (mayor), whom the King charged with the duty of execution. "Nor is there reference either in the Hebrew or the state documents to a Jewish executioner."<sup>170</sup>

According to a privilege granted to the Jews of Saragossa in 1346, a convicted informer could be sentenced to exile, flagellation, lapidation, or death, and unlike Villadon de Porta,<sup>\*</sup> the accused had no right to ask for a special pardon from the King. In fact, if the accused attempted to obtain a pardon, his petition was "tantamount to a declaration of guilt, and he was executed by the royal officials forthwith, either by hanging or crucifixion, without waiting for a formal request from the Jewish authorities."<sup>171</sup> It is doubtful, however, whether the punishment for attempting to gain a pardon was ever carried out; although forty-four years earlier, in 1302, James II had ordered the hanging of a Jewish informer, but no other details of the case are available.<sup>172</sup>

It would seem from the evidence, that, in fact, the Jewish community did fear the consequences of committing capital punishment, and therefore did not inflict the death sentence on an informer without first receiving the sanction of the government.<sup>173</sup> Even though Rabbi Epstein disagrees, he does admit that the communities of Aragon "had no right to put...an informer to death without the direction of the Crown."<sup>174</sup> Further support for the position

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\*See p. xv.

that the Jewish communities were wary of direct involvement in the execution of the informer can be seen by the indirect manner of capital punishment that was advocated by the Rabbis.\* And, though, Jewish informers were, in fact, often killed in very direct ways, these extreme punishments were generally carried out either at the command of the King or his officials.\*\*

Lastly, it is of interest to note that R. Asher b. Yechiel, of Germany, claims to have been opposed to the use of capital punishment in regard to the informer: "I have therefore let the custom stand, though I have never agreed with them (the Jews of Spain) on the subject of the taking of life."<sup>175</sup> In spite of R. Asher's above remarks, he not only confirmed verdicts of capital punishment by communal authorities, and unhesitatingly imposed death sentences on informers, but in one case, he even praised the authorities for sentencing an informer to die.\*\*\* Although R. Adret also felt that capital punishment of an informer was a necessity, he, unlike R. Asher, seems to have done more to minimize the likelihood of informers actually being executed: "And so I pleaded with (the informer's) relatives to compromise...because I knew that (if the case was again) tried that he would be sentenced to die."\*\*\*\*

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\* See pp. ix and xi.

\*\* See p. xvii.

\*\*\* See p. vii.

\*\*\*\* See p. xv.

R. Asher's willingness to impose capital punishment on informers is particularly interesting because he claims, upon his arrival in Toledo, to have been quite surprised that Jews in the diaspora could adjudicate capital cases. In a responsum to the Bet Din (court) of Cordova he wrote:

In all the countries I have ever heard of, capital matters are not judged (by Jews) except here in Spain. I was greatly puzzled when I first came here, how it was possible to judge capital matters with the Sanhedrin not in existence.<sup>176</sup>

To help clarify R. Asher's "puzzlement" it is necessary to understand that according to Talmudic law, capital punishment was not to be inflicted except by a regularly constituted court of twenty-three qualified and duly ordained judges, and only in Palestine.<sup>\*177</sup> The Jewish Courts, outside of Palestine, therefore, did not possess talmudic authority to administer this extreme penalty.<sup>178</sup> In fact, the right of capital punishment was taken away from the Sanhedrin itself about forty years before the fall of the second Temple.<sup>179</sup>

It was moreover, extremely rare for Jewish communities to possess the power of capital punishment. Thus in post-talmudic times, the problem of capital punishment according to Jewish law very rarely, if ever, even arose,<sup>180</sup> until Jews received this jurisdiction from the Spanish nobility.

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\* See p. xx.

The Rabbis, however, felt bound to legalize this autonomy according to Jewish law. R. Adret justified this authority on the theory that the communities of the diaspora should possess the same rights that had once belonged to the Sanhedrin and later to the Gaonite: 1) "The majority of every city is to the individual what the Sanhedrin was to all Israel,"<sup>181</sup> and 2) "Every community within its borders has the same prerogatives that the geonim once possessed over all Israel."<sup>182</sup>

What is particularly amazing, however, is that according to R. Adret "even if the Jewish law was vague," i.e. even if the Rabbis could not find Jewish legal precedent for the Spanish community's right to kill the informer, "we would (nevertheless) be able to do what former generations did..." on the basis of what is actually being done presently.\* R. Adret was, therefore, willing to justify the use of capital punishment on community custom even if no legal authority could be found.

It is for this reason that Shalom Albeck wrote in an article entitled, "The Principles of Government in the Spanish Jewish Communities," that the justification for killing the informer rested "...outside the legal framework of the Spanish community."<sup>183</sup> Thus, he points out that Maimonides' permission to kill the habitual informer in any place, even though the Jewish community did not

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\* See p. xx.

adjudicate capital cases, is based, as it is by R. Adret, on the pragmatic Talmudic statement: "If someone comes to kill you, kill him first;"\* and the Talmudic principle of "necessity," or "personal defense."\*\*184

Once armed with these general rationalizations for Jewish legal authority in the area of capital punishment, the Rabbis merely had to explain why the informer deserved to be put to death. Of course, one of the basic reasons given by the Rabbis for permitting the informer to be killed was in order to protect the community. To paraphrase R. Asher; as soon as one threatens to inform he has left the Jewish community, and must be punished, because his continued informing will endanger the lives of the innocent and the poor, i.e. his informing "threatens to uproot everything."

Another reason given by the Rabbis for capital punishment against informers is based on the fact that the informer is considered to be an assailant, (rodef) or a pursuer of life. R. Asher states that he may be killed in order to save him from committing a crime.\*\* R. Adret also rationalized his punishment on the basis that the informer was an assailant. However, R. Adret's motives seem less noble than R. Asher's, and, therefore, probably more honest. In his words, "The Torah says if someone comes to kill you, kill him first."\*\*\* Similarly, R. Barfat

\* See pp. xviii, v, and xi respectively.

\*\* See p. ii.

\*\*\* See p. xviii.

explains that R. Kahana killed an informer,\* even though capital cases were not then adjudicated, "because it is a commandment and an obligation for every man to save the pursued from the hand of the pursuer (assailant)."<sup>185</sup>

It should be noted that the term rodef, as applied to the informer, connotes one who has not yet informed, but merely threatened to do so. The punishment of an informer who has been termed a rodef is, therefore, applied in order to prevent an act of informing, rather than as a punishment after the fact. Thus, R. Barfat wrote: "Know that the masor or the malshin are not killed by (permission) of the court for something that was done...but are punished on the basis of a (possible) future act...for example, they punish him when he threatens that he will inform."<sup>186</sup>

According to R. Adret, however, this concept of killing an informer for something not yet accomplished applies only to an "established" informer (masor). Thus, only an "established" informer may be killed either at the time of his crime, or after he has committed it." As we have previously mentioned, a confirmed informer (masor) was determined on the basis of his having previously informed three or more times.\*\*

In concluding this chapter on punishment, it is of interest to note that according to Graetz "the privilege of passing death sentences (on informers in Spain) was of

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\* See p. iv.

\*\* See p. xviii.

great antiquity."<sup>187</sup> Of course, we don't know what Graetz means by "great antiquity," but Shalom Albeck believes that the Spanish Jewish community only began to impose the death penalty on informers after the period of Isaac Alfasi, who died in 1103, and probably not until the period of the Almohades persecutions (1148-49).

Albeck bases his opinion on the fact that R. Alfasi in his "sefer ha-Halachot," does not mention the punishment of death for an informer, and only states that the informer has to pay for any damages which, he might have caused, and that testimony is not required for his conviction. Albeck believes, therefore, that when Maimonides (1135-1204) says that "it is a common practice in the cities of the West to (kill) confirmed informers," he is referring to informers whose guilt was ( *לפי דבריו* ) established without a doubt.<sup>188</sup> Albeck's statement may be correct, but it is only an assumption since we have no real proof either way. The fact that Alfasi does not mention capital punishment, only proves that it was not yet being practiced as a legal punishment. Further, as we shall now see, informers were not always dealt with by legal means.



## Chapter Seven

### Misuse of Autonomy in Dealing with The Informer

According to one well-known secondary source, "capital punishment (in Spain) was never inflicted without the sanction of the government."<sup>189</sup> Similarly, the Jewish Encyclopedia states that "the execution of a death-sentence pronounced by a Jewish court could take place only with the King's consent...."<sup>190</sup> Even Professor Kaufmann in his fine article on the informer in Spain states that "...it was customary in every case to obtain the assent of the King..." in carrying out the death sentence of an informer.<sup>191</sup>

The fact is, however, that the Jewish communities of Spain did not always possess judicial and criminal autonomy over informers. It seems more than likely, therefore, that when a Jewish community did not possess the right of criminal jurisdiction over informers, the Jewish officials frequently assumed such authority under the sanction of Jewish law as interpreted by Rabbis like Adret, Barfat, and Asher b. Yechiel.<sup>192</sup>

Further, even though Kaufmann is correct in saying that it was "customary" for the aljama to obtain the King's consent, the fact is that such permission could be easily acquired by bribery, or through the medium of Jewish courtiers.<sup>193</sup> This can be seen in the case of Vidalon de Porta, where the community officials approached the Abrabalia brothers to speak to the King.\*

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\* See p.xiv.

Once the King's permission was obtained, or even in those cases where it was not, as with the illegal execution of Joseph Pichon,\* the inflammatory character of an informer's case often encouraged the abbreviation or even dismissal of the normal safeguards of legal procedure. The accused were often tried in secret, and as we've mentioned, were often deprived the opportunity of facing their denunciators.<sup>194</sup> Thus, in Graet's words, "Such proceedings...only increased the evil they were designed to cure."<sup>195</sup> Obviously, under such circumstances a miscarriage of justice was at time inevitable, since the informer's fate was decided not on the basis of legal proceedings but "...upon the political powers of the place and the influence of the particular individuals involved in the affair."<sup>196</sup>

Thus, in reality, as stated by Rabbi Epstein, "...it seems that without official communal sanction these criminals were (occasionally) secretly struck down with the connivance of the aljama authorities."<sup>197</sup>

The miscarriage of justice was common, however, not merely in those cases where there was no official communal legal sanction. The legal powers granted to a community like Huesca by John I, practically guaranteed some amount of injustice. In fact, there is a strong possibility that such broad autonomy occasionally permitted the investigation and conviction of one who had not actually informed at all.<sup>198</sup>

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\* See p. 18.

In a Professor I. Baer is partially correct therefore in stating "that the whole purpose of (such) laws against informers, was to wage a political struggle in the most ruthless medieval form of which we are aware."<sup>199</sup> In the community of Valencia, for example, after a protracted controversy, which finally ended in about 1300, the individuals involved brought charges of denunciation against the other. The leaders of the aljama imprisoned the man as an alleged informer, and without consulting the Rabbis of Aragon, whose rabbinical jurisdiction they were under, turned to the Jewish scholars of Toledo, in Castille, for a ruling in the case. The latter refused on the ground that the matter did not come within their competence. As a last resort the leaders applied to R. Adret, whom they should have consulted with in the first place, but he refused to become involved without the King's authorization. The matter was ultimately dropped--Baer says intentionally.<sup>200</sup> The fact that the community leaders turned to the Rabbis of Toledo before turning to R. Adret, leads one to suspect that their motives were not exactly pure.

In the case of Joseph Pichon, concerning whom Graetz says it is not known whether he actually deserved death, or fell victim to the intrigues of his enemies; the fact is that "the circumstance of his death was not (just) the work of irresponsible individuals, but of the foremost leaders of the Jewish community" of Seville.<sup>201</sup>

In conclusion, it would be difficult to state as categorically as does Professor Baer that "the anti delation privileges" of the Spanish Jewish community represented "a bloodstained sword for defending themselves against their internal and external enemies."<sup>202</sup> Nevertheless, there is little doubt that the extremely broad privileges of jurisdiction granted to various Jewish communities occasionally encouraged unjust treatment of informers in Medieval Spain.

NOTES TO INTRODUCTION

1. Jeremiah 20:10.
2. Ibid.
3. H. Graetz, History of The Jews, IV, p. 155.
4. Ibid., II, pp. 425-6.
5. Talmud Sanhedrin 91a; Rosh Hashana 17a.
6. Talmud Gitin 45b.
7. Talmud Baba Kamma 47a; Shabuot 44b.
8. D.M. Shohet, The Jewish Court in the Middle Ages, p. 152.
9. Isidore. Epstein, The Responsa of Solomon Ben Adreth of Barcelona, p. 49.
10. Op. Cit., Shohet, p. 153.
11. Louis Finkelstein, Jewish Self-Government In The Middle Ages, p. 184, (Column K).
- 12.. Ibid., (Column M).
13. Ibid, pp. 184-5, Footnote 2.
14. Op. Cit., Graetz, IV, p. 155.
15. Op. Cit., Epstein, p. 111, Footnote 157; Abraham Hershman, Isaac Perfet and His Times, p. 214, Footnote 2.
16. Jewish Quarterly Review (JQR), VIII (1896), p. 218.
17. Jewish Encyclopedia, IX, p. 43.
18. Op. Cit., Graetz, IV, p. 155.
19. Op. Cit., Neuman, I, p. 132.
20. תשובת ר' יצחק בר שש"ת ברפ"ט, Responsa of R. Isaac Bar Sheshet Barfat. Footnote 376.
21. Op. Cit., Neuman, I, p. 130.

NOTES TO CHAPTER I

22. "שהוא מלשין ומסור...כי הדבר ידוע מי שהוא מוחזק מסור  
ומלשין....", ספר שו"ח רא"ש, לה  
L. Finkelstein, Jewish Self-Government in The Middle Ages, p. 332.
23. "שהרי אף אם מסר או הלשין....", ריב"ש, קכו
24. Isidore Epstein, The Responsa of R. Simon...Duran, pp. 67-8.
25. Yitzhak Baer, A History of The Jews in Christian Spain, II, p. 10.
26. Ibid.
27. Ibid., I, p. 421.
28. Ibid., p. 12.
29. Ibid., p. 41.
30. Ibid.
31. Op. Cit., Neuman, I, p. 130, (Responsa of R. Barfat, #80).
32. Op. Cit., Baer, II, p. 456.
33. Op. Cit., Neuman, I, p. 130.
34. Ibid., p. 132.
35. Ibid., p. 130.
36. Responsa of R. Solomon Ibn Adret, V, p. 123, #287.
37. Op. Cit., Neuman, I, p. 130.
38. Op. Cit., R. Adret, III, p. 75b, #384.
39. Op. Cit., Baer, II, p. 242.
40. Ibid., p. 341.
41. Ibid., p. 52.
42. Ibid., p. 53.
43. Ibid.
44. Ibid.

- 45. Ibid., p. 456.
- 46. Op. Cit., Neuman, II, p.6.
- 47. Ibid., pp. 7-8.
- 48. "כל שכן כשא"נו מוסר נפש רק ממון...." ר"ב ש"ש, רלח.
- 49. Op. Cit., Neuman, I, p. 130.

NOTES TO CHAPTER II

50. Op. Cit., Graetz, III, p. 317.
51. Op. Cit., Neuman, II, p. 237.
52. Louis Finkelstein, Jewish Self-Government In The Middle Ages, p. 151.
53. "לפי שכל \*שראל הנמסר ביד כוכבים אפילו על עסקי חבן וקש  
\*ש סכנה בדבר שכיון שישראל נופל בידיהם אין מרחמים  
עליהם". מ"ט ריב"ש, רלח.
54. Op. Cit., Graetz, IV, p. 155.
55. Ibid., III, p. 457.
56. Ibid., IV, pp. 199-200.
57. Op. Cit., Baer, II, p. 61.
58. Op. Cit., Graetz, IV, pp. 246-7.
59. Op. Cit., Baer, I, p. 162.
60. Ibid., p. 158.
61. Ibid., p. 149.
62. Ibid., p. 150.
63. Op. Cit., Neuman, I, p. 38.
64. Op. Cit., Baer, II, p. 166.
65. Op. Cit., Neuman, I, p. 22.
66. Op. Cit., Graetz, IV, p. 156.
67. Op. Cit., Baer, I, p. 376.
68. Op. Cit., Graetz, IV, pp. 156-7.
69. Op. Cit., Baer, I, p. 252.



NOTES TO CHAPTER III

70. Op. Cit., Neuman, I, p. 138.
71. Op. Cit., Epstein, p. 49, (Quoted in Karo, Tur H., 388, 17.)<sup>כ"י בעון הדבר התחילו קצת אנשים ללמוד האומנות הפסדה הזאת</sup>.
72. Op. Cit., Neuman, II, p. 262.
73. Ibid.
74. Op. Cit., Graetz, IV, pp. 194-5.
75. Ibid., p. 156.
76. Op. Cit., Epstein, p. 48.
77. Ibid.
78. Ibid.
79. Op. Cit., Hershman, p. 214.
80. Op. Cit., Baer, II, p. 384.
81. Ibid.
82. Ibid., p. 339.
83. Op. Cit., Neuman, I, p. 58.
84. Op. Cit., Graetz, IV, p. 315.
85. Ibid., p. 355.

NOTES TO CHAPTER IV

86. Op. Cit., Neuman, I, p. 107.
87. Ibid.
88. Ibid., II, p. 160.
89. Ibid.
90. Ibid., I, p. 131.
91. Ibid., p. 259, Footnote 154.
92. Op. Cit., Baer, II, p. 91.
93. Op. Cit., Neuman, I, p. 131.
94. Ibid., p. 32.
95. Op. Cit., Epstein, p. 46.
96. Ibid., p. 46.
97. Op. Cit., Baer, I, p. 220.
98. Op. Cit., Epstein, p. 47.
99. Op. Cit., Neuman, I, p. 114.
100. Op. Cit., Baer, I, p. 315.
101. Ibid., II, p. 261.
102. Ibid., pp. 263-4.
103. Ibid., p. 264, and Op. Cit., Finkelstein, pp. 361-2.
104. Ibid., Baer, p. 264.
105. Ibid.
106. Op. Cit., Finkelstein, p. 363.
107. Ibid., pp. 363-4.
108. Op. Cit., Neuman, I, p. 138.
109. Op. Cit., Baer, I, pp. 161-2.
110. Ibid., p. 162.

111. Op. Cit., Finkelstein, p. 100.
112. Ibid., p. 101.
113. Op. Cit., Baer, II, pp. 25-6.
114. Ibid., p. 24.
115. Op. Cit., Jewish Quarterly Review, pp. 218-19.
116. Op. Cit., Finkelstein, p. 339, with Hebrew text on p. 332.
117. Op. Cit., Jewish Encyclopedia, p. 43.
118. שו"ת ריב"ש, מס:עט, דף:טו.
119. Op. Cit., Baer, I, p. 233.
120. Op. Cit., Hershman, p. 138.
121. Ibid., pp. 100-101.
122. "כי כבר ידעת שבזאת הארץ אין אנו רגילין לרדן בדיני נפשות ואף לא לקוץ יד ורגל במשפט המלך הוא".  
שו"ת ריב"ש, מס:לנא.
123. Op. Cit., Epstein, p. 112, Footnote 160: and in Responsa of R. Solomon Adreth:  
"...אם הייתה חקפה עליו (עלינו) כמו בקשטילאה".
124. Op. Cit., Baer, II, p. 69.
125. Ibid.
126. Ibid.
127. Ibid., p. 70.
128. Ibid.

NOTES TO CHAPTER V

129. Irving A. Agus, Rabbi Meir of Rothenburg, p. 678, Responsa # 783.
130. Paul H. Vichny, "The Informer As A Defendant In Jewish Criminal Procedure", Meyer Waxman Jubilee Volume, p. 124.
131. Ibid., p. 128.
132. Ibid.
133. Op. Cit., Hershman, p. 138, (Responsa of Isaac bar Sheshet Barfat, #234, 238).
134. Op. Cit., Baer, II, p. 68.
135. Op. Cit., Vichney, p. 128, (Responsa of Isaac bar Sheshet Barfat, #236).
136. Op. Cit., Hershman, p. 139.
137. Op. Cit., Vichney, p. 128.
138. Op. Cit., Hershman, p. 138.
139. Op. Cit., Vichney, p. 131.
140. Ibid.
141. Ibid.
142. Ibid., (Responsa of Isaac bar Sheshet Barfat, #236; and of R. Asher b. Yechiel, #17:6).
143. Op. Cit., Baer, II, p. 68.
144. Op. Cit., Hershman, p. 139.
145. Ibid.
146. Op. Cit., Vichney, p. 129.
147. Op. Cit., Hershman, p. 139, (Responsa of Isaac bar Sheshet Barfat, #235).
148. Op. Cit., Shohet, pp. 156-7.
149. Ibid.
150. Ibid.

151. Ibid., p. 158.
152. Op. Cit., Vishny, p. 132.
153. Ibid., p. 133.
154. Ibid.
155. Ibid., p. 135.

NOTES TO CHAPTER VI

156. Mishneh Torah, Ha Chovel Oomazik, VIII, 11.
157. Op. Cit., She'elot Oo-Teshuvot, R. Isaac b. Sheshet, #79.
158. Ibid., #238:                   "כל שעשה ומסר מביאין אותו לב"ד  
  ועונשין אותו כפי צורך השעה...."
159. Op. Cit., Shohet, pp. 25,30.
160. Op. Cit., Epstein, p. 52.
161. Op. Cit., R. Isaac b. Sheshet, #80.
162. Op. Cit., Epstein, p. 52.
163. Op. Cit., Jewish Encyclopedia, p. 43.
164. Op. Cit., Finkelstein, pp. 362-3.
165. Op. Cit., Baer, II, p. 68.
166. Op. Cit., Finkelstein, p. 363.
167. Ibid., p. 103.
168. Op. Cit., Epstein, p. 50.
169. Op. Cit., Mishneh Torah, VIII, 11.
170. Op. Cit., Neuman, I, p. 129.
171. Ibid., p. 134.
172. Op. Cit., Baer, II, p. 2.
173. Israel Abrahams, Jewish Life In The Middle Ages, p. 50.
174. Op. Cit., Epstein, p. 50.
175. Op. Cit., She'elot Oo-Teshuvot, R. Asher Ben Yechiel, XVII, 8.
176. Ibid.
177. Op. Cit., Shohet, p. 21, (Sanhedrin 2a; 52b).
178. Ibid., (Sanhedrin, 41a, 6b; Makkot, 7a).
179. Ibid., (Baba Kamma, 117a).

180. de Sola Pool, Jewish Eugenics and Other Essays, p. 98.
181. Op. Cit., Neuman, I, p. 48, (Adret V, 126).
182. Ibid., (Adret I, 729).
183. Op. Cit., שלום אלבק, p. 110, "מחוץ למסגרת הקוריוז של הקהילה".
184. Ibid.
185. Op. Cit., Shelot Oo-Teshuvoth, R. Isaac b. Sheshet, #238.
186. Ibid.
187. Op. Cit., Graetz, IV, p. 155.
188. שלום אלבק, חש"ך.

NOTES TO CHAPTER VII

189. Op. Cit., Abrahams, p. 50.
190. Op. Cit., Jewish Encyclopedia, p. 43.
191. Op. Cit., Jewish Quarterly Review, p. 220.
192. Op. Cit., Neuman, I, pp. 23-4, see also I, p. 125.
193. Op. Cit., Graetz, IV, p. 155.
194. Op. Cit., Neuman, I, p. 135.
195. Op. Cit., Graetz, IV, p. 155.
196. Op. Cit., Baer, I, p. 233.
197. Op. Cit., Epstein, p. 50.
198. Op. Cit., Vishny, p. 136, Footnote 69.
199. Op. Cit., Baer, II, pp. 69-70.
200. Ibid., p. 2.
201. Op. Cit., Graetz, IV, p. 156-7.
202. Op. Cit., Baer, II, p. 92.



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## APPENDIX

1) (This is the responsa of Asher ben Yechiel (RASH), on the "laws regarding the informer; he who denounces to violent men; and he who pursues others to harm them...":

Question: Instruct us, dear teacher, what to do with a man concerning whom it is become known that he informs to violent people on Jewish individuals and on the community. And he is (also) continually, (in fact) daily threatening to go and say things to (these) violent men concerning individual Jewish men and communities which are likely to result in causing damage (either) to them personally, or to their property. And (so) the (general) community is extremely frightened of this man. For he stands on guard every night in one of the palace courtyards of a (certain) powerful moslem personage (and passes on information about Jews that is detrimental to their security).

But behold, the Jewish community has secretly been given royal permission to pass sentence on him, and if he be found deserving of death we may have him killed. And concerning this (matter) therefore, the heads of the community have met, and appointed a court (of inquiry) to investigate whether the afore mentioned is true. (And) they will judge him as it seems proper to them (on the basis of) the testimony they receive.

And so (various) witnesses came before them, and this is their version: (To begin with) Ruben and Simon testified before the court that they were certain that this man (the accused) was a confirmed and frequent informer and denunciator, and that when--in the last month during the occasion of Don Pedro's visit here in Seville, he, in a similar way threatened (people with his) false information concerning Jews--one

of the important men of the community attempted to turn him from (saying) this (accusation) he would not refrain himself. And further, Ruben and Simon who are mentioned above, testified that they were certain that the elders and many (other) men of the community were afraid that he might falsely inform on the community. And (other) men, in addition to (Ruben and Simon), testified that (the accused) is known to possess the legal status of a denunciator and informer who has often, in their presence, threatened them (with his) informing.

Now instruct us, our teacher, whether he should be judged on the basis of the law of the assailant (pursuer) since he, while (in the presence of) Don Pedro here (in Seville), threatens to go (and inform) and will not refrain, in spite of being admonished; and (instruct us) whether it is permitted "to save him" (from his evil) by killing him, (as in the case) of Rav Kahana in the chapter of "Ha-gozel Batra" (in Baba Kamma)\*, since we have (also) been given the authority (to have him killed) by the power of the monarchy (government).

Answer: Even though the four types of death penalty (stoning, burning, decapitation, and strangulation) ceased (to exist) from the time that the Sanhedrin went into exile (from Jerusalem), this (only) means that one can (no longer) sentence a person to death for one of the transgressions for which death is the prescribed penalty. For since the Sanhedrin is not in its (proper) place (i.e. Jerusalem) no man possesses the power to sentence his fellow man to death.

But (in reference to) those (cases), that are enumerated in Sanhedrin in the chapter (entitled) "Sorer V'moreh"--(in which) one may save them (the criminals) by killing them in order to save the pursued (victim)

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\* see P. iv..

from death, or from bodily injury--(in) these (cases the death penalty) did not cease. Although they (the criminals) may not be killed for that (which was done) in the past, but only for that (which might be done) in the future.

In a place, however, where permission (to make use of the death penalty) is given to a (particular) court by the government, as was previously explained, their death (the death of the criminals who are to be punished) is neither dependent on the court(s) or on witnesses, but is dependent (merely) on a person actually seeing them (commit the crime), as it says (in Leviticus 19:16) "Thou shalt not stand by the blood of your neighbor".

And (concerning) the one who pursues (his victim, in order) to hand over ( רָחֹק ) his property into the hand of a violent man, the sages (view his crime as) equal to one who pursues (the) body of his (victim so as) to kill him; as is written (in Isaiah 51:20) "Thy sons have fainted, they lie at the head of every street corner, as an antelope in a net". Just as when this antelope falls into a net, they show no mercy on it, so (similarly) when a Jew's property falls into the possession of violent men they show no mercy on it. Today they take a little part (of his property), tomorrow they take it all, and in the end they turn him over and kill him, (thinking that) perhaps (the Jew) will admit that he has more property. Therefore, he (the informer) is (considered to be) a "pursuer" (of life), and it is permitted to save him (from committing a crime) by killing him.

And you have written concerning this case that witnesses testified that in the presence of Don Pedro (the accused) threatened to inform ( לְהַלְשִׁי ), and that when one of the community's notables told him

that he should stop his threatening and that he should refrain from (anymore) of it, that he (the accused) refused to refrain from it.

(This case then) is precisely (the same as) the case of Rav Kahana, in the chapter (entitled) "Ha-gozel Batra" p. 117a (in which) a person wanted to point out the straw of a fellow Jew (i.e. he wanted to inform on him that he kept his money in a hay stack). (This would-be informer) came to Rav (and) Rav said to him, don't point it out! (i.e. don't be an informer). He replied to Rav, I certainly am going to point it out. Rav Kahana (happened to be there and) was sitting in front of him (the would-be informer), (and) got up and cut his throat. Here also (in this case) since one of the community's notables had warned him that he should refrain (from further informing), and (since) he stated that he didn't want to refrain, he immediately made himself liable to be killed by any Jew; although Rabbi Chananel (ben Chushiel)\* wrote that he (an informer) should not be killed in a direct way, but that he should be lowered into a well from which he will be unable to get out, and will (then) die of his own accord. The Rabbis, however, said (in regard) to a kooti (the word for a non Jew, used in editions that came under censorial influence), (who is hired as an executioner), it is just as if he (the informer) is lowered into a well, (in which case a Jew) doesn't do the killing (in a direct way, and which was therefore also permitted).

And so I have seen it (written) in a responsum that (concerning) a lying informer, it is permitted to hire a non Jew to punish (kill) him, even though he has not (yet actually) informed (but merely threatened to do so).

But there are those who prohibit his being punished by Gentiles

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\* Lived in North Africa in the first half of the 11th Century.

when he has not (yet actually) engaged (in informing). And their proof (for this opinion is based) on the chapter "Haish Meqaddesh" (Qid. 49b) (where the male betrothed says "behold you are betrothed unto me") on the condition that I am a righteous person; (and) even if he (should prove to be) utterly wicked, the betrothal is (nevertheless) valid, because he might have meditated repentance in his heart. But my teacher, Rabbi Jacob the son of Rabbi Isaac, rejected this comparison due, perhaps, to the (necessity) of stringency. (In the case) of a married woman we say (that in matters of marriage the court is stringent in its rulings in order to keep the marriage in tact), but in the case of an informer, we are lenient in regard to him since we know that he is a lying informer, and therefore give special weight (to the importance of) saving the lives of poor and decent people (who would otherwise be continually threatened by his informing) due to the (continued) doubt (as to whether he will actually act as an informer).

(Further), the following also proves our point: It says in Gittin (46:b) in the chapter (entitled) "Ha-sholeach" that a certain man sold himself to Lydians, he (then) came to Rabbi Ami and said "redeem me!". For with reference to this case it is taught in the Mishna (Gittin 4:9) "that he who sells himself, and his children to non Jews may not be redeemed, but they do redeem his children because of the moral corruption" (that might result due to the children living among non Jews); and how much the more so here (in this case) where (the possible) death (of innocent people) is involved.

(In further consideration of the above case in which the man wanted to be redeemed) the Rabbis said to Rabbi Ami, this man is an apostate whom we saw eating non kosher food. He (Rabbi Ami) said to them, perhaps

he ate it only in order to satisfy his appetite (and not for ideological reasons). They said to him there have been times when (both) prohibited and kosher food are in front of him, and he ignores the kosher food and eats the forbidden (non kosher food). (Thus) Rabbi Ami said to (the fellow who wanted to be redeemed), they (the Rabbis) won't permit me to redeem you. Consequently we can not say (postulate the possibility) that perhaps he (i.e. the informer) repented. (Thus we do not give him the benefit of the doubt.) And how much the more so in the case (of this informer), for according to the testimony he threatened (to inform) and they warned him, and (still) he would not refrain.

Behold, (therefore) this man should be considered as an active informer (because he might continue informing, and does not listen to warning), and (therefore) all Jews possess permission to punish him; nor is there any need to receive testimony in his presence. But even (if) he was not presently engaged (in informing) when we sentenced him to be punished by the hand of Gentile (executioners) there would be no need to accept (hear) testimony in his presence, because it is known that he who is an established informer and denunciator is drawn upon (used) by the gentiles for their benefit. And (so) were it necessary to accept testimony in his presence and to examine and investigate his case, then he would never be sentenced because he would be saved by the gentiles. For even when he (the informer) is not (personally) in danger, he informs on individuals and groups; how much more so (is it likely) that he will inform through false accusations when he sees himself in bodily danger, and will (thereby) endanger every Jew.

Therefore, in all the places of the diaspora when there is an established informer, who has on three occasions informed to violent people



concerning Jews (personally) or on their property, the (common) practice is to seek advice and tactics for punishing him in order to protect (Jewish) interests, to warn other (would-be informers of the consequences) so that informers will not increase in (k'lal) Israel, and to save all Jews who are being pursued by him.

Therefore in this case, where the witnesses testified that he was an established informer and denunciator who was active (at the time when the case came before R. Asher), it is well that they (the local court) judged him to be punished, and so, "Thus shall perish all thine enemies, O Lord, but those who love Him shall be as the sun when it comes forth in its might".\*

(This) is the opinion of the respondent Asher the son of R. Yechiel, may his memory be a blessing.

2) This is the responsum of Asher ben Yechiel.

Question: What you have asked, concerning a man who is a confirmed informer, is whether it is permitted to testify against him, and to bring testimony (against him) in their courts?

Answer: Know that since he is a habitual informer it is permitted (to testify against him in a non Jewish court), for so I have heard from Rabbi Meir, may his memory be a blessing, that after the informer has informed, and (therefore) is a confirmed informer, that it is permitted.

3) This is the responsum of Asher ben Yechiel.

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\* Judges 5:31

Question: (A certain) Ruben stated that he had complaints against (one named) Simon who owes him money, and further, who does things unto him that are improper. And he (also) spreads evil calumny against him, and (Ruben) says that he wants to have him incriminated in non Jewish courts.

Simon (the defendent) came to the (Jewish) court and invited (the plaintiff, Ruben (to do the same), and said to the court, "Behold I am ready to come before you to be judged, and to accept whatever judgment you inflict (upon) me." But now warn him (Ruben) that he should stop bringing these complaints and claims against me in the gentile courts.

Answer: It appears that Ruben (the Plaintiff) is merely bringing forth calumny and suspicion against Simon and (so) transgresses (the law that says) "you shall not bring forth a false report". And so whoever hears his words and (how) he complains about (Simon) before the gentiles, may apply (to him) the law of the informer (in order) to physically punish him.

And if he should threaten by saying, "I will go before violent men and say (things) that are likely to result in damage to Simon", (then) from the time that he says this (threatening word) he has left the Jewish community, the children of the covenant, and permission is given to all (those) who are God fearing and (who) tremble at His word to punish (kill) him. (Signed) Asher the son of R. Yechiel, may his memory be a blessing.

4) This is the responsum of Asher ben Yechiel.

Question: You have asked a question concerning (a certain) Lea who accuses Ruben of turning her over to violent men, which resulted in

great loss to her, and some of it (her loss) (was confirmed) by witnesses, and some of it (was substantiated only by circumstantial) evidence. And Ruben answered (Lea by saying that) "a fire broke out, and during (the fire) you robbed (me) of my money", but there is no clear testimony (that she actually robbed during the fire). "And I", (continued Ruben), "Asked the thugs to grab you in order to frighten you so that (you) would return to me what is mine, and (in actuality) you suffered no damage whatsoever because I did not take you to the (non Jewish) authorities (from whose hand you really would have suffered!)."

Answer: He should pay her for whatever Lea is able to clarify (prove) by witnesses, that (show) that he caused her a loss due to the kidnapping; while Ruben should swear that he did not cause her (any) more loss (than she would have felt had he taken her to the authorities).

Since the Gemara leaves the following problem unanswered--that is, whether they made a ruling for a person who suffered a loss because of an informer--we do not extract money (i.e. won't make a person pay). But if there were (real) indications (that she actually robbed him during the fire) it does not seem proper to sentence him to make him pay money. Peace, (signed) Asher the son of R. Yechiel.

5) This is the responsum of Asher ben Yechiel.

Question: You have asked concerning one who caused the arrest of a man by the city's (Jewish) elders, (who) are forcing him to grant a divorce without grounds, except that she (the wife) says that she does not want him anymore.

And it is the evil custom (of this community) to force him (to grant the divorce) immediately (upon her saying that she does not want him).

And (so) they tortured him with chains until he was close to (the point of) dying, but he escaped and they pursued him (in order) to arrest him as (they had) originally. But the (person) pursued went and had the pursuer arrested by thugs in order to put an end to his being pursued, and (so) caused the pursuer a loss of fourteen gold pieces (which he had to pay in order to set himself free).

Answer: Let it be acknowledged and known to everyone who sees this my writ that there is a certain Abraham, or (who some know by) his (arabic) name, Aloom, who dwells in Zigrot, concerning whom complaints and accusations have already, (and) for a long time come before me! "And both ears will ring of those who hear"\* (about him); for concerning him they have said that he has on numerous occasions handed over to violent men the properties of Jews both individually and collectively, and his hand has been involved in the crime of thwarting (the payment) of debts (owed to Jews). And further, every day he threatens to cause damage to, and to hand over to violent men, the properties of Jews, and to place idols in the churches of the idol worshipers, (i.e. attempts to degrade Judaism) in the presence of the masses; and does (so) many (other) similar things that I am no longer (able) to remember all of them (so as) to write them down.

And the great of the land (Jewish leaders) have often consulted me whether it is permitted to punish him. I have answered that I have not (yet) received (the) testimony of all these things, but (that) when the matter has been clarified for us (proven to us), (then) it is permitted to punish (to kill) him even on a Yom Kippur that falls on a Sabbath. For neither witnesses or evidence are necessary for a lying

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\* I Samuel 3:11

informer (to be punished), but (all that is necessary) is only that one hears from his (own) mouth that he threatens to cause damage to a Jew's property, or that he (threatens) to hand over (inform) to violent men. (Further) it is incumbent on him (the one who hears someone threatening to inform) to punish (kill) him, as is stated in (the chapter entitled) "Ha-gozel" in B. Batra....\*

(Thus) the heretics and the informers are lowered (into the pit) and not pulled out, and so in Ashkenaz (Germany) I have seen (this done), and similarly I have heard that in France they often permit the informer to be killed. For were it not so, this unfortunate generation would not be able to continually stand (exist), due to our sins, and the many (people) who break the fence (cause communal distress), and (so) this matter (of protection against the informer) necessitates a fence and a protection (i.e. because of our sins there are informers among us, who are such a threat to community welfare that we have to protect ourselves by applying the death penalty liberally).

(With) all these words have I answered, for the questioner, the matter of this informer. Since he escaped once, only to (then) threaten to inform on an important man, so if R. Kahana (could kill the informer referred to on p. iv), (then) how much the more so (does) this man (deserve death) concerning whom you have said on many occasions that he hands over the property of Jews to violent men, and (who) everyday opens his mouth to its widest extent, and who (therefore) threatens to uproot everything.

(And) I say, (therefore, that) whoever has received testimony about these matters, or who has (actually) heard (threatening words) from his

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\* See p. iv, first paragraph.

mouth, that it is a commandment (mitsvah) to turn him over to be punished. And if one does not turn him over (for punishment) than he (himself) should be punished for all the evil acts that the informer will do to the Jewish community from now on, (just) as if he did them with his own hands, for it is a commandment to have him (the informer) punished, and he did not punish him (because he did not turn him over).

And now (as) to this matter that the honorable R. Joseph the Levite, whose spirit was stirred by God and who acted zealously for God, brought to fruition so as to be acted upon--let all the notables of this generation take heed of my words of the living God--and they should investigate the words of this informer, and should scrutinize the testimonies that came forth concerning him. And if they ascertain that they are sufficient as testimony against the informer (i.e. if the testimony by itself is damaging enough to convict him), (then) they should not conceal it (the testimony) from him. But if it seems to you that there is not really sufficient formal testimony (justification) to judge him in accordance to the law, (then) "act according to your wisdom, (but do not let his grey head go down to sheol in peace);"\* (i.e. kill him) so that he will no longer (continue) to do thusly, and this (action) will cause peace,--(signed) Asher ben Yechiel....

6) This is the (legal) brief that our great Rabbi (and) teacher, Rabbi Solomon Ibn Adret...sent (to the Rabbis of northern France and Germany\*\*) concerning a matter of informing which occurred in Barcelona

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\* I Kings, 2:6.

\*\* J.Q.R., v. VIII 1896, p. 228.

in his days (in R. Adret's lifetime). And (the informer--Vidalon de Porta)\* was (a descendant) of the distinguished families who were there (in Barcelona), and his relatives were peaceful and so they were numerous.

.....

(But) he bored deeply, and he acted (criminally) to (the point) that in his arrogance (he strove) to corrupt everything, and without authority to become a judge, and without money a lord; for his house was empty. He was a rich man's son who had become impoverished, and he intended to empty the land and lay it waste. And many of the congregations loathed him because of his earlier offenses; nor could the land bear the (calumnious) words of his last accusations. And they warned him to abandon these later deeds lest he later regret what he had planned to do, and (so) he promised to turn (from his evil ways), but he did not.

Then one day all the communities of Catalonia, and the communities of the kingdoms of Valencia and Aragon were summoned to appear (before) the King (Pedro III)\*\*, may his majesty be exalted, and they were positive that he (the informer) had lodged information against them (and) had caused (their having been summoned), for he was indeed a man of calumny.

Then every community selected their greatest personages (to represent them), and when they were about to go they called this (informer) and pleaded with him not to follow them, and he agreed. But almost (as soon as) he passed out of their (sight) he ran back and followed them. And they warned him a second time, but he would not submit to their will, for he was a stubborn and obstinate (person) who was (always) attempting to trap (people as they went) along their way.

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\* Yitzhak Baer, A History of the Jews in Christian Spain, I, p. 169.

\*\* J.Q.R., v. VIII 1896, p. 225.

The deputies of the communities realizing that he (the informer) was also an "assailant" (rodef) took counsel with the great (royal finance\*) ministers, Rabbi Joseph Abrabalia, the great community leader, and his brother Rabbi Moses Abrabalia, who (both) held official positions at the royal court, and who told our lord the King, may his majesty be exalted, that (in their opinion the informer) was deserving of death for what he had done on (so) many occasions.

Because our lord the King, may his majesty be exalted, is also a lover of justice, he had (the informer) arrested and inflicted with foot chains. Further, the claimants of the communities and their representatives, at the instruction of (their) communities, assembled and argued (their case) against him before one of the King's advisers and judges.

In spite of all this, however, I did not lay my hand against him. (For though) I was (continually) going and coming among the communities, they were not at all able (to convince) me that I should enter into (this case) with them until several communities (together) with (the informer's) brothers and relatives joined them (and attempted) to acquire a mandate from our lord the King, may his majesty be exalted, that this case should come under the jurisdiction of the wise and great Rabbi Jonah of Gerondi (or Gerona\*\*), a nephew of my great teacher Rabbi Jonah (b. Abraham Gerondi\*\*\*), (concerning whom it should be said) remember the righteous for a blessing, and (who at that time) was an old man and member of the academy.

They also selected me, a young man, to adjudicate (this case) with

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\* Baer, loc. cit.

\*\* J.Q.R., op. cit., p. 223.

\*\*\* Jewish Encyclopaedia, v. IX, p. 43.



him, (but) I said I would never join him in (this) case unless I could effect an amicable agreement. And (so) I pleaded with (the informer's) relatives to compromise on this (matter of attempting to obtain) a royal authorization because I know that if (the case was again) tried that he would be sentenced to die. But they rejected all my advice and obtained the royal mandate (for the case to be retried) against our advice (in order) to see whether he had done something that was deserving of death in the view of this wise man, the judge of our King. But I did not know that they had done thusly (i.e. had obtained the royal mandate), and I was close to concluding that they also wanted him killed because they had also suffered a great deal because of him.

Finally our lord the King, may his majesty be exalted, summoned the great Rabbi Jonah, who has already been mentioned, but who came with great trouble for he was of old age and very heavy. And our lord the King ordered us to gather testimony and he commanded all the communities to pronounce the ban on whoever knew of testimony in regard to (this case) and (did not come forward), so that he would (more likely) come forward and testify before the court of his town. (Further, the King commanded) that (all such testimony) be sent to us, and that we report our findings to him or to the judge who has been already referred to.

But we put off doing anything for a long time, for almost a year, for we wanted permission from the communities to effect a compromise, but they (wanted him killed and) would not listen since they feared that (unless dead) he might cause great damage to every community. We even begged for our lord the King's understanding (to let us try to effect a compromise) in this matter, but he would not accept (our plea), for the King was angered (by the delay in the proceedings), and he was (then)

in a distant part of the kingdom--or (that) we send our findings to his judge.

The (informer's) brother was continually urging us to comply with the King's will and to announce to him what our decision (on the case) was, for it was better that he (alone) should die than to have everyone (in) his father's house die with him. (Finally, after) much labor and expenses we were forced to tell our lord the King, may his majesty be exalted, how the case appeared to us.

For we felt that according to what he (the accused) had himself said in our presence, and according to all the testimony (that had been made) against him in all the various courts that he was deserving of death--(that is) if (the King) wanted to have him killed--especially since it has been duly established (that he was an informer).

And so I am sending to you the depositions (of the various) witnesses who testified; some of whom (testified) in his presence, and others in the presence of he who (the accused) appointed to argue (the case) in our presence, and to gather testimony for him, for he was a prisoner in chains; though some of the witnesses (testified) before all the various communities (involved).

And then, after all this, our lord the King, may his majesty be exalted, sent the judge (whom he had appointed), and who has already been referred to, to judge (the accused) on the basis of the testimony we had accumulated. But he (the accused) returned and argued that he had further claims (of innocence) to plead (before the court). And the judge, who has been referred to, allowed him to present (this new evidence, before) the representatives of the communities and their officials, and we adjourned.

In the meanwhile the King's judge, who has been referred to, died. But within a few days the King sent for his official and ordered him to have the informer executed, and so it was done. (He was taken) to the square in front of the Jewish burial ground in the city of Barcelona, where the veins of his two arms were opened (so that) he bled (to death).\*

And now (at the writing of this brief) three years have elapsed since this case occurred. (And) the great and noble community leader, R. Joseph Abrabalia, who was the people's representative at the royal court, has passed away because of this generation's iniquity, ( נפול היה ) may he rest in paradise. Therefore, one of the brothers of the (already) sentenced (informer), thinking that the communities would no longer possess a strong hand (to serve their interests) at the court, rose on behalf of his brother, the informer, and stated to one of the King's judges that our decision was not legal because (according to Jewish law) we had no authority to adjudicate capital cases, and how much more so (he reasoned) did this apply in the diaspora, for at all times (even when Jews had adjudicated capital cases in Palestine) a court of twenty-three was necessary and the testimony had to be presented in the presence (of the accused).

In the beginning (the informer's brother) was not embarrassed by his (own) actions, for he was intent upon continuing his strong accusation, but (his efforts on his brother's behalf) were not successful.... And (so) in order that no other denunciator ( מלשן ) will stand and contest (the legality of our decision) and will (thereby) dig (holes that weaken) the structure (of our community), and which allow violent men to enter (our community); and further, so that one tax collector (considered a

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\* This sentence in the Hebrew original properly belongs at the beginning of the document.

robber in Jewish law\*) will not infect the whole family (by causing them to also become) tax collectors, I am therefore writing down why we agreed to furnish our legal advice to our lord the King in this case.

And now Rabbis, it is incumbent upon you to construct a (protective fence) around the lion (i.e. the informer) lest he come and cause both our land and your's to become a bitter and a plundered house. For if we don't confront them (informers) with (both) shepherds and (their) **staves**, (these) hyenas will (surely) increase....

First of all, all of our testimony (proves) that he was an assailant (of life), and such an assailant may be put to death at any time, whether in the holy land or not; even without a court trial as we know in the incident (that involved) R. Shila, in the chapter (entitled) "Ha-Roeh"\*\*. For (example, we see in the case) where David said to Saul that it is permitted to kill you, (that the Rabbis asked), "What is the reason (for David's statement)"; (and that they reasoned that David's statement was based on the fact that) you (Saul, are acting as) an assailant, and the Torah says if someone comes to kill you, kill him first. Further, even if one is (the kind of) an assailant who only wants to hand over (another's) money, that (in a similar instance, Rav)\*\*\* said to (an informer) don't show it (don't inform), and (the informer) said I certainly will, that (Rav Kahana) got up and cut his throat.

Nevertheless, one who is not an established informer may not be killed, except after his act (of informing); although an established informer may be killed either at the time of his crime, or after he has committed (it). And whoever kills (those who are) habitual informers

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\* Marcus Jastrow, Dictionary, II, p. 741.

\*\* Berachot, 58 a.

\*\*\* See p. iiii.

has committed a meritorious act. For as it says in a b'raita: "...minim\*, informers, apostates, and sceptics may be cast (into a pit) and need not be brought up."\*\*

And it is even (permissible) to kill them in a direct manner (בְּיָד יָדָא), for behold they are like a serpent. For both (the serpent and the informer) lay traps (for their victims), as it is written in (Ecclesiastes 10:11), "if the serpent bite before it is charmed, than the charmer hath no advantage". Further, it is written in Baba Kama (I,4), "the snake is always reckoned as noxious", and therefore whoever kills him first commits a praiseworthy act, according to (the opinion of) Akiba, in the chapter entitled "Dinay Mamanot" (Sanhedrin, f.15 b.)....

Even though (a majority of the) Rabbis differed with him (Akiba) we accept his view--(i.e. even though Akiba's view was the minority one, the Rabbis still accepted it). And so the practice of putting the confirmed informer to death in a direct manner is common in many places in Israel. And Maimonides wrote and testified in ("Chovel Oomazik" VIII,11): "Concerning the informer who gives false testimony and informs, it seems to me that it is forbidden to kill him unless he is a confirmed informer. For such a one (i.e. one who is not a confirmed informer) should be punished lest he inform on others." And it is a common practice in the cities of the West to punish (confirmed) informers, "...who by their informing are known to have caused loss of Jewish property," and to turn such informers over to the non-Jews for execution, beating, or imprisonment according to (the seriousness) of their crime. And so it is permissible to turn whoever causes community distress and grief over to the gentiles to be flogged, imprisoned or fined. It is, however, forbidden

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\* "Those who act as priests to idols whether they are Israelites or heathens", Rashi.

\*\* A'vodah Zarah, 26b., Soncino Talmud, p. 131.

to destroy the informer's property, even though it is permitted to fine him, because his property belongs to his heirs.

Further, (the punishment of the confirmed informer) is practiced daily in the land of Castile, and similarly in the Kingdom of Aragon, where it became customary to do so because (of the advice) of the Jewish leaders who (lived) there. Similarly, in Catalonia (itself), in the previous generation (and) in our generation there have been instances in which informers have been killed.

And even (if) the Jewish law was vague (i.e. uncertain as to what the law was in this matter) we would (nevertheless) be able to do what former generations did. For (as we have said) the later generations also hold fast to (this practice), even though they are neither prophets or the sons of prophets.\* For it says in the Jerusalem (Talmud): (Concerning) all law that is vague in your hand, and you do not know what its essence is (i.e. don't know what to do), go out and see how the people are doing it and do accordingly.

And who is a confirmed (פִּיטוּס) (informer)? Whoever is known to be such by the people (עַם הָאָרֶץ). For (there is) no (longer) a court of twenty-three (to determine, via the presentation of evidence before it), who is an established informer, and (therefore were it not left up to the people) there would at present be no confirmed (informers) for we have no court (of twenty-three) experts. And behold, (our) sages have (therefore) compiled books, testified, and written that an established informer may be killed at any time, and he who shows him kindness or mercy is (in reality) being cruel to his (own) generation.....

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\* Amos, 7:14.