Inter-Communal Inspiration: R. Jacob ben Asher's *Arba'ah Turim* and *Las Siete Partidas*

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Contribution

Even as this thesis only begins to elaborate upon Ephraim Urbach's landmark "Mi-Darkhei Ha-Codifikatziah – Al S' Ha-Turim L'R. Yaakov b. Asher," it aspires to provide a stepping-stone to further inquiry and study of the relationships between the Spanish and Christian communities in Spain – and the legal codes that sustained them.

Goal

This thesis seeks to study afresh the question of the apparent similarities between *Las Siete Partidas* and the Tur. The thesis will examine selected sections of Tur *Hoshen Mishpat* in light of parallel sections of *Las Siete Partidas* in their original languages (Hebrew and Spanish, respectively) through a comparative law lens and contextualize the Tur in fourteenth century Christian Spain.

Organization of the Thesis

This thesis was organized in good measure according to the sources listed in Ephraim Urbach's article, "Mi-Darkhei Ha-Codifikatziah – Al S' Ha-Turim L'R. Yaakov b. Asher," and then supplemented with additional comparative legal analysis within *Las Siete Partidas* and the *Arba'ah Turim*.

Materials Used

Primary source legal codes, read alongside Ephraim Urbach's "Mi-Darkhei Ha-Codifikatziah – Al S' Ha-Turim L'R. Yaakov b. Asher," provided the bedrock of material for this thesis. These were then supplemented with secondary sources pertaining to Jewish, Roman, and Spanish law, as well as the history of Christian Spain.

Introduction: Historical Context for a Historic Legal Code

It is difficult to measure the contribution of a jurist without knowledge of the historical context in which he was writing. This is certainly so of Jacob ben Asher, known for his *magnum opus*, the *Arba'ah Turim* (Tur).[1] While his early life, family, and intellectual ancestry may be traced to Ashkenaz, he crafted his contribution to fit the Spanish preference for systematic codes. The perceived need for it, and the process by which it was formulated, likewise relate directly to the Tur's time period and geographic location.

Christian Spain's history in this time is bound intimately to the "Reconquista," in which the Christian north drove the border with the Muslim south down toward the bottom of the Iberian Peninsula. While this happened over the course of hundreds of years, with the border moving north and south depending on the victors of the latest battle, the thirteenth and fourteenth centuries marked a period of growth and political centralization for the Christian north. For Spanish Jews, it marked a period of innovation, wrought largely by the creation of new communal structures and the relatively high degree of autonomy bestowed upon Jewish communities in Spain. The Muslim rulers of Spain initially granted this latitude to the Jewish community, and the Christian rulers of northern Spain[2] maintained it.

[1] Jacob ben Asher is known as the "Tur," which is also the shorthand for the name of his legal codification, the *Arba'ah Turim*.

[2] Much of the sociopolitical reality of the era is one of tension between the growing Christian north and the declining Muslim south of Spain. As the Christian north came, over time, to control more territory, Jewish residents of those areas came under the authority of Christian rulers.

Consequently, the Jewish legal system in Spain could be applied with greater latitude to the day-to-day lives of Jews living there. In the five centuries of legal development in Spain of which there is record (and three leading up to the arrival of the Tur to Toledo), Jewish jurists were developing the practical means to adjudicate many of their own cases.[3]

Yet the change in authority between Muslim and Christian rulers in particular regions also created something of a power vacuum within Spanish Jewry. Institutions remained undeveloped and only gradually took root in the frontier regions. As Jonathan Ray describes in *The Sephardic Frontier*, "Indeed, the development of communal institutions, such as synagogues, cemeteries, and kosher butcheries was very slow and often varied greatly from one settlement to the next."[4] Even when these institutions came into being, and overcame the internal factionalism that occasionally stymied them, they were disparate and found only inconsistently across cities and regions.[5] As Ray goes on to describe, "When Asher ben Yehiel and his sons [including Jacob ben Asher] arrived in Toledo at the beginning of the fourteenth century, the large Jewish community there was still without a charitable fund," something often considered a mainstay of more developed Jewish communities.[6] Likewise, it would be easy to assume that the existence of

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[3] Eliav Shochetman. "Jewish Law in Spain Before 1300."*An Introduction to the History and Sources of Jewish Law.* N. S. Hecht, B. S. Jackson, S. M. Passamaneck, Daniela Piattelli, and Alfredo Rabello, eds. New York: Oxford University Press, 1996: pages 271-272.

[4] Jonathan Ray. *The Sephardic Frontier*: *The Reconquista and the Jewish Community in Medieval Iberia.* Ithaca, New York: Cornell University Press, 2006: page 98.

[5] Ibid.

[6] Ibid 103. Judah Galinsky might challenge Ray's presumption, holding that such funds were uncommon in many parts of Spain, France, and Germany until the fourteenth century. Nonetheless, it is significant that at the turn of the fourteenth century, these funds were in such a nascent stage of development within northern Spain, perhaps still lagging behind those for comparable communities within Ashkenaz. For more, see Galinsky's "Public Charity in Medieval Germany: A Preliminary Investigation," in *Toward a Renewed Ethic of Jewish Philanthropy*, edited by Robert S. Hirt and Yossi Prager (New York: Yeshiva University Press, 2009: page 80).

synagogues meant a high degree of centralization of Jewish life, when in fact many communities did not support synagogues, and the synagogues that did exist were at times limited in influence due to the convening of prayer quorums in private homes.[7] Such decentralization was typical in these growing communities along the frontier in the twelfth through fourteenth centuries, particularly as Jews from the Muslim south of the Iberian Peninsula continued to flow northwards.[8]

The lack of clarity about Jewish communal order likewise provided the opportunity for the growing Spanish kingdoms in the north to insert themselves more significantly into Jewish life. For example, even as Jewish courts officially maintained a significant degree of autonomy, they were often dependent upon Christian governments to ensure that rulings were implemented.[9] Christian authorities also began to influence internal Jewish governance more directly. Jewish communities, known as *aljamas*, were governed by a council of elders, who were selected by their communities to oversee internal affairs.[10] As their responsibilities included assessing taxes for the royal coffers, the Crown of Aragon and other regional rulers began to require approval of the communal selection of elders by an official that the community had no formal say in appointing -- a "crown rabbi."[11]

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[7] Galinsky 99-100.

[8] This trend became pronounced following the consecutive invasions of the intolerant Almoravids and Almohads from North Africa, and the general economic and social decline of the Muslim south of the Iberian Peninsula from the twelfth century onwards.

[9] Ray 105. While Spain was not unique in this regard, it is a particularly noteworthy context.

[10] Ibid 105-107.

[11] Ibid 107, 113.

These crown rabbis were frequently unlearned but loyal to the crown. To the dismay of Jewish legal scholars, whose power remained quite limited and whose primary strengths stemmed from knowledge and their esteem as scholars within the Jewish community, crown rabbis maintained significant sway.[12] Crown rabbis were often granted leave to adjudicate cases within the Jewish community and even constitute a court of appeals.[13] Legitimacy and knowledge of rabbinic law remained largely in the hands of rabbinic scholars, while power rested, by proxy, with the crown and the wealthy among the Jewish community.

While this disparity of power created tensions within the Jewish community, it also enabled Jewish communal authorities to maintain significant power and autonomy -- notably the power to tax, oversee the Jewish community, and ban individuals deemed a threat to it.[14] These authorities may have been resented for having dual loyalties to the crown and Jewish community, but they also enabled greater autonomy for Jewish communities.

The fact and continuity of Jewish legal and communal autonomy in Spain created a unique set of demands upon Jewish jurists. Jurists were frequently called upon to support towns lacking rabbinic judges or those versed enough in Jewish law to serve in their stead.[15] This practical necessity spawned an extensive responsa literature and works of Jewish law, which can be observed, for example, in the responsa of Rabbi Solomon Ibn Adret, known as the "Rashba."

[12] Ray 113-115.
[13] Ibid 115-116.
[14] Ibid 107.
[15] Shochetman 273.

Rabbinic thinkers produced two major types of works focused on Jewish law: *sifre halachot* and *sifre pesakim*.[16] The former works clarify and analyze legal sources, while the latter make and share legal determinations.[17] Given the practical needs of the Spanish community to adjudicate cases, these became especially prominent.

While halachic literature in Spain dates to the tenth century,[18] two major works dominated the landscape by the end of the thirteenth century: Isaac Alfasi's *Halachot Rabbati* and Moses Maimonides' *Mishneh Torah*.[19] Judah Galinsky chronicles the impact these two works had on Spain by the fourteenth century: "Briefly, in Castile serious study of the Talmud and the supplementary Tosafist glosses was almost non-existent, and the halakha was all but decided according to Maimonides' *Mishne Torah,* and to a lesser extent, the *Halakhot* of Alfasi."[20]

The earlier of these two works, Rabbi Isaac Alfasi's eleventh century *Halachot Rabbati*, provides what Leonard Levy terms "one of the pillars upon which almost all subsequent attempts at halakhic codification rested."[21] Indeed, his impact on codification was such that Abraham ibn

[16] Shochetman 276. Jewish jurists were not conscious at the time of this distinction in genre. Rather, it is contemporary scholars, such as Menahem Elon and Chaim Tchernowitz (Rav Tzair), who developed this categorization.
[17] Ibid 276-277.
[18] Ibid 275.
[19] Judah Galinsky. "Ashkenazim in Sefarad: The Rosh and the Tur on the Codification of Jewish Law." Berachyahu Lifshitz, ed. *The Jewish Law Annual*, Volume XVI. New York: Routeledge, 2006: page 4.
[20] Ibid.
[21] Leonard R. Levy. *Yitzhaq Alfasi's Application of Principles of Adjudication in Halakhot Rabbati.* Ph.D. diss., Jewish Theological Seminary, 2002: pages 1-24. The citation here is from page 1.

Daud opined, "Ever since the days of R. Hai [Gaon] there had been no one who could match him in scholarship."[22] While it is a matter of historical dispute as to whether Alfasi wrote his entire compilation in Spain (which would mean that he did so at sixty years of age or more), or did so during the earlier part of his life in North Africa,[23] his influence on Spanish Jewry cannot be overstated. From his seat as head of the academy in Lucena, he cultivated a generation of scholars whose ideas shaped Spanish Jewry, with his most noted student Joseph Ibn Migash ultimately succeeding him at the helm of the yeshiva in Lucena.[24] Through his training of successive generations of students, Alfasi's *magnum opus* became the preeminent legal work of Muslim Iberia and North Africa. From Christian Provence (toward the end of the twelfth century) to Catalonia (years earlier) and throughout Andalusia and North Africa, Alfasi's *Halachot Rabbati* permeated the legal culture of the region.

Alfasi's work focuses on portions of the Babylonian Talmud of immediate and practical importance in his time.[25] Following the order of the Babylonian Talmud, he utilizes much of its language to explain legal determinations, while relating only portions of the Talmudic discussions, so as not to confuse less knowledgeable jurists.[26] The code also includes material from the Palestinian Talmud as well as a great deal of post-Talmudic material, notably from R.

[22] Levy 2.
[23] Ibid 5-8.
[24] Ibid 9.
[25] Ibid 15.
[26] Ibid 15-16.

Shimon Qayyara's *Halachot Gedolot*.[27] The practical applications of this work are manifold. According to Levy,

> From the structure of the *Halakhot* and the sources upon which Alfasi relied, it is clear that Alfasi's main purpose was to write a work which would not only teach the practical legal conclusions to be derived from the Talmud for his time, but also to demonstrate how these conclusions are derived. For this purpose, Alfasi refined and defined a methodology based on the teachings of the Geonim for deriving legal conclusions from the Talmud.[28]

Alfasi provided a new core text for Jewish law in Spain (and beyond). The yeshiva in Lucena, which he helped bring into great prominence, ensured that his text would become embedded in the Spanish halakhic tradition.

The next great Spanish codifier, Moses ben Maimon (Maimonides), was arguably directly impacted by the efforts of the yeshiva in Lucena, absorbing not merely the work of Isaac Alfasi, but also the broader scholarly tradition of which it was a centerpiece. It is possible to trace the intellectual lineage from Isaac Alfasi to his successor in Lucena, Joseph Ibn Migash, to Rabbi Maimon (Maimonides' father), and finally on to Maimonides.

[27] Levy 17-20.
[28] Ibid 21.

While Maimonides' *Mishneh Torah* was composed nearly entirely outside of Spain, its influence on Spanish Jewry was profound. It quickly became a mainstay of the Iberian Peninsula and much of the Middle East, and gradually came into circulation in Eastern Europe.[29]

Unlike Alfasi's *Halakhot Rabbati*, the *Mishneh Torah* sought to reorganize Jewish law based on subject area.[30] Divided into fourteen books, it includes many areas beyond the purview of Alfasi's earlier code, delving into topics that were not relevant to Jews of the era.[31] It was, as he put it explicitly, "'so that all the rules shall be accessible to young and old, whether these appertain to the Pentateuchal precepts or to the institutions established by the sages and prophets.'"[32] Yet as Moshe Halbertal argues in his seminal essay, "What is the *Mishneh Torah*?" there are in fact two possible understandings of Maimonides' endeavor: "The first option, the moderate one, perceives the *Mishneh Torah* as the representation of halakhah, and the second option, the more radical one, perceives the *Mishneh Torah* as halakhah."[33] A comprehensive guide to all aspects of Jewish living, Maimonides might have hoped to replace the Talmud itself and have the *Mishneh Torah* become the authority on all aspects of Jewish law and conduct.

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[29] For more, see Jeffrey Woolf's "Admiration and Apathy: Maimonides' *Mishneh Torah* in High and Late Medieval Ashkenaz," *Studies in Memory of Isadore Twersky*, ed. J. R. Harris, Cambridge: Harvard University Press, 2005.

[30] Moshe Halbertal. "What Is the *Mishneh Torah*? On Codification and Ambivalence." Jay M. Harris, ed. *Maimonides After 800 Years: Essays on Maimonides and His Influence*. Cambridge, Massachusetts: Harvard University Press, 2007: pages 81-111. This particular citation is from page 81.

[31] Ibid 81.

[32] Ibid.

[33] Ibid 82.

Because of its radical approach to codification, Maimonides' code was met with skepticism, or ignored altogether, in many parts of Ashkenaz, when it entered discussion there in the 13th century.[34] Jeffrey R. Woolf suggests that the tosafist work, *Sefer Mitzvot Gadol*, written by Rabbi Moses ben Jacob of Coucy in the mid-thirteenth century, should be noted for "the fact that this work (perhaps more than any other) facilitated the penetration of the *Mis[h]neh Torah* of Moses Maimonides… into the Ashkenazic orbit."[35] It relies on the Mishneh Torah for structure and much of its content, but also engages with it from within the world of tosafist scholarship and method. His father, Rabbi Asher ben Yehiel (the Rosh) may be seen as the last of the tosafists.[36]

The Rosh and his family emigrated from Germany in 1303 and settled in the region of Castile in Spain by 1305. There he found a halachic culture dramatically different from the one to which he was accustomed in the tosafist heartland. He was jarred to find an intensive focus on codes, such as the Rambam's, rather than, as Galinsky put it, "a Talmud-centric society where study of the Tosafist glosses was widespread and the law was decided by consulting legal summaries that followed the order of the Talmud…"[37] There seemed to be only a limited focus on Talmudic analysis in the judicial realm.[38] The *Mishneh Torah* had become so dominant

[34] Even as the Jewish communities of al-Andalus (Muslim Spain) were largely disbanded or suppressed by the Almohads, the Jewish communities in Christian Spain continued, in large measure, to thrive.

[35] Jeffrey Woolf. "Maimonides Revised: The Case of the *Sefer Miswot Gadol*." *Harvard Theological* Review, 90:2 Cambridge: Harvard University Press, 1997: pages 175-203. These quotes are from page 176.

[36] Elon and Urbach both suggest as much in their scholarly analysis of the tosafists.

[37] "Ashkenazim in Sefarad" 4-5.

[38] "Ashkenazim in Sefarad" 4-5.

alongside *Halachot Rabbati* that students ceased looking to the Talmud as a point of reference when adjudicating cases.[39]

Discontented by the dearth of Talmudic analysis in the adjudication of cases, the Rosh set about reinvigorating it. As Rabbi Menahem ben Zerah (Navarre, circa 1310-1385)[40] notes with respect to the Rosh,

> And in particular in all the land of Sefarad [i.e., Andalusia and Castile] those who studied Talmud were few in number, from times past until God awakened the spirit of R. Asher, who came from Ashkenaz. And [here] he studied and taught and raised many students, he and his sons after him.[41]

The Rosh focused his efforts on both pedagogy and legal practice, encouraging the expansion of yeshiva curricula to include Tosafist thought and training future scholars to use the Talmud as the basis of legal determinations.[42]

The Rosh became known as the preeminent halachic thinker in Castile, assuming leadership of the yeshiva in Toledo.[43] As both a teacher and leading jurist of the region, the Rosh

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[39] In some respects, this might have signified the realization of Maimonides' ambitions for the *Mishneh Torah.* Yet the efforts of Rosh and his son R. Jacob (Tur) show how Jewish legal history did not unfold exactly as Maimonides might have wished.

[40] For more, see Page 146 of the Blackwell Companion to Judaism, edited by Jacob Neusner (2003).

[41] "Ashkenazim in Sefarad" 6. The parenthetical notations are Galinsky's.

[42] Ibid 7.

[43] Judah Galinsky. *Dissertation.* Bar Ilan University, 1999: page 1.

set about creating pedagogical scaffolding so that students and legal authorities could more readily turn to the Talmud for guidance. In his *Piskei HaRosh*, the Rosh provided analysis of halachic materials, so that students and jurists could refer back to the Talmud for additional information and background, as well as a well-rounded view of how the Rosh's legal conclusion flowed from the Talmudic text. *Piskei HaRosh* differs significantly from the *Mishneh Torah* in both form and content. It makes the Talmud more transparent, rather than supplanting, or at the least suppressing it. As Galinsky describes,

> There are two basic differences between a code, such as Maimonides' Mishneh Torah, and a summary, which was the preferred literary form in Ashkenaz. In a code, the reader is not privy to the Talmudic grounding of the legal decisions, but is presented with a single interpretation of the Talmudic data, that of the author. In contrast, Ashkenazi halakhic summaries, such as the *Piskei Ha-Rosh*, directly relate to the Talmudic texts on which they are based and present an array of conflicting opinions alongside the author's position.[44]

The Rosh's reasons for eschewing the systematic code form that had become popular in Spain were profound. The Rosh believed that it was impossible to reach accurate legal rulings without referring to the Talmud because of scribal errors and the likelihood that a jurist might misinterpret the author's intent without adequate knowledge of the background material on which

[44] "Dissertation" 1.

a given opinion is based.[45] Codes were problematic and could be misapplied by individuals who did not understand the underlying law and extrapolated improperly from them.

In spite of his intense critique of codes, his remedy was limited in its effect. *Piskei HaRosh* did not affect the Jewish court system as much as the yeshiva. Judah Galinsky determines that Rosh's impact on the Jewish court system was secondary "from the fact that his *Psakim* would have been virtually useless" due to its bulk, style, arrangement according to the Talmudic structure, and use of Talmudic language.[46] His great work was not readily applicable within a court of law. As Galinsky suggests, "we must instead conclude that he had resigned himself to his inability to influence the practices of the rabbinical court judges in Castile" and focused his efforts on raising up a new generation of scholars, versed in Talmudic thought and able to adjudicate cases with greater reference to the Talmud.[47]

In some ways, R. Jacob b. Asher can be seen as carrying on his father's legacy. His work answers the two principle critiques that the Rosh brings against legal codes: they are liable to scribal error, and the reader may not fully understand the ideas presented by the author.[48] Yet the form that his work takes may seem counterintuitive, for it is, in the words of Galinsky,

[45] "Ashkenazim in Sefarad" 9.
[46] Ibid 12.
[47] Ibid.
[48] Ibid 9. As noted earlier, scribal errors within codes would be compounded by the limited information with which to contextualize an idea or concept. As a result, scribal errors were more likely to result in a miscarriage of justice.

"structured in a logical and practical manner, without direct links to the Talmud"; in essence, "with more affinities to the codes used in Sefarad than to the summaries of Ashkenaz."[49]

While the form is that of a Sephardic legal code, the Tur includes significant content from Ashkenaz, notably rulings from the Rosh and earlier Tosafist thinkers. In addition, its plurality of opinions and discursive nature diminishes the likelihood that a jurist would misunderstand the issues present within a given ruling. The Tur's compromise in form for the sake of impact was, as Galinsky points out, "in order to reach his targeted audience, the religious leadership and learned laymen of Spain."[50] The Tur focused his energies on the court system itself, bringing Ashkenazi thought and discourse into Spain in a form that was congenial to that culture.

Galinsky goes on to suggest four target audiences that the Tur had in mind, in relation to each of his four books: judges (*Hoshen Mishpat*, *Evan HaEzer*), local rabbis (*Yoreh Deah*), and the local rabbi and layperson (*Orach Hayyim*).[51] Galinsky points out that "This new code, updated with the teachings of the Tosafists, and of his father as well, would [aim to] replace that of Maimonides. For the learned judge, however, the new work would also be useful, serving as an excellent complement to the study of the Talmud and the Rosh."[52]

[49] "Ashkenazim in Sefarad" 13.
[50] "Dissertation" 2.
[51] Ibid 3.
[52] "Ashkenazim in Sefarad" 16.

In his introduction to each of the four books of the Tur, Jacob ben Asher clarifies his purpose. But in the introduction to *Hoshen Mishpat*, he describes the content of all four books and the relationship between each book:

> And I called it *Hoshen Mishpat*, and I gave to the breastplate of justice the precious stones,[53] so that all who consulted it would have their eyes illuminated and have the openings of their lips [in speech] be correct and pure. And with it [*Hoshen Mishpat*], the *Arbaah Turim* was completed, chiseled with help of God's presence.
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> The first [book of the] Tur was *Orach Hayyim*, in which I gave the blessings and the prayers and the rules for Shabbat and holidays and their laws. And I called it *Orach Hayyim* because from it goes forth life.
>
> The second [book of the] Tur was *Yoreh Deah*, whose proceedings relate to the forbidden, to enlighten the Children of Israel about the permitted and the forbidden. And I called it *Yoreh Deah* so that one would be in awe of wisdom and know tradition.
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> And the third [book of the] Tur was *Even HaEzer*, in which I provided for man a help corresponding to him, also when he sends out his wife away and expels her [from his household], how he expels her from his household, and I called it *Even HaEzer* because it has the effect also of helping [in such situations].

[53] Literally the *Urim* and *Tumim*, in reference to the seer-stones by which the High Priest would consult God.

> And the fourth [book of the] Tur was *Hoshen Mishpat*, in which I put forth law and statute. And that is how I ordered it; at the beginning, I clarified the statutes [that one uses] to judge and the rulings of the judges.

It is with the Tur's own words in mind that we delve into a comparative legal analysis of his work.

Ephraim Urbach and His Theory of the *Arba'ah Turim*

Scholarship related to the Tur has often been overshadowed by analyses of Joseph Karo's works, the *Shulchan Aruch* and *Beit Yosef*. The Tur reemerged as a text of interest for scholars engaged in the "academic" study of Judaism in nineteenth-century Germany. Since then, scholars have examined it with varying degrees of interest, depending on the intellectual zeitgeist and related texts being studied. More than a generation ago, Ephraim Urbach emerged as a leader in the academic study of the Tur and his works.

Of particular note is an article that he published just over thirty years ago, "Mi-Darkhei Ha-Codifikatziah – Al S' Ha-Turim L'R. Yaakov b. Asher."[54] In it, Ephraim E. Urbach argued that R. Jacob ben Asher's Tur was influenced in part by, and bears a few marked similarities to, the thirteenth-century Spanish legal code *Las Siete Partidas* ("The Seven Parts").

Las Siete Partidas was promulgated during the reign of King Alfonso X of Castile and was an attempt to create a legal code for his entire kingdom, integrating within it elements of local law (*fueros*), canon law, and Roman legal codes from the previous millennium. *Prima facie*, the Tur's codification process does appear to mirror that laid out in the *Siete Partidas*. Both determine the laws that remain relevant in the present and work to resolve conflicting opinions.

[54] Ephraim E. Urbach "Mi-Darkhei Ha-Codifikatziah – Al S' Ha-Turim L'R. Yaakov b. Asher" *Proceedings of the American Academy for Jewish Research*, Volumes 46-47. New York: AAJR, 1980.

Urbach's article has attracted little attention, and contributions by Israel M. Ta-Shma and Judah Galinsky have advanced the study of the Tur significantly since its publication.[55] This thesis seeks to study afresh the question of the apparent similarities between *Las Siete Partidas* and the Tur. The thesis will examine selected sections of Tur *Hoshen Mishpat* in light of parallel sections of *Las Siete Partidas* in their original languages (Hebrew and Spanish, respectively) through a comparative law lens and, as noted, will seek to contextualize the Tur in fourteenth century Christian Spain. As an analysis of the Tur in relation *to Las Siete Partidas*, it must take account of Urbach's pioneering study.

Urbach first sets out the common faulty appraisals historians made of the Tur. Referring to Heinrich Graetz, the towering nineteenth century Jewish historian, Urbach suggests that Graetz was "great in his apprehension and great in his errors" with respect to the Tur.[56] Graetz expressed a rather searing disdain for the Tur and claimed that "The religious codex of Rabbi Jacob is fitting for use as a measure, in order to understand just how much Jewish leadership had declined since the time of the Rambam."[57] While Graetz may be seen as one of the harshest

[55] For example, please see Israel Ta-Shma's "R. Asher b. Yehiel u-Beno R. Ya'aqov Ba'al ha-Turim" in *Pe'amim*, 46–7 (1991), 75–91 and Judah Galinsky's "Ashkenazim in Sefarad: The Rosh and the Tur on the Codification of Jewish Law" in *The Jewish Law Annual*, Volume XVI. New York: Routeledge, 2006.

[56] Ephraim E. Urbach "Mi-Darkhei Ha-Codifikatziah – Al S' Ha-Turim L'R. Yaakov b. Asher" *Proceedings of the American Academy for Jewish Research*, Volumes 46-47. New York: AAJR, 1980: page 1. This and all other quotes from Urbach, the Tur, the *Shulchan Aruch*, and other Hebrew texts are my own, unless otherwise indicated. Graetz's work was published in 1864.

[57] Ibid.

critics of the Tur, he did nevertheless play a role in bringing the work into the world of academic discourse. His views were not, however, uniformly accepted by other scholars of the era.

P. Bucholz went so far as to argue that, contrary to Graetz,

> If we observe the measure of independence that is evident [in the Tur], we conclude that the author's organization of the laws is new and instills within them completeness; if we weigh in addition to that the internal logical connections that are within each and every *perek* (section) . . . it is evident that the composition appears as a[n original] creation of someone with spirit and who is blessed with talents.[58]

Urbach likewise relates A. H. Weiss's impression that the Tur "did not add anything of his own, except for some poetic flourishes.[59] Weiss—most poetically—notes that "One should not ignore all of the light [that the Tur brings] to the words, because our Rabbi Jacob [ben Asher] gave to his book scientific form, and there was not in all of Ashkenaz and France that kind [of

[58] Urbach 2.
[59] Ibid.

codification]."[60] Commenting more on form than content, Weiss recognizes that the methodology of the Tur was innovative and praiseworthy.

It was not until 1920 that "the first detailed discussion on the books of the Tur was released in a monograph…"[61] This monograph by the very young (twenty years of age!) Abraham Hayyim Freimann was itself primarily on "the family of the Rosh [Rabbi Asher ben Yehiel]," and yet it was the first to begin discussing the significance of the Tur as a contribution to Jewish jurisprudence.[62] Urbach notes that Freimann recognizes the extent to which the Tur follows the opinions of his father in making legal rulings.[63]

Yet Freimann provides a far more positive valuation of the Tur's work than many prior scholars. He recognizes the internal methodology and logic of the codification.[64] The Tur, in his estimation, engaged in scholarship that departed from the work of his father Asher ben Yehiel and had its own internal logic.

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[60] Urbach 2.
[61] Ibid.
[62] Urbach is referring to modern legal analysis, not traditional study. Joseph Karo's *Beit Yosef* and *Shulchan Aruch* were themselves organized according to the structure of the Tur and reflect deep study of the code, and a number of early commentators wrote on the Tur.
[63] Ibid. This quote, along with the subsequent one, is Urbach's, not Freimann's.
[64] Ibid. In his four introductions, the Tur likewise explicates his legal reasoning.

Urbach affirms Freimann's insights and elaborates upon them:

> The great achievement of the *Baal HaTurim* [Jacob ben Asher] was his command of the great [quantity of] material on which his authority stood, his ability to choose between the abundance of opinions and sources… as in the words of the great Rabbi Joseph Karo, 'to gather the many opinions of the [Ashkenaz] legal rulings.'[65] Instead of discovering the weaknesses of the work, we find praiseworthiness in its very content.[66]

According to Urbach, the Tur's uniqueness was not in his creative or original jurisprudence but in his ability to organize massive amounts of legal material so effectively. In sum, Urbach determines,

> Rabbi Jacob did not succeed in promulgating a work of wonderful order and uniform style like the *Mishneh Torah* of the Rambam. But his agenda was not an amazing literary creation, but rather a compilation of a book of legal rulings which would serve particular

[65] Indeed, this quote supports the notion that it was in large part later commentators who questioned the Tur's contributions, in contrast to those who lived closer to the Tur's own lifetime, such as Rabbi Joseph Karo.

[66] Urbach 2.

> needs, and which Rambam's composition [the Mishneh Torah] did not fulfill; and from this angle, one must see in his books an advancement in the process of codification.[67]

To Urbach, the Tur's critics simply misapprehend the nature of his work. What the Tur might lack in terms of style, it more than compensates for in its content.

It is from here that Urbach begins his inquiry into the Tur's relation to his Spanish environment. How did the Tur make such advances in the codification of Jewish law? More specifically,

> The question . . . that should be raised is this: if there exists an obvious change in the ordering of the books of the Tur in relation to those [codifications] before them, should one not also examine the context [in terms] of the time and the surrounding environment that gave life to and created Rabbi Jacob?[68]

[67] Urbach 2.
[68] Urbach 3.

Urbach here assumes that changes the Tur makes to the order of his codification that differentiate it from previous ones—notably that of Maimonides—should lead us to look for external influences that may have led him to these changes. This assumption, while not unreasonable, excludes the possibility that the Tur may have changed the order of material for his own reasons.

In general, Urbach holds that the advances of the Tur must be studied within their historical context in order identify what might have inspired them. In general, Urbach's historical instinct is correct. We should look for external sources of influence when internal explanations are insufficient. In this case, there is no internal Jewish precedent for his unique structure (even though there is precedent for systematic codes), although this lacuna does not exempt us from pondering whether the Tur's unique order has its own internal logic.

From this preliminary question, Urbach asks "another more general one": "What principles were at work within the enterprise of codification that are made manifest [within the Tur]?"[69] If the historical context provides the basis for inquiry about the Tur's sources of inspiration, then what key concepts were at play within that time and place, which can be observed within the Tur itself?

[69] Urbach 3.

This second question, when viewed together with the first, is of critical importance to a broader understanding of the Tur. On what basis was it composed, particularly if its genius lies largely in its organization, rather than in its original content? Yet Urbach adds a cautionary note to his dual lines of inquiry: "Those questions do not come to [re]position his rulings [in light of] their influences, but rather to underscore the shared processes of different codifications and together with that, understand [what is] special within each one of them."[70] In other words, the Tur's rulings should not be reduced to their context, but the context should shed light on what is unique about his code.

From within this new, positively framed search for parallels between codifications, Urbach looks for influences on Jacob ben Asher and his methodology. Unsurprisingly, Urbach turns first to the Tur's father, Rabbi Asher ben Yehiel. "Rabbi Jacob's efforts were in part those his father, the Rosh [Rabbi Asher ben Yehiel] …"[71] This is evidenced in a number of passages in the Tur; in very many cases the Tur closes his discussions of various issues with references to his father, indicating that we are to understand that he is ruling like his father.

[70] Ibid.
[71] Ibid.

Sources external to Jewish law also appear to have significantly impacted the Tur, both in content and structure. For example, in certain places the Tur refers to "the laws of the gentiles."[72] He does so in the laws governing "transfer of the estate from all of the offspring and plac[ing] it in the hand of the eldest child…."[73] A similar reference appears to laws that have "authority vested in them by reason of the king."[74]

Yet Urbach holds that these direct references pale in comparison to the more fundamental structural parallels between Spanish legal codification and the Tur. These structural elements suggest, to Urbach, a broad overlap between the enterprises of Spanish and Jewish legal codification and indicate that the Tur's breakthrough code may have been in part inspired by legal developments outside the Jewish community. Urbach notes, "The epoch in which Rabbi Jacob lived and worked was one of repeated attempts to insert Roman law [into Spanish legal codes]… so as to integrate them with local *Fueros* [codes of law]."[75]

Much as Christian jurists in Spain were attempting to integrate local Spanish laws with the more systematic Roman legal codes, so too was Rabbi Jacob ben Asher attempting to insert

[72] Urbach 3.
[73] Ibid. Local Spanish law forbade such a practice, and the Tur was perhaps referencing the idea that siblings who, by Jewish law, might not have received an equal portion of a given inheritance, should not bring suit in Spanish courts.
[74] Ibid.
[75] Urbach 3-4.

and integrate Ashkenazi legal literature into his more systematic code. While certain elements undoubtedly differed -- notably in the additional thread of canon law within the Spanish codes -- Urbach underscores the parallel process.

Urbach emphasizes that, "The second half of the thirteenth century was a time of great activity in this [subject] area of codification."[76] During it, "Alfonso el Sabio (["The Wise"] 1252-1284 [C.E.]) continued the effort begun by his father. In 1255 the *Fuero Real* [Royal Code of Laws] was completed in four books"[77] -- a number quite resonant with the title of the Tur's *Arba'ah Turim*.

The first of *Fuero Real*'s sections relates to "religion"; the second to "evidentiary law"; the third "family law, inheritance, and obligations"; and the fourth to "punishments and remunerations."[78] (Books of local law were called 'fueros,' and the idea of a *Royal Fuero* was an indication of growing legal and governmental centralization.) The consolidation of the law into these four parts was an intensive undertaking and, according to Urbach, "before the composition,

[76] Ibid.
[77] Ibid.
[78] Urbach 4. Dr. Alyssa Gray notes how the extent to which the structure of the *Fuero Real* closely maps onto the Tur, with the notable exception of an equivalent to Yoreh Deah. Hoshen Mishpat likewise combines *Fuero Real*'s second and fourth parts.

[governments] still governed… based on a foundation of Gothic law," which was used "alongside books of local law."[79]

The *Fuero Real* was published half a century before Jacob ben Asher migrated with his family to the Iberian Peninsula and was part of a larger effort to engage in codification. Urbach indicates that "that codex was used only as a source in the preparation of a larger effort, which was completed in 1265," and known as *Libro de las Leyes*, *Fuero de las Leyes* (Book of Laws, Code of the Laws).[80] Comprised of seven parts, it quickly became known as *Las Siete Partidas*.[81]

Like the Tur, *Las Siete Partidas* sought to bring multiple bodies of law into a single compilation, in this instance "Roman law, canon law, and local law, in order to fully absorb Roman law into Spanish law."[82] Urbach discerns three major purposes for *Las Siete Partidas*: "realization of the idea of his [Alfonso el Sabio's] father, Fernando el Santo"; "to create a direct guideline for subsequent kings in order to ease for them the task [of ruling]"; and "to spread awareness of the legal situation to simple people who would not achieve [a higher order

[79] Ibid.
[80] Ibid.
[81] Ibid.
[82] Urbach 4. The Tur synthesized in a single compilation Ashkenazic law and legal materials from the Sefardic context; Maimonides and Alfasi to be sure, but also others, including R. Meir Abulafia ("Ramah").

understanding of it] but rather would love their lords and listen to them" -- in short, to make the laws of Spain explicit and accessible.[83]

Yet even after this later code was promulgated, the work of codification continued. Having upset the balance of power between different interest groups with the promulgation of the code, Alfonso sought to appease a particularly important interest in his effort to retain legitimacy: the Pope.[84] He set about reconfiguring the code in a way that would be more favorable to the Vatican's interests.[85] Ultimately, it took a combined effort of nearly 90 years—until 1348—for the crown to put forth this revised legal code, known as the *Ordenamiento de Alcala*.[86] Given its far later publication (approximately 5 years after the Tur's death), Urbach aptly deduces that the Tur lived through a period of intensive codification of Spanish law, in which *Las Siete Partidas* served as the basis for further adaptations and revisions.

Fuero Real was a source for both *Las Siete Partidas* and the later *Ordenamiento de Alcala*. Urbach claims that it also may have been a source of inspiration for the *Arba'ah Turim*. As Urbach put it with aplomb, "This short study on the paths of legal codification in Spain near the time of the Tur will save us from resting on common assumptions about the entire effort of

[83] Ibid.
[84] Ibid.
[85] Ibid.
[86] Ibid.

codification, and what in my eyes is most important about the *Arba'ah Turim.*"[87] In short, to Urbach, the Tur's work was significantly affected by the process of legal codification taking place at roughly the same time in Spain.

Urbach bases his thesis on three major sources of evidence: historical, structural, and textual. By historical evidence, he means Spanish history and the chronology of legal codification in the Christian north. By structural evidence, he means the organization of the Tur in relation to the organization of other, Christian legal codes from the same geographic area. By textual, he means possible parallels within particular topics of discussion. While this thesis will devote attention to historical factors, its primary focus is on the direct parallels between different sections of the Spanish legal codes and the Tur.

This thesis will focus on the introductions to Hoshen Mishpat (and Hoshen Mishpat 1) and the prologue of the *Fuero Real*, both of which address broader ideas of legal philosophy and justice. Further, this thesis will delve into Hoshen Mishpat 68, which the Tur explicitly states is based upon the "ordering of the gentiles," and which Urbach suggests is paralleled by *Fueros Municipales* (section 73), a portion of an antecedent text on which *Las Siete Partidas* is based. The thesis will further study Hoshen Mishpat 65, which Urbach indicates may have been drawn in part from Decretum Gratiani (within Corpus iuris canonici; the canon law).

[87] Urbach 4.

Ultimately, this thesis seeks more clearly to ascertain the extent to which textual parallels between Spanish legal codifications and the *Arba'ah Turim* exist and to study the Tur's method of legal analysis in comparison with that of the contemporaneous *Las Siete Partidas*. It will attempt to establish whether and to what extend the Tur's substantive Jewish legal determinations overlap with those of the contemporaneous Spanish legal compilations. Through these analyses, this thesis hopes to contribute further to our understanding of this seminal work of Jewish legal codification.

Introductions to the *Hoshen Mishpat* and the *Digesta*

Ephraim Urbach suggests that of Jacob ben Asher's four introductions to the Tur (one for each of its four parts), three are quite similar. "Rabbi Jacob composes an introduction to each book [of the *Arba'ah Turim*]; those introductions are similar in the first part [of each one] not only one to the other but also to the introductions found in every other code [of Jewish law]."[88] Indeed, as Urbach underscores, each one opens with praise of God, a discussion of the relevant areas of law, and a list of the laws relevant to that part.

Yet one of the four introductory sections in the Tur is quite different: the introduction to *Hoshen Mishpat*. Urbach suggests that this introduction may be key to understanding Jacob ben Asher and his intentions in composing the Tur. Urbach explains, "Here for the first time the name *Arba'ah Turim* is expressed. This introduction, which was written after the completion of the fourth [book of the] Tur, changes the fundamental orientation for the author's observations about his [own] great work."[89]

Urbach contends that in his introduction to *Hoshen Mishpat*, Jacob ben Asher is more direct in explaining the significance and means by which he composed his codification than he is

[88] Urbach 5.

[89] Ibid 7. It is interesting to note that in *Orach Hayyim* and *Yoreh Deah* Rabbi Jacob ben Asher presents himself as young and inexperienced, in a way that he does not in *Even HaEzer* and *Hoshen Mishpat*. It would seem that by the time he composed the later books, he had a clearer sense of his accomplishment and the opus as a complete work.

in other introductions within the Tur. To Urbach, the Tur's introduction to this book is therefore crucial to any discussion about Spanish influences on the code.

Urbach suggests a close connection between the Roman *Digesta* and the introduction to *Hoshen Mishpat.*[90] Urbach points out that, like the Tur and other rabbinic codifiers, the Roman author of the *Digesta* significantly credits his predecessors with the production of legal content.[91] Justinian, at the time the emperor of Rome, "in writing to Tribonian about the task of compiling the *Digesta*," wrote,

> that the whole tradition of laws from then were based on the laws of Rome, that from the time of Romulus [the laws] had been confused and distanced [from the original] until they lacked bounds [and definition], and [there was] no man of [adequate] personal character capable of coming and deriving the conclusions [about them]."[92]

In short, Roman law had become difficult to master. It was the task of Roman scholars to place bounds on the scope of their laws and determine the practical conclusions from earlier sources -- much as Jacob ben Asher later felt compelled to do.

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[90] Urbach 7.

[91] Unless otherwise noted, quotes in Latin from the *Digesta* are translated from the Hebrew quoted within Ephraim Urbach's article.

[92] Ibid.

It was as a result of this need, according to Urbach, that Justinian commissioned Tribonian to compose a legal code to clarify and transmit Roman law. Interestingly, the resulting *Digesta* consisted of five parts and emphasized the role that different scholars had played in making a particular law or legal ruling.[93] In doing so, Tribonian demonstrated an explicit connection to earlier Roman laws and codifications and constructed his own role as that of explicating, organizing, and consolidating the growing corpus of Roman law.[94]

While demonstrating that Tribonian and Jacob ben Asher undertook a similar process within their respective legal traditions, Urbach does not demonstrate a clear causal relationship or show that the Tur directly imitated Tribonian's legal methodology. Urbach endeavors to muster additional evidence about the ordering of Hoshen Mishpat, which "corresponds in good measure to that of the order found within the *Digesta*," yet even he acknowledges that "there exist other examples as to which the order [within the Tur] does not correspond to that within the *Digesta.*"[95]

Urbach's acknowledgement that "similar things can be found in the prologue to *Fuero Real*… and others" further reduces the likelihood that Jacob ben Asher directly referred to the *Digesta* in constructing his compilation.[96]

[93] Urbach 7.
[94] Ibid 7-8.
[95] Ibid.
[96] Ibid 7.

Alan Watson reflects on the history and aims of Emperor Justinian (who ruled 527-565 C.E.):

> At once he began to restate the law. He first appointed a commission to make a collection of imperial rescripts, that is enactments or statements of law.[97] The rescripts were to be updated. This resulted in the first *Code* of 530 which has not survived because it was replaced by a revised *Code* in 534. After the first Code, Justinian turned his attention to the writings of the classical Roman jurists, primarily from the first century B.C. to the end of the first third of the third century A.D.[98]

Like Jacob ben Asher, Justinian sought to harmonize disparate viewpoints and create a single code. While Justinian was not himself the codifier, his effort in many respects mirrors that of Jacob ben Asher in bringing together prior legal literature to formulate a more unified whole.

In pursuit of this aim, Justinian (and his team of jurists) promulgated four major legal works: the *Codex Constitutionum*, *Digesta*, *Institutiones*, and *Novellae Constitutiones Post Codicem*.[99] The *Codex* was the initial legal code (and second edition) he put forth; the *Digesta*[100] was an abridgement of legal writings; *Institutiones* was, in Watson's words, something of a "new

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[97] I would suggest that these might be analogous within Roman law to the Spanish *Fueros.*

[98] Alan Watson, translator. Preface. *The Digest of Justinian*, Vol 1. Philadelphia: University of Pennsylvania Press, 1998: page xxiii.

[99] *Encyclopædia Britannica Online*, s. v. "Code of Justinian", accessed May 21, 2012, <http://www.britannica.com/EBchecked/topic/308835/Code-of-Justinian>.

[100] The *Digesta* is thought to have gone into effect in 533, according to Watson's preface to his English translation of the code.

elementary textbook for students"; and *Novellae Constitutiones Post Codicem* is a compilation of Justinian's later legislative actions.[101]

In focusing on the *Digesta* more particularly, there are likewise many ostensible parallels with the Tur. Urbach affirms these similarities, explaining, "As a result [of his stated aims] he [Justinian] commands [of Tribonian] the gathering of all that is written and conveyed [of the law], sifting through it to clarify and arrive at a compilation of legal rulings in a language that is comprehensible to all."[102] Urbach likewise recognizes the importance of citations within the *Digesta*; "it was not permitted to forget the names of the great teachers, and because of that the name of the legal sage who promulgated it is noted by each ruling."[103]

Most significant, however, is Urbach's claim about the ordering of the *Digesta* and *Hoshen Mishpat.* It would be reasonable to assume that Jacob ben Asher might have chosen to structure the laws *within Hoshen* Mishpat following the example of Maimonides, given the latter's significance in the thirteenth and fourteenth century in Spain.

To his surprise, however, Urbach finds that, at least with respect to *Hoshen Mishpat*, the Tur appears to deviate from the *Mishneh Torah*. He observes,

[101] Watson, xxiii - xxiv
[102] Urbach 7.
[103] Ibid.

In the ordering of the laws in *Hoshen Mishpat*, there is a stark difference between the order of Rabbi Jacob [ben Asher] and the [choice of] ordering taken by Rambam. In the *Mishneh Torah*, the order is this: Book 11 ("damages"), and within it the laws of financial damages, theft, robbery, loss, injury, destruction [of property], and murder. Book 12 ("acquisition"), and within it the laws of sale, giving, neighbors, agents, partners, and slaves. Book 13 ("justice"), and within in it laws related to renting, borrowing [things] and deposit, creditor and debtor, plaintiff and defendant, and bequests; and in Book 14 ("judges"), and within it the laws of the Sanhedrin, evidence, rebels, mourning, and kings.

By contrast, the Tur's *Hoshen Mishpat* opens with laws of judges, evidence, legal documents, creditor and debtor, plaintiff and defendant, possession, partnerships, acquisition, sale, gifts, lost articles, bequests, deposits, theft, damages, personal injury, and capital offenses. This order largely fits the order of the *Digesta*.[104]

Urbach specifies the ordering of the *Digesta* itself:

In the beginning stands the book [one of 50 sections of the *Digesta*] of justice and judges and after it [the book on] jurisdiction, and only in the 47th book are the laws of theft dealt with, and after ten pages [within it] laws corresponding to the laws of damages and laws

[104] Urbach 7.

of the informer -- which are [likewise] brought in *Hoshen Mishpat* after laws related to theft.[105]

Urbach also looks for similarities in content between the *Digesta* and *Hoshen Mishpat*. He argues that "there are also [sections] matching in name, and in some pages where there are [already] signs of relationship."[106] He goes on to list several examples of shared phrasing and words between corresponding sections, which are also apparently arranged in a similar order.[107]

The crux of Urbach's argument with respect to the *Digesta* is as follows:

> …It is possible that Rabbi Jacob brought forth [the ordering of the Tur] from a known legal compilation that was present in his [Spanish] milieu. Thus to the eyes of many, large sections of the rulings by the Tur [in *Hoshen Mishpat*] are alike in ordering to those from the *Digesta*.[108]

One key point to which Urbach paid insufficient attention is the similarities between the introduction to the *Hoshen Mishpat* and that of Justinian's published letter to Tribonian.

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[105] Urbach 8.

[106] Ibid.

[107] I have not studied these corresponding phrases in great detail in good measure due to my lack of facility with Latin. Likewise, however, Urbach does not appear to particularly emphasize these phrases in common and only lists several of them.

[108] Ibid.

Justinian's preface to the *Digesta* appears to frame the code in theological terms analogous to those found in *Hoshen Mishpat*. While his letter is structured so as to accommodate a Christian framework and emphasize Roman imperial strength, Justinian draws upon history to inform the sacred nature of the Roman legal codification.

Justinian proclaims in the first portion of his preface,

> Governing under the authority of God, our empire which was delivered to us by the Heavenly Majesty, we both conduct wars successfully and render peace honorable, and we uphold the condition of the state. We so lift up our minds to the help of the omnipotent God that we do not place our trust in weapons or soldiers or our military leaders or our own talents, but we rest all hopes in the Supreme Trinity alone, from whence elements of the whole world proceeded and their disposition throughout the universe was derived.[109]

In short, Justinian emphasizes that God's authority makes imperial authority possible and is essential to its continued rule. Political realities are intertwined with the Divine.

Justinian then extends the notion of the Divine and the sacred mandate under which he rules to the laws needed to administer the Roman Empire. Extolling the virtues of legal authority

[109] Watson xliii.

(and sacred legal authority, by implication), he delineates the problem that his legal code seeks to address:

> Whereas, then, nothing in any sphere is found so worthy of study as the authority of law, which sets in good order affairs both divine and human and casts out all injustice, yet we have found the whole extent of our laws which has come down from the foundation of the city of Rome and days of Romulus to be so confused that it extends to an inordinate length and is beyond comprehension of any human nature.[110]

Historical circumstances have obscured law that is both Divine in authority and essential to justice within the Roman Empire. It is therefore necessary, according to Justinian, to gather, reconcile (where differences appear), and consolidate Roman law into a usable treatise.[111]

> Justinian commanded Tribonian and the latter's assembly of legal scholars to:
>
> read and work upon the books dealing with Roman law, written by those learned men of old, to whom the most revered emperors gave authority to compose and interpret the laws, so that the whole substance may be extracted from them, all repetition and

[110] Watson xliii.
[111] Ibid.

> discrepancy as far as possible removed, and out of them one single work may be compiled, which will suffice in place of them all.[112]

Significantly, Justinian points to the challenge of reconciling discrepancies between different rulings. As to these discrepancies, Justinian assertes that "All legal writers will have equal weight and no superior authority will be preserved for any author, since not all are regarded as better or worse in all respects, but only some in particular respects."[113] Only those deemed insufficiently "worthy" (outside the spectrum of reputed legal thinkers) should not be included in the *Digesta*.[114] The reason for the latter is the overabundance of legal codes and the need for a single, accessible work.

In brief, according to Justinian's letter to Tribonian, all of the major contributors to Roman law should be taken into account, even if some of their codes are more highly regarded than others. In tying the new code's legitimacy to prior Roman legal works, Justinian sought to create something new in the law under the pretense of continuity.

The result of this process, as Justinian specifies, should be fifty books[115] comprising "the entire ancient law."[116] The process of codification is itself to be considered sacred, as its content

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[112] Ibid xliii - xliv.
[113] Watson xliv.
[114] Ibid.
[115] Justinian expressly states that the fifty books and titles emulate the *Codex of constitutions* and the Perpetual Edict (Watson xliv).

and the material from which it is drawn ensure a product "consecrating, as it were a fitting and most holy temple of justice."[117] The process of organization comes to give order to ancient law that was left "in a state of confusion for almost fourteen hundred years, and rectified by us."[118] The code would make it possible for the ancient law to be "as if defended by a wall and leave nothing outside itself."[119] Empowered by the emperor, Tribonian was told explicitly that he "must not hesitate to set this down too as having the force of law, so that all the most gifted authors whose work is contained in this book may have as much authority as if their studies were derived from imperial *constitutiones* (enactments) and have been uttered by our own mouth."[120] This was to include careful emendations of ancient law in order to more accurately express its evident intentions and correct likely misquotations of even earlier legal authors.[121]

Justinian then contextualized the *Digest* and expressed how he hoped that the commissioned work would function[122]:

> We therefore command that everything is to be regulated by these two works: the *Codex de constitutiones* (enactments), and the other clarified and arranged in the book that is to be. There may be added something else promulgated by us, serving the purpose of

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[116] Watson xliv.
[117] Ibid.
[118] Ibid.
[119] Ibid.
[120] Ibid.
[121] Ibid xlv.
[122] Interestingly, Justinian highlights the central importance of Rome in dictating custom and highlights its sacred nature to the Romans. This appears similar to Jacob ben Asher's references to Jerusalem and its sacred importance to the Jews (xlv).

> *Institutes*, so that the immature mind of the student, nourished on simple things, may be the more easily brought to knowledge of the higher learning. We command that our complete work, which is to be composed by you with God's approval, is to bear the name *Digest* or *Encyclopaedia*. No skilled lawyers are to presume in the future to supply commentaries thereon and confuse with their own verbosity the brevity of the aforesaid work, in the way that was done in former times, when by the conflicting opinions of expositors, the whole of the law was virtually thrown into confusion.[123]

The legal codification was to be permanent and draw together the attributed opinions of different legal rulings into a single code, simple enough for students and comprehensive enough to encompass much of Roman law. The codification was to take place a single time, with the code occupying a central position within Roman law always.[124] Apropos, the code was not to become a subject of commentary, which Justinian saw as having contributed significantly to the legal confusion he sought to alleviate. Also noteworthy is the emphasis on the sacred nature of justice as a manifestation of God's will on earth. By interweaving God, justice, and human life, the *Digesta* provides a notable intellectual analogue within Roman legal theory to that which can be found in the Tur.[125] Justinian sees himself as responsible to carry out his Christian mandate for justice; the Tur sees the people Israel as those who should do so.

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[123] Watson xlv-xlvi.

[124] More than a few Jewish codifiers advocated similarly for the ultimate nature of their codes. The Rambam is noted for this claim, though the Tur likewise appears to have hoped for the adoption of his work as authoritative, at least in Spain. Unlike Justinian, however, the Jewish jurists would only be able to achieve such a status for their codes through persuasion -- rather than through the use of (their nonexistent) imperial authority and organs of government. Perhaps this also relates to a question of legacy on the part of the authors, who hope that their works will endure beyond their own lives.

[125] This comes even as its target audience appears to have been different.

While Justinian proclaimed himself to be "Governing under the authority of God" an "empire which was delivered to us by the Heavenly Majesty,"[126] Jacob ben Asher invoked in his introduction to the *Hoshen* Mishpat the analogous Divine authority underlying rabbinic law: "Blessed is Adonai, God of Israel, which chose us from among the whole world."[127] Interestingly, however, Jacob ben Asher then proceeds to thank God, who "Gave us the Torah of truth and unblemished laws for righteousness." God gave the Jews sacred laws, rather than an empire.

By contrast, Justinian believes that God chose the Roman Empire, while its scholars are commissioned to establish a code of laws "which is to be composed by you with God's approval."[128] Justinian understands God to be the ultimate arbiter of Rome's fate, thereby necessitating a code that enshrines justice. Yet the role he sees for legal scholars is not in clarifying divine law, but rather in clarifying civil law for the benefit and well-being of an empire that God chose and sustained. The code he commissioned was to (with help from a team of jurists) engage in "consecrating, as it were a fitting and most holy temple of justice,"[129] but he did not see law itself to be of divine provenance -- except insofar as it traced its roots to the sacred nature of Rome's founding.

Related to the notion of the sacred, Jacob ben Asher praises God who "expelled before us great and numerous nations" -- perhaps a reference to Rome or Babylonia, both of which fell,

[126] Watson xliii.
[127] As specified previously, this is my own translation.
[128] Ibid xlv-xlvi.
[129] Ibid xliv.

even as Jewish law endured. The Roman Empire crumbled, but Jewish law became an enduring inheritance of the Jewish people, passed along across the generations within the regions in which Jews settled. While Justinian held that the Roman Empire was sacred, and that just laws intended to bolster its administration were a logical tool to maintain the Empire, Jacob ben Asher suggests that Jewish law -- rather than empire -- was of central importance to the Jewish people.

Jacob ben Asher's introduction to *Hoshen Mishpat* then continues on with a focus on the sacred provenance of Jewish law. He reiterates the related responsibilities that Jews maintained with respect to their intellectual inheritance: "for the sake of [God and our God-given inheritance], we will observe God's laws and on Torah we will meditate nights and also days."[130] Jacob ben Asher then moved from the future responsibility of Jews to the past, recounting the biblical (and what he considers to be historical) origins of the Torah. The Tur's "historical reconstruction" is not dissimilar to that of the Rambam and other Jewish jurists, who sought to establish a chain of tradition for Jewish law, dating back to Sinai and the period of wandering in the desert.

Jacob ben Asher goes on to delineate subsequent historical events that shaped the organization of the law. These notably include the creation of rabbinic courts. The first to which Jacob ben Asher makes reference is that of the Sanhedrin:

[130] Dr. Alyssa Gray aptly observes a key difference here: "The Jews are obligated to study their law and turn it into a subject of religious devotion. That is not the case with Roman law (nor with the Spanish codes of the 13th or 14th centuries).

> The sages taught that it was within the portion of Benjamin to have among it an office of legal rulings and in the portion of Judah where the Sanhedrin would sit and from them promulgate Torah and law for all of Israel. Because it is in honor of their merit that the Torah and law were made to dwell with and watch over Israel.

The Tur then continues his explication of the transmission and application of Torah. "The divine presence is among Benjamin; the hall of hewn stone, where the Sanhedrin sits, is next to Judah. From them [the Sanhedrin], Torah and justice go out to all Israel. Because by virtue of the merit of doing Torah and justice, the Divine Presence shines on Israel." Aside from these [the Sanhedrin], there were "two courts of 23 [judges] in the Temple; one at the door of the [inner] courtyard and one at the entrance to the Temple mount." In addition, there were "in Jerusalem 481 courts -- apart from courts in each and every town, which were innumerable." These key institutions were the purveyors of Torah and justice -- the inheritance of the Jewish people.

In a manner far more akin to that of the history-weary Rambam than the triumphalist Justinian, Jacob ben Asher notes the decline of these legal institutions, both of which were a part of the continual chain of Torah and served to administer it. Jacob ben Asher introduces himself and explains the need for his work:

> I [am], Jacob, son of the rabbi, Rabbeinu Asher, may his memory be for a blessing. Due to our poverty, since our Temple was destroyed, there ceased to exist all of them [the aforementioned legal institutions], and there is no office [of law] and there is no

> Sanhedrin. There is no capital city and no High Priest. There are no redeemers and no liberators. There is no prophet and no enlightener. There is no priest and no teachers. There is no judge of justice… So [it is as though] there are openings with no stairs. Gutters that are not level. Crookedness and not straight lines. Darkness and no illumination. Darkness and no enlightenment. Darkness and no order.

The Jewish people lost the institutions upon which the continuous transmission of Torah was based. The means by which the Torah was understood, applied, promulgated, and transmitted were turned on their heads.[131]

This vision aligns closely with that of the Rambam, who wrote in the introduction to the *Mishneh Torah*: "In our days, severe vicissitudes prevail, and all feel the pressure of hard times. The wisdom of our wise men has disappeared; the understanding of our prudent men is hidden."[132] The Tur acknowledges that the lack of institutions is problematic for "just" individuals, who do not know how to behave without guidance about what is right and what is wrong. This lack of knowledge could ultimately cause the law to become "bent." But in contrast to the Rambam, the source of this "obscurity" is not traced to events from his own time period, but events that took place well over a millennium before. Unlike the Rambam, who holds up a code based on his own legal judgments as necessary for jurisprudence in an era of what he portrays as diminished knowledge and study, Jacob ben Asher holds up a code built on the

[131] In many respects, the significant historical role of Rome within the Tur's understanding of Jewish law and its fall into obscurity makes all the more ironic the possibility that he based his *magnum opus* at least in part on the *Digesta.* Once more it should be noted, however, that the Tur may not have done so deliberately.

[132] Twersky, Isadore. ed. *A Maimonides Reader*. New York: Behrman House, 1972: page 39.

insights of other jurists, in an era that is not devoid of scholarship. Jacob ben Asher does not claim to be the sole bearer of knowledge that had been lost, but rather the organizer of knowledge that had yet to be integrated:

> I saw more to do; [composing] chapters in which to collect [and place] each topic, and in a few words write about them at the start of the book in which [it is found based on] the number and kind, so that it will be simple to look for each topic. And it was not with cunning that rose within my heart in making it, as I knew that I did not have a thought of subterfuge…. But it was the grace of God that assured me, and from it, I was asked to give of its wisdom, [as was] in my heart to do justice and righteousness, as it pursued the path of justice and righteous. And it made my ear effective in my studies. And when I opened my lips, it gave of uprightness.

The Tur's efforts, paralleling those of Justinian before him, were in good measure intended to consolidate, organize, and clarify already-existing laws. Rather than eschewing citation (as the Rambam had in the *Mishneh Torah*), Jacob ben Asher emphasized the rulings that major scholars made with respect to each case, discerning the principles that undergirded their decisions and cross-referencing them with those of other scholars. The Tur sought to integrate existing legal codes and Tosafist insights from Ashkenaz and frame them anew.

Much as Justinian sought the integration of disparate legal sources, while claiming connection to the legal traditions from which they were derived, so too did the Tur seek

continuity with Jewish legal history. Both legal codes work to home in on ostensible (or evident) discrepancies between their sources for the sake of simplicity and consistency. Justinian commands his lawyers,

> Read and work upon the books dealing with Roman law, written by those learned men of old, to whom the most revered emperors gave authority to compose and interpret the laws, so that the whole substance may be extracted from them, all repetition and discrepancy as far as possible removed, and out of them one single work may be compiled, which will suffice in place of them all.[133]

Jacob ben Asher likewise sought to create a single source in which one could find Sephardic law and Tosafist insights, the legal content of Ashkenaz in a legal form more familiar to Sefarad. He, like Justinian, was aiming for a work that would integrate and draw together disparate sources into a single whole.

Urbach's suggestion that Jacob ben Asher might have relied on one of Justinian's four commissioned legal codes becomes increasingly plausible when taking into account their respective introductions (or introductory missives), even as questions remain about how the Tur would have been able to acquire knowledge about the structures and contents of such works.

[133] Watson xliii - xliv.

The Death Penalty in *Hoshen Mishpat* and *Las Siete Partidas*

This thesis continues along and then beyond the path of Ephraim Urbach's landmark article on Jacob ben Asher, from an analysis of introductions to a study of Jewish legal topics within the *Arba'ah Turim* in comparison with similar topics within *Las Siete Partidas* and its source codes.

Urbach's first example relates to punishments and the manner of their imposition.[134] Urbach observes,

> Indeed, in the printed editions of the Tur, [and] in the list of chapters[135] . . . chapter 424 is listed as 'The one who injures his father or mother,' [and] chapter 426 as 'He sees his fellow [Jew] drowning in a river, he is obligated to save him,' and chapter 425 is missing from the list.[136]

While this may be the case from the list of chapters included in the printed editions, there is indeed a record of chapter 425 in earlier manuscripts. Urbach continues,

> But in the manuscripts and in the early printed editions, we find chapter 425, and it is 'judgments in capital cases, which are adjudicated in this time.' And of the body of the

[134] Urbach 8. Urbach points out that this is the final section of Hoshen Mishpat.
[135] Literally, this is the list of *simanim*.
[136] Ibid.

> chapter, the majority is missing. It [the chapter] is closed with the *tshuva* [responsum] of a Gaon, which ends with the words, 'In order to make a fence around a matter for which there is a need of the public, we impose a penalty according to the need of the hour,' but in the manuscript and in the first printed editions, the chapter continues: 'In spite of the fact that we do not adjudicate capital cases today, with respect to what is this said? [It is said with respect to] capital cases which require a *beit din* [court] and witnesses; but those who may be killed without a court, they are killed even now [in this time in Spain].[137]

Urbach then details other elements of the Tur's discussion of punishments, and especially the death penalty. The Tur, for example, lays out laws about the *rodef* (pursuer)[138] and the one who tunnels under (into one's house), trying to underscore the distinction between a *beit din* administering the death penalty directly and the taking of a life in circumstances—such as immediate danger to life—that do not necessitate a *beit din.*[139]

Urbach then points out that the Tur's views align with those of his father, the Rosh. As the Rosh put it, "I left it [capital punishment] to them [the Jews of] as their *minhagim* [customs in Spain], but never agreed with them about the loss of life."[140] However, the views of both father

[137] Urbach 8.
[138] The pursuer, like the one who digs under another's house, has the presumed intention to harm, as their deeds can only hurt others.
[139] Ibid.
[140] Ibid 8-9.

and son appear to have evolved over time. Urbach underscores, "But in the course of time, he [the Rosh] agreed [to support the death penalty], and in responsa that were not known until recently, even takes initiative in the matter under discussion."[141] More directly related to the Tur,

> Rabbi Jacob ben Asher himself signs as the second [author] on the responsum that ends with the words, 'Therefore, for all of these [aforementioned] reasons, it appears that there is a judgment of death for this man, and for anyone who intercedes or speaks in his merit, it is forbidden to speak of it [on his behalf], and whoever exerts effort in killing him is like one who extirpates a doer of evil [from the world].[142]

This responsum is important not only because it shows alignment between the views of father and son, but also because it demonstrates an evolution in their stated views. In part, this may be due to their growing awareness of how the Spanish Jewish jurists saw great social benefit in their ability to adjudicate not only civil, but also criminal cases.[143] They were granted this authority in Muslim-controlled al-Andalus, but it was preserved to a significant extent even in areas that later came under Christian rule. Challenging this authority might have been met with resistance that the Rosh and the Tur preferred to avoid, and which they may not have been able to overcome.

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[141] Urbach 9.
[142] Ibid.
[143] Shochetman 286. As Dr. Alyssa Gray also notes, "This is also evident in a responsum of R. Yehudah b. HaRosh, the Tur's brother. That is responsum 58 of his collection *Zikhron Yehudah*.

Urbach suggests, "In [*Las Siete*] Partidas the last section on laws about penalties and ways of acting are collected [in the same way] as they are in the Tur."[144] When examining the particular chapters that Urbach highlights (*Hoshen Mishpat* 424-426), one indeed sees a number of similarities to *Las Siete Partidas*. Most prominently, both codes appear to view criminal acts that merit serious punishment as more than private matters. While a conception was evident within Jewish law by the time of the Babylonian Talmud, the notion of crime as an offense against the good order of society and not just the victim and his family was a relatively new concept within most Western legal systems. Robert I. Burns explains,

> Until roughly the twelfth century, Western people saw crime as offending the victim and his or her kin, the community or the class involved, and of course God, but not as offending the political order or society at large. Punishment therefore involved fixed monetary compensation to forestall vendettas, restitution of honor, or some form of penance with reconciliation or else vengeance.[145]

Beginning in the twelfth century, jurisprudence created "a sharp split between sin and crime (though offenses could be both at once) with retributive justice as vengeance for violating the law itself more than the person."[146] While *Las Siete Partidas* codified both canon and criminal law, punishments for crimes reflect the new understanding that illegal activities not only harm the injured parties but the very system of justice itself and the political order that stands behind

[144] Urbach 8.

[145] Robert I. Burns "Introduction to the Seventh *Partida*." *Las Siete Partidas*, Volume 5. Samuel Parsons Scott, Translator. Philadelphia: University of Pennsylvania, 2001: pages xix - xlvi. This citation is from page xix.

[146] Ibid xix.

it. This new awareness within Christian Europe may have narrowed the gap between the Jewish and Christian orientations to law.

Las Siete Partidas divides criminal offenses into four kinds: "deeds"; "speech," including insult, defamation, and bearing false witness; "writing," such as fake documents and harmful statements; and "advice; as where certain persons join together, or take an oath, or enter into an agreement or an association to do harm to others; or to receive enemies into the country; or to cause insurrections therein; or to encourage thieves or malefactors..."[147] Many of these categories relate specifically to the well-being of the state, rather than the harm actually done to one party by another.[148]

Due to the new emphasis on preserving the legal system, and the political order that sustains it, *Las Siete Partidas* bestows significant authority upon judges to punish lawbreakers. These punishments are divided into seven categories:

> The first is, to sentence men to death, or to loss of limb. The second is, to condemn a man to remain in irons for his life, working in the mines of the king, or on any other of his works; or serving those who do this. The third is, when any person whosoever is banished forever to some island, or to some specified place, and is deprived of all his property. The

[147] Burns 1464. *Las Siete Partidas*, Volume 5. Samuel Parsons Scott, Translator. Philadelphia: University of Pennsylvania, 2001: page 1464. This law is from Partida VII, Title XXXI, Law III. This section of quotes, as with all quotes from *Las Siete Partidas* within this chapter of the thesis, is the translation of Samuel Parsons Scott, as I was unable to find Volume 7 in the original Spanish.

[148] The idea of criminal law within Jewish law merits further examination. In particular, one might look to *Masechet Makot* and sections related to punishment, not only in the Tur but also the *Beit Yosef* and *Shulchan Aruch*.

> fourth is, when a man is ordered to be placed in irons and to wear them always; or is put in jail, or in some other prison…. The fifth is, when anyone is banished to some island, but is not deprived of his property. The sixth is, where a man's reputation is injured by proclaiming him infamous; or when he is deprived of office on account of some crime which he has committed… The seventh is, when anyone is condemned to be scourged, or whipped in public, on account of some offence which he has committed, or be placed in disgrace in the pillory, or be stripped, and then, after having been smeared with honey, be exposed to the sun for a certain time during the day, in order that the flies may sting him.[149]

Justices, under *Las Siete Partidas*, are granted significant power to implement these punishments. They have the authority to order corporal and capital punishments, as well as a host of other punishments intended not merely to bring about restitution but protect the political system and polity as a whole. While judges are asked to "endeavor to punish crime in the countries over which they have jurisdiction, after the guilty parties have been convicted or confessed," their only limitations in the kind of punishments they are permitted to dole out in include "branding… in the face with a hot iron; cutting off his nose; plucking out his eyes; or inflicting any other kind of punishment on him by which his face may be disfigured."[150] This comes as "God made man in his own image."[151] Likewise, when implementing the death penalty, judges "shall not order any man to be stoned to death, or crucified, or cast down from a rock,

[149] Burns 1464 - 1465.
[150] Ibid 1465.
[151] Burns 1465-1466.

tower, bridge, or any other high place"; instead, judges are to ensure that it "be inflicted on the party who deserved it by cutting off his head with a sword or a knife…"[152] Most penalties, in short, were within the set of options afforded to judges by *Las Siete Partidas.* While justices were told not to dispense punishment until "after they [the alleged criminals] have been convicted, or acknowledged their guilt in court," they were allowed to engage in torture in order to extract information (or a possible admission of guilt) from an accused party.[153]

This contrasts with the portions of the *Hoshen Mishpat* that Urbach highlights as possible parallels to these provisions of *Las Siete Partidas*. Hoshen Mishpat 425 discusses limitations placed on the death penalty. Interestingly, the limitations placed on the death penalty stem from the Bible and refer to institutions that had not existed in Judaism for centuries. For example, a court that has sentenced a person to death and "discovers that the killer [is in] a city of refuge, the person cannot be given the death penalty, as at that time the sentence is suspended."[154]

In a broader principle that the Tur derives from the Biblical concept of a city of refuge, he explains how a court should understand its jurisdiction in death penalty cases. He suggests invoking the concept of *l'migdar milta* ("to fence around the matter"; to enact a provision to prevent inappropriate behavior), that a "beit din should be prepared to punish in order to make a fence around the Torah," even if such punishment cannot be instituted at that particular moment.

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[152] Ibid 1466.
[153] Ibid.
[154] See, for example, Deuteronomy 19: 11-13.

Following up on this notion, the Tur quotes a responsum about a person who jumps on his fellow's back in the midst of Purim festivities and ends up killing him unintentionally. The resolution of the quandary about if and how to punish a person who killed another unintentionally is that one should "not punish [the guilty party] except *l'migdar milta*" (that is, one should only punish him to make a "fence around the matter"), as there is a great need to punish [the guilty party] based on the needs of the time." The Tur circumscribes the use of the death penalty in cases of accidental homicide, except if there is a clear and significant societal need for a judge to invoke it. While the cities of refuge were no longer in existence, he understood the concept of mercy for a person who accidentally killed as one that transcended institution but remained bounded by the time and place in which the homicide occurred. This contrasts with the greater ease with which penalties could be dispensed according to the rules of *Las Siete Partidas.*

In many ways, Hoshen Mishpat 426 appears unrelated to *Las Siete Partidas*. It pertains to the obligations that an individual would have to save the life of his fellow [Jew], if he sees "his fellow drowning in a river or bandits come upon him." In both of those cases, "he is required to save him." Apropos, the Tur quotes the Rambam's non-legal additions that if a person does not intervene then he violates the Torah's dictum, "do not stand on the blood of your neighbor," but that if he does save his neighbor, "it is as though he has made the world." While the Tur relates the implementation of the death penalty to the broader category of laws related to life and death (including the saving of a life), *Las Siete Partidas* does not apparently create a separate category related to matters of life and death within its seventh volume.

The implications of this disparity should not be understated. It seems that *Las Siete Partidas* proceeds from an orientation of social decentralization, presupposing a minimum but growing number of obligations between individuals, even in emergencies. By contrast, the Tur voices a longstanding concern on the part of a community that has for over a millennium lived without a government or state and instead sought to maintain close ties through social obligations and norms.

In spite of these differences in orientation, wrought in good measure by the historical circumstances of each legal tradition, there are noteworthy parallels between Hoshen Mishpat 424 and *Las Siete Partidas*' Title 31:8. This law pertains to "matters judges should carefully consider before they order penalties to be inflicted, and for what reasons they can increase, diminish, or dispense with them."[155] This section divides these "matters" into approximately nine categories: station of the guilty party, age of the guilty party, station of the injured party, whether the crime is frequently committed in that time and area, whether the crime was committed by day or by night, specific place where the crime was committed (and whether it was a space run by the government or Church), the way in which the crime was committed (and its degree of severity), the nature of the offense (whether more serious or less so), and, in the case of the fine, the wealth of the person expected to pay it. With the exception of the category of time, there are commonalities between these categories and the discussions in Hoshen Mishpat 425 and 426.

[155] Burns 1466.

The framing for Hoshen Mishpat 424 is a case in which a child injures his parents: "[If] a person injures his mother and his father, but blood does not come forth from them [due to the injury], he is required by God to apologize; [but if] blood comes forth from [them in their injuries], he is obligated to die [for his actions]." The conclusion from this is "the child should not let blood from his father and not take off a chip from his skin and not open his abscess, lest blood come out of it." This is a means of furthering with precept of honoring one's parents, which can be seen as related to the discussion in *Las Siete Partidas* 31:8 about injury to a person of a different status: "When judges sentence anyone, they should carefully consider the station of the party against whom the sentence is pronounced, namely; whether he is a slave, a freeman, a nobleman, the resident of a town or village, and whether he is a boy, a young man, or a slave."[156] Penalties vary based on the station of the perpetrator (and his or her age) and also the station of the victim:

> Judges should also take into consideration the position of those against whom an offense was committed, for a party guilty of unlawful acts against his master, his father, his lord, his superior, or his friend, deserves a more severe penalty than if he commits it against some one to whom he was under none of these obligations.[157]

Las Siete Partidas specifically refers to fathers; we thus see underscored a parallel between the two codes as to the social status of victim and perpetrator.

[156] Burns 1466.
[157] Ibid 1466 - 1467.

Hoshen Mishpat continues on to discuss when punishments may be carried out. The Tur states:

> If a person injures his fellow on Shabbat, he is exempt from making appropriate payments to the person, even if it is accidental, because there is…a judicial death penalty [for violating Shabbat]. But if a person injures on Yom Kippur, even if it is deliberate, he is required to pay him, as the scriptural verse requires payments [for such actions].

The particularly Jewish concern about the Sabbath and Yom Kippur is obviously missing from *Las Siete Partidas*, which in general does not appear to concern itself with the timing of sentencing.

Following its brief interlude on punishments on the Sabbath and Yom Kippur, the Tur returns to the issue of relative status between the victim and the perpetrator; in this case, masters and slaves. In some respects, the discussion within the Tur may be seen as the inverse of that in *Las Siete Partidas*. The latter focuses more on the severity of the punishment that one can give a slave (and the master's right to do so), while the Tur focuses more on the protections due the slave and the limitations to such punishments. In sum, Hoshen Mishpat appears to place limits around the penalties that can be given to individuals least regarded in society, while *Las Siete Partidas* emphasizes the extent to which those of least status can be punished.

Hoshen Mishpat continues on to describe the extent to which one who injures a slave must attend to the slave's health, and who is to receive remuneration for the slave's injuries. The Tur states, "If a Jewish person injures a gentile slave, and it is his, it is exempt. But if it is [other Jewish] people who injure the slave, the master then gets the payment for damage, pain, time off [from work], embarrassment, and the payments for the healing of the slave." Hoshen Mishpat then details the course of treatments that a court can require of the person who injures a slave. For example, "If [a court] assigns it [the injury] a course of treatment of 3 days, and the medicine given is strong and he [the slave] is healed in two days, the extra [medicine] goes to the master, even though it was the slave who was more pained [in the process of healing] due to the strength of the medicine." While the slave is granted standing in court, his master is still able to benefit from the additional compensation that he is granted for the slave's injuries, though that extra compensation may well go into healing the slave.

Likewise, Hoshen Mishpat endeavors to clarify cases in which a person has the status both of a "free person" and that of "slave": "one who[se time] is split in half, half slave and half free man." According to the Rambam, whether the person is compensated as a free person or as a slave depends on the particular time at which the person was hurt -- whether he was free or serving as a slave at that point. *Las Siete Partidas* does not discuss this point, which is a particular concern of the Talmud, rooted in its interest in liminal statuses and situations.

The Tur then raises (by way of disagreement between his father the Rosh and the Rabad),[158] the related question about ambiguity with respect to a slave who is freed, but whose papers formally granting his freedom have not yet been signed. Timing, once more, is of critical concern, as is the right of a slave with respect to his master.

This person's situation is likened to the case of a child still living in his[159] father's home, when the mother is cast out during a divorce. In the event that the son is harmed by a third party, who is to receive the compensation? The Rambam invokes the cultural norm of sitting close to a father's place at the table as a measure of relative status and who should ultimately receive the compensatory sums: "If he sits closely at the table to his father, it is for him [the father to receive]…." The Rosh appears to generally concur with the Rambam, adding that it may even be a child who is harmed should receive full compensation for his pain in a court of law, irrespective of his age.

A related question is that of liability for damages. The Tur raises the example of charges brought against women for causing injury to another party. "Even in a place in which they [the judges] order punishments for a woman, it is [in fact] for her husband, as all that the woman bought, the husband [owns]." While the penalty is meted out according to her actions and her

[158] Rabbi Abraham ben David of Posquieres.

[159] In this case, it would pertain specifically to a male child, given the orientation of the Tur and Jewish law of this time period toward gender norms.

standing as an adult woman in a court of law, it is her husband who would be held at least partially accountable for financial remuneration to the injured party.[160]

While the Tur delves into greater detail about the statuses of injured and injuring parties in a court case than *Las Siete Partidas*, both codes emphasize personal status as a factor to be taken into account in the administration of punishments. Much of the Tur's discussion of status, however, is derived from earlier sources and reflects laws no longer in current use. Insofar as both codes do indeed deal with the statuses of injured persons, Urbach appears to be justified in his observation that there are parallels between Hoshen Mishpat 424 and the final sections *of Las Siete Partidas* on punishments. However, the presence of these common elements provides paltry evidence for the hypothesis that the Tur used *Las Siete Partidas* as a basis for his work -- at least in this particular section. Their respective codifications of punishments are clearly distinct, with the Tur initially focusing on criminal punishments (including the death penalty) and then moving on to civil concerns and monetary compensation. The Tur also focuses in detail on the timing of status changes between injured and injuring parties, and engages more intensively with particular statuses -- notably of slaves, women, minors, and those on the verge of having a change in status (such as slaves set to be freed, women set to be divorced, and minors set to become independent adults). The Tur also, as noted, codifies laws that no longer pertain to the world of fourteenth century Spain.

[160] Interestingly, *Las Siete Partidas* does not appear to delve extensively into the question of a woman's role in society. Though family law is addressed in the fourth volume, they are not discussed as a separate category. As Robert I. Burns describes in his introduction to the fourth *Partida* (Philadelphia: University of Pennsylvania Press, 2001: page xii), "Alfonso has no treatment of women any more than he does of men." Nonetheless, Burns goes on to explain, "The present *partida* comes closest to a sustained consideration of women's issues, in society whose few public professions allowed no role for women, but a society that did acknowledge their importance in the domestic context."

Las Siete Partidas, by contrast, simply provides broad directions about the severity of punishments. Slaves should be punished more severely than free men, free men more severely than nobility for their infractions. Apropos, injuries that harm nobility should be punished more severely than injuries that harm free men, which should be punished more severely still than injuries that harm slaves. Under *Las Siete Partidas* judges have significant latitude to mete out punishments, in contrast to the *Tur,* which appears more interested in delineating limitations—although, as noted, some of these limitations, such as the "cities of refuge," reflect archaic biblical law and not current Jewish practice. Thus aspects of the ordering of laws may be similar, but the *tendenz* of the two codes is not.

There appears to be an even broader disparity between *Las Siete Partidas* and Tur regarding punishments: the Tur focuses on financial compensation, while *Las Siete Partidas* focuses on criminal penalties that extend far beyond financial compensation, in order to preserve the political order and system of justice. Given that the Jews were not in power and had little by way of autonomous government to protect through their own legal means, this difference in emphasis is unsurprising.

It could even be, as Urbach suggests in his review of the Tur's stance on the death penalty, that the Tur might have banned it altogether, were it not for ameliorating (and perhaps political) factors in his decision. However, the connection that Urbach suggests between Hoshen Mishpat 424 and the analogous section of *Siete Partidas* is slight. It would be more reasonable to

suggest that questions of status and standing are universally relevant to court cases and punishments, rather than suggesting that the Tur relied upon *Las Siete Partidas* in particular as a source for his reflection on punishments. Even if the Tur did rely for this ordering on *Las Siete Partidas*, the two codes have a different *tendenz*, as noted above.[161]

[161] Indeed, a comparative study of the structure of the analogous sections on punishments within *Hoshen Mishpat* and the *Siete Partidas* is warranted. It may be that the two are more structurally similar than the Tur and other codes of Jewish law.

Hoshen Mishpat 68: Contracts Done in the Presence of Non-Jews

Within his essay, Urbach next delves into the topic of laws of the kingdom. Urbach notes that,

> Laws of the kingdom and the presence of non-Jews [in interaction with Jews] in the kingdom were known to the Rabbi Jacob [ben Asher], which can be proven from Hoshen Mishpat 68, [in the] inclusion on 'laws on contract which are made in the presence of gentiles,' wherein they are brought forth as usual in the smooth words of the Rosh and closed with the quotation of the words of the Ramban.[162]

Urbach pays particular attention to the conclusion of the chapter on contracts, where the Tur discusses contracts concerning real property executed in the presence of non-Jews. He spends a great deal of time reflecting on the Ramban's responsum. He emphasizes, "The conclusion of the chapter is the most important."[163] Urbach then quotes the section of interest from the Tur:

> Because such invalid contracts are no more preferable from the gentile courts than they would be if they are from Jewish scribes, because the only purpose of the King's laws is to validate their legal documents and to make their scribes as reliable as one hundred witnesses for us. But when it comes to the methods of causing acquisition, those legal

[162] Urbach 9. The Ramban is widely known by his Latinized name, Nachmanides. *Rabbi Moshe ben Nahman* was one of the great biblical commentators and rabbinic thinkers of the thirteenth century.

[163] Ibid.

> documents are not preferable to our legal documents. Even the gentiles in many places are divided as to their laws, and when they are lacking a certain way to validate a contract, they invalidate it. One judge chooses one legal custom, another judge legal chooses another custom, according to the dispute of their sages and the custom of their places. The king has no role in determining a valid contract, except in validating that contract [by way of royal imprimatur].[164]

This passage clearly relates the extent to which local custom was a factor in enforcement of contracts across regions in Spain. The *Fueros* in which these customs were codified are of significance to Urbach's theory that *Las Siete Partidas,* which sought to create uniformity in the laws of Spain and took into account many of the local customs and could have provided a source of inspiration to Jacob ben Asher.

Urbach sees great significance in the fact that the Tur concludes this chapter with the Ramban's words. In quoting directly, Urbach deduces that Jacob ben Asher "hints… that the situation had not changed [from the time of the Ramban] to his own days and illuminates. . . the use of the local *Fueros* despite the king's effort at [creating a single legal] codification."[165] Had the influence of local law been entirely subverted by the time of Jacob ben Asher, he would in all likelihood have had to emend the Ramban's words. That he did not suggests that local laws were still widely used, and that they in turn created judicial challenges. We may conclude, then, that the process of legal codification was not complete in Spain by the time of Jacob ben Asher's

[164] Urbach 9.
[165] Ibid.

work, but was very much *au courant*. It was in the zeitgeist and in conversation. Jacob ben Asher need not have encountered it in his study—which is difficult to imagine—but in interactions with non-Jewish jurists or Spanish courts.

Urbach further suggests, "[Jacob ben Asher's] knowledge about the general causes of codification is aided if we understand the words of Rabbi Jacob about what caused him to compose his book."[166] In other words, R. Jacob b. Asher's goals in codification were similar overall to those of the motivating the creation of *Fuero Real* and *Las Siete Partidas.* Both were responding to the growth of state or communal institutions and the growth in number of communities under one ruler. Likewise, each used a traditional legal response in Spain to the shifting institutional and social needs: a new codification better suited for the time.

Urbach determines that "He [Jacob ben Asher] came to improve the situation of the 'righteous man in what he sees he should do, and the one who tells him what to do.'"[167] Urbach then expands on this, quoting the Tur to bolster his case:

> [The code is] For the same people who are commanded [to implement] law and statute, but lack the intelligence to comprehend it, but also for those 'upon whom dwells a cloud of light, but by whose will the light is darkened, because he fears the measure of judgment within it [striking out] against him, and says the judgment 'I choose in the

[166] Urbach 9.
[167] Ibid.

words from the composition and from them I will speak and be disposed, and my walking stick will tell me [how to go].'"[168]

In short, Urbach suggests that Jacob ben Asher was both seeking to support the individuals without adequate knowledge of Jewish law and to strengthen the resolve of individuals who did have the requisite knowledge -- but feared departing from Alfasi or the Rambam when making rulings. These circumstances were particularly pressing at the time the Tur was writing, due to the growth of Christian Spain and Jewish communities therein. Communal institutions, like their governmental counterparts, were rapidly growing, while the individuals suited to lead and live in accord with them needed cultivation and support.

There is an apparent tension, however, in two of Urbach's claims. His assumption that Jacob ben Asher was responding to practical communal needs -- and in the specific case of Hoshen Mishpat Chapter 68 on *Shtarot* (contracts) was aware of the limitations of the *Fuero Real* in reducing confusion related to disparate communal customs -- is inconsistent with the idea that the Tur was seeking to create a systematic code like the *Fuero Real* and later *Las Siete Partidas.* If the *Fuero Real* had only limited success in creating coherence in legal practice across northern Spain, why would Jacob ben Asher seek to create a code that was similarly crafted?

[168] Urbach 9.

It seems that Jacob ben Asher might have been inspired by elements of the codification process going on in Spain. But this does not mean that he meant to replicate that process *in toto.* Moreover, the concern that Jacob ben Asher and his father shared was not of an overabundance of local custom in Jewish jurisprudence, but rather the lack of awareness of Talmudic study and its use in adjudication. Yet in incorporating Ashkenazi thought (and regional custom) into his code, Jacob ben Asher was undoubtedly aware of the drawbacks of regional variation. The *Tur* as a code may therefore be conceptualized as the creation of a Jewish *Fuero Real* in which Ashkenazi jurisprudence could be preserved and yet applied more uniformly within the new region.

Urbach's point about ease of application is readily seen in Hoshen Mishpat 68: "Contract law done in the presence of gentiles."[169] It pertains specifically to "purchase contracts and loan contracts which are done in the presence of gentiles and gentile witnesses, who attest to their validity,"[170] there are a number of relevant cases. The first mentioned is that in which a contract is written in a language that a Jew cannot understand. The "Israelite [who] does not know how to read it [the contract]" should "give [it] to two gentiles to read it," who are not together at the time (and presumably colluding) or working with one of the other agents in the agreement.[171] The Tur then quotes the Rambam about the process that would need to take place in order for the contract to be valid:

[169] Literally, the abbreviation *a'kum* means those who worship stars in Hebrew.
[170] In this case, the word is "*kasher*" -- "fit" in the sense of suitable, legitimate, authentic.
[171] This becomes clear within the Rosh's explanation of the Rambam's discussion, as there are uncertain pronouns within the Rambam's explanation, which lead do a degree of ambiguity.

> It is necessary for the money to be transferred before them [the witnesses] and that written into it [is the following statement:] 'before us from *Ploni*[172] to *Ploni* such and such [was given],' [with information about] who purchased or has a debt of money, and that he could not collect it except for the [presence of] free people [serving as witnesses to the transaction].[173]

The Tur quotes further from the Rambam:

> They [who are writing a contract and seeking its enforceability within a Jewish court] need Jewish witnesses to attest to that -- [that] the gentiles witnessed the contract, and on the judge who brought made use of their testimony,[174] that they [as Jewish witnesses to the contract] did not have knowledge of [their] receipt of bribes; and if it [the contract] lacks for that [assurance], it is forbidden.[175]

The Rambam outlines the basic requirements for a contract to be valid within the Jewish legal system if it involves non-Jewish witnesses. While the Tur engages additional sources (including the Ramah and Ra'avad, as well as his father the Rosh), the Rambam's basic outline remains in

[172] In Hebrew the name "Ploni" is a stand-in for anyone; it may be akin to "John Doe" in English.

[173] One wonders if nobility were the only individuals who could read and write in the Rambam's time, thereby necessitating this statement of status of the witnesses to the contracts. This statement might likewise have been necessary or relavant when the Tur was writing.

[174] In this case, literally, "their witnessing" of the contract.

[175] In this case, not necessarily forbidden in a literal sense, but certainly disqualified from enforcement and adjudication within the Jewish legal system.

place. It indeed seems that the Tur is seeking out the clearest, simplest language in which to explain and clarify the laws involved.

Jacob ben Asher subsequently quotes his father about the need for Jewish legal scholars to be attuned to local legal customs. The Rosh states,

> If the custom of the king [of a region[176] is that] one should not make any contracts except before the one who composes them,[177] then all contracts done in the presence of the one who composes them are fit, even contracts for gifts and informing [of parties by way of contract], because of the laws of kingdoms; but while it is admirable with respect to the laws of the kingdom that all contracts are done in [front of the] one who composes them -- if there are contracts of gifts done by a person who composes them in the language of the world,[178] even if they are conveyed before Jewish witnesses [they should be signed before the judge authorized to compose them]. But if the giver of the purchase to the recipient in a purchase arranged and wrote the contract that is before them, and the purchase is given to the recipient through the arrangement of a contract it is fit, with proof in the world [of its validity].

In short, while it is preferable to observe the local customs designated by the (non-Jewish) ruler, a contract that is arranged and adhered to in a Jewish court of law is valid. Nonetheless, the Rosh

[176] This is my own logical inference.
[177] Presumably this is in reference to a judge or magistrate.
[178] This may be a reference to Castilian as (if you will) the *lengua Franca* of the area.

cautions that such contracts -- if not composed in accordance with local (Christian) custom -- may not be enforceable or validated within non-Jewish courts. The Tur then cites the Ramah (Rabbi Meir Abulafia, Burgos, circa 1170-1244), who expands on this understanding of limited or nonexistent enforceability of contracts within Christian courts (notably if they do not adhere to customs within the particular area in which the court has jurisdiction).

This chapter then closes with the Ramban's discussion of the subject.[179] It relates Ramban's discussion of the disparity in standards by which contracts are adjudicated in non-Jewish courts within different regions of Spain. Urbach points out that Jacob ben Asher's decision to cite the Ramban implies continued disunity and disparate legal practices within Spanish (Christian) law. Similarly, it is possible that Jacob ben Asher included the Ramban's responsum out of regard for his father (who initially quoted the Ramban), or as a means of moving beyond Rambam and bringing to the attention of readers other legal sources of which they should be aware.

In fact, *Las Siete Partidas* has also built into itself an understanding that time may be needed for law within Christian Spain to become more centralized. In *Partida*[180] *3*, *Titulo*[181] 14, *Ley*[182] 15 (3:14:15), for example, we see this stated explicitly.[183] The section addresses standards of proof required for plaintiffs bringing a case within a court that uses the newly central legal

[179] Urbach neglects to point out that the Rosh quotes the Ramban.

[180] This word means "part" and corresponds to one of the 7 volumes in *Las Siete Partidas.*

[181] This word means "title" and corresponds to a section heading or chapter in *Las Siete Partidas.*

[182] This word means "law" and corresponds to the particular law, as presented within the part and title of the legal code. It is the smallest unit denoted in *Las Siete Partidas*.

[183] This is based on the edition made possible by Gregorio Lopez de Tovar. The translation here is my own.

code, *Las Siete Partidas*. It is itself entitled "When plaintiffs are permitted to bring suit[184] based on law or by *fuero*."[185] The section states,

> Not only can they prove their suit and the contentions that [they bring] between men with evidence or witnesses, or validating letters, prior agreement,[186] or by public documents, or by suspicion, or by fame,[187] about which we therefore say: more by law, or by *fuero* that we determine [a ruling for] the suit about that which is contended.

Moreover, the law continues,

> We therefore say, and require [accordingly] of all law from our book [*Las Siete Partidas*], that [when] someone brings [suit] before a judge, to prove and determine his intention, for if by that [other, local] law he proved what he says, that [ruling] is to be validated and applied.[188]

Within the context of *Las Siete Partidas*, this suggests the active affirmation of prior judicial rulings, with the understanding that at the time of the contract's establishment, they had been

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[184] The word here is *pronar*.

[185] It is of note that *Las Siete Partidas* distinguishes so clearly between "law" and "custom," which is approximately what *fuero* can be translated as -- literally a "doing" or perhaps "way of doing" in a particular region.

[186] The precise term in Spanish, *preuillejos*, does not exist in the dictionary of the Royal Academy of Spain, suggesting that it is an antiquated term for which there is no contemporary usage and perhaps even imprecise usage in earlier eras.

[187] I believe this is in reference to widespread knowledge of a particular action or event.

[188] I translated "que cumpla," which literally means "that it is completed" as "applied" within this idiomatic translation.

precedent within the regionally enforced legal systems and had maintained jurisdiction over the contract itself. As such, the prior law is to be upheld and validated, even in new courts that employ *Las Siete Partidas* as the basis of their decision-making.

This section within *Las Siete Partidas* then goes on to detail the nature of local laws, as courts making use of the new, more centralized legal code should view them. Rather than replacing them or viewing them as superseded by *Las Siete Partidas*, contemporary judges working within a more unified judicial context are actively to research older, local legal systems and apply the ones which would have been applied in a case at the time in which a contract, exchange, or transaction would have taken place. More than merely having older laws "grandfathered in," current justices are urged to ensure that cases -- even ones that had not previously been tried -- would be tried in the way that they would have been at the time in which the transaction took place. With respect to these "actions which are in contention, which were done between people from a particular[189] land," a judge -- "of our Lord"[190] -- should "receive the case or the law, or the *fuero* of that land that had been applied before[hand],[191] and based upon it, determine and deliberate upon the suit." Reiterating this orientation toward earlier laws and *fueros*, Law 15 explains, "Additionally we say that if about a suit, or motion, or donation, or wrongdoing that was made at a[n earlier] time in which it would have been judged by an old

[189] "Aquella" suggests "those" and perhaps implies a distance from the present time in which the case is being adjudicated.

[190] This refers to the central ruler, whose rule is being bolstered by the *Siete Partidas.*

[191] Before, that is, *Las Siete Partidas* became the putative law of the land.

fuero" it is to be judged by the old *fuero* and not the new one.[192] "And this is because the time in which [transactions] are commenced, and times in which the things are bought[193] always are [to be] maintained…" Based on the internal logic of this section of *Las Siete Partidas*, it would be improper to judge a case based on current law, rather than at the time in which a particular action or transaction had taken place. *Las Siete Partidas* was to apply to current and future cases, but not to those for whom jurisdiction was implied, based on the region in which the action was taken, contract made, or exchange transacted.

While it seems clear that the local legal customs (as codified at times in *Fueros*) remained significant within the Spanish (Christian) jurisprudential landscape, they were actively being integrated and subsumed under the heading of a new legal code, with significant and growing institutional backing. That the Rosh and Tur would know about the challenges posed by such an integrative process is unsurprising. Built into *Las Siete Partidas* itself is an awareness of the confusion that a new legal code could cause. *Las Siete Partidas* responds with clarity to concerns about jurisdiction in civil suits. Judges of the increasingly centralized Spanish crown would be able to adjudicate all civil cases, but would do so while using the code of law on which the transaction or contract was based. This pragmatic approach may be one necessitated by a process of legal integration, which is paralleled in Jacob ben Asher's codification efforts. The chronology and orientation to legal integration of the Tur and *Las Siete Partidas* substantially align.

[192] This may be referring to the *Fuero Real*, which worked to consolidate the disparate *fueros* and was a precursor to the *Siete Partidas.*

[193] The word used here, "deue" is not present in the dictionary of the Royal Academy of Spain.

With this additional context from *Las Siete Partidas* in mind, Urbach's emphasis on the incorporation of the Ramban's responsum into the Tur's discussion of contracts written in the presence of gentiles seems superfluous. It is clear even from the Spanish legal forces of centralization that they recognized the presence and continuing validity of local law. While centralization was not yet a reality, it was rapidly taking place. It was not only Jacob ben Asher who sought to encourage ease of application in his new code, but the authors of *Las Siete Partidas* who did as well.[194]

The self-awareness of *Las Siete Partidas*' authors in noting the endurance of local law might in fact provide additional circumstantial evidence for inter-communal inspiration. *Las Siete Partidas*, like the *Tur*, appears to emphasize practicability and ease of application. Much like Jacob ben Asher, *Las Siete Partidas* seems to acknowledge the inherent complexity of creating a uniform legal code and incorporating within it elements of local judicial customs. Jacob ben Asher might have emphasized applicability precisely because of his familiarity with leading Spanish jurists, who had already attempted a process similar to the one he was undertaking. Urbach's thesis remains plausible, even as his understanding of *Las Siete Partidas* may be somewhat flawed.

[194] I am using this vague term to include both Alfonso the Wise and the lawyers who implemented his mandate for a new code of law in Christian Spain.

Hoshen Mishpat 61: Laws of Loans

Urbach links his analysis of contracts made in the presence of non-Jews to a thematically related section of *Hoshen Mishpat* (61) that focuses on purchases and contracts.[195] This entire chapter is dedicated to a question posed to the Rosh, of which there is only a remnant of his initial responsum. Urbach suggests that it "is brought as one example of rulings [the Tur] made easier [to apply] in contract law."[196] In so doing, Urbach brings evidence to reinforce his earlier position that one of the Tur's main goals was to make Jewish law easier to apply, and that the use of Tosafist sources – and particularly the opinions of his father – engaged this purpose.

The question presented to the Rosh relates to a contract composed for a particular purchase. The question asks whether for "all who are parties to the purchase and sale, gift, and loan, that without a contract, these [transactions] should not be enacted" and "if [the contract] is not written by a scribe of the city, and if… there is a space in which goes [the names of the parties] Reuven to Shimon, and in the writing it is not that of the scribe," whether it can be enforced.[197] In sum, how should a contract be enforced if it is incomplete, signed long after its composition by the scribe, or written even in part by an individual other than the designated scribe of the city?

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[195] Urbach 10.

[196] Ibid. One might suggest that the Tur is sharpening one of the initial uses of *minhag* from Ashkenaz to a new environment. *Minhag* inherently responded to the local needs and circumstances of a Jewish community. In this case, the Tur may have extracted an underlying principle that ease of application was key to Jewish law and reapplied principles, precedents, and commentaries from Ashkenaz in order to see it actualized within the Sephardic milieu.

[197] In this case "Reuven to Shimon" is a generic set of names, equivalent in English to "John Doe."

The Rosh (as relayed by the Tur) responds that these questions need not arise at all, save for the lack of witnesses present to verify the initial contract and its stipulations. He rules that "…a contract should not be arranged except if it is made in the presence of witnesses, and therefore [should] habituate the arrangement that no contract should be made – save those written by scribes and the signatures of the special witnesses of the city."[198] Almost immediately, however, the Rosh applies a corrective to his own stipulation: "However, incomplete contracts [with general terms and parties to be filled in later] made for everyday [transactions] written by one party are therefore to be seen, if it is written and then signed later, as though he had written and signed [the contract at the same time]." In short, everyday contracts that a person writes and then signs at another time are to been understood as valid, since they conform to social norms of the time and (one might infer) fulfill a practical need. Scribes are needed to compose contracts stipulating the terms of larger or less ordinary transactions, but not smaller contracts made on a day-to-day basis. The Rosh then delves into the particular instances in which the disparate kinds of contract are permissible – and how they should be adjudicated in a variety of related circumstances.

Urbach, however, focuses on a particular subsection of this responsum. Urbach quotes a significant portion of it:

> That you asked about a creditor who by himself seized the possessions of the debtor, without the assessment of the court, there can be sold from the debtor up to the amount of

[198] Hoshen Mishpat 61.

> his the debt. It is in consequence of this [kind of occurrence] that they are accustomed to write in promissory notes that there is permission for the creditor to sell everything that the debtor has of his property whether in the debtor's presence or not in the debtor's presence, without the permission of the court, [and] without announcing this. The Rosh says 'Yes, it is true. Everything that the scribes write in the document, one must obey... But no, it does not seem that the creditor should be able to do this without the authority of the court.'

Likewise of interest to Urbach are the subsequent sentences pertaining to the nature of a contract that might be enforced by another court, but perhaps not a Jewish one. Urbach quotes the Rosh:

> [An] answer, in truth, is that what the scribes are accustomed to write in contracts they are to do according to what they are accustomed to write. And whoever is [to be] in judgment, that appears to me that not all among them that are owed money go down to [have someone] appraise it, except at the behest of the court. And as he has fulfilled [his obligation] in that, I determined already here about how it is customary to write a contract [that is enforceable] between a Jewish court and a court of nations of the world; and I said 'heaven forbid that jurisdiction for a loan would be sought in a court of [non-Jewish] nations of the world, that even if the lender and debtor stood before me I would say to them that they cannot seek [adjudication] except in a court of Israel.' If he could not be made to listen, we would excommunicate him.

This point emphasizes the extent to which the Rosh saw cause for concern in non-Jewish courts serving as adjudicators of contracts between Jewish litigants (or at least involving one Jewish litigant). It would seem evident from the Rosh's statement that the concern was rooted in practical experience. The Rosh continued in his responsum:

> Therefore, in [accord with] that judgment, even if they wrote in the contract that it is the prerogative of the lender to go to a loan appraiser, they should not change the words of Torah, as it is taught that the lender to his fellow should not proceed [against him] except in a [Jewish] court, and it should be explained in [clear] language that in their eyes he did not commit a wrongdoing.

This passage is of interest, as it shows the extent to which local custom was allowed to influence key components of contracts. If it was the custom of a particular scribe (or group of scribes in a given region) to write contracts that called for the appraisal of property, then the contracts would be valid in a Jewish court. Urbach expresses, "In the eyes of others, Rabbi Jacob himself tries to place emphasis on Spanish *minhag* where it is compatible with the *halacha*."[199]

Questions of jurisdiction with respect to contracts similarly come into play in *Las Siete Partidas*. In fact, it may be argued that the content of *Las Siete Partidas* is in good measure about the question of jurisdiction – and the extent to which royal authority (and corresponding

[199] Urbach 11.

adjudication) could supersede local courts. Yet their similarity to the instances brought by in the Rosh's responsum are less clear.

The third volume of *Las Siete Partidas* includes the section "De Los Judíos" – literally "Of the Jews" – in Title 24.[200] The framing of the section represents an orthodox Christian perspective, in which the Jews do not accept Jesus as their Lord and mistreated (proto-) Christians. Consequently, they deserve worse treatment because of the history of the Jews and early Christianity:

> Jews are a kind of person that does not believe in the faith of our Lord, Jesus Christ, but by [the acts of] whose great leaders[201] [of old] Christians always suffered when they lived among them…. We seek therefore here to say of the Jews, who contradict and denounce the sacred and marvelous act [of God] that He made when He sent His son, our lord Jesus Christ, to the world to save the sinners. And where he took this name: and by the reason of the church and the great Christian leaders, the Jews were left to live among themselves. And [the Christian leaders delineated] in what manner one should live his life while they [Jews] live among them. And which things they should not use [or do] according to our law. And what those early judges [suggest] that you can press upon them for wrongdoings that they had committed, or for which a debt is owed. And how

[200] This is according to the 1807 version, introduced and published by the (Spanish) Royal Academy of History. It is accessible online at the link below and is used for all citations in this section: http://books.google.com/books?id=nZ_qJwsB1kkC&pg=PA672&dq=Las+Siete+Partidas+Los+Judios&hl=en&sa=X&ei=afi0UOO8EtG90QHQpIGAAw&ved=0CC0Q6AEwADgK#v=onepage&q=Las%20Siete%20Partidas%20Los%20Judios&f=false.

[201] In this case, literally, "sirs" or "nobles," referring in all likelihood to Jewish leaders.

> Jews who converted to Christianity should not be oppressed by those who did not convert….[202]

This series of stipulations continues and includes penalties for Christians who convert to Judaism and Jews who oppress converts to Christianity. In short, Judaism is understood to be a lesser tradition, whose ways are allowed within the community, but cannot under any circumstances be held over Christians or undermine Christian supremacy, according to *Las Siete Partidas* and the regions governed by it.[203]

The supremacy of Christianity is likewise enforced – at least officially – with respect to Jewish law and courts. Law III of Title 24 in Volume 3 of *Siete Partidas* (3:24:3) is entitled "That no Jew can ever be an official or dignitary with the ability to compel Christians." This law begins with an early Christian construction of Jewish history in the biblical period:

> Long ago, the Jews were very esteemed and had been granted privileges over all the other peoples, such that they were [the] only [ones] called the people of God – all the more so because they were unaware that they [of long ago] had been honored and privileged, and in place of doing honor to [this privilege], they dishonored it [by] giving very despicably [Jesus over to his] death on the cross, a guised action it was, and it is because of such a

[202] This section comes in the introduction to Title 24.

[203] It should be noted that this approach to Jews goes back to the later Roman law codes, beginning in the late fourth century.

> great error and wrongdoing that they committed that they lost the honor and privilege that had been [theirs].

Due to the nature of this narrative, reported as history, the Jews lost their right to rule over others, and by extension, serve in places of "dignity" in which they could compel a Christian to follow instructions or obey particular laws. The law (3:24:3) continues,

> And it is for good and for rightness that the emperors of old, leaders of [entire] parts of the world, lost all of their honors and privileges…because of their treason in killing their Lord.[204] [This is such that] no Jew can ever again hold an honored place, nor a public office, with which he can obligate any Christian in any way [to do anything].

In short, for fear of abuse of the sort exemplified by the execution of Jesus, no Jews could ever hold power over Christians, according to *Las Siete Partidas*.[205]

What is striking about *Las Siete Partidas* is that it lays down a categorical prohibition on Jewish leaders holding positions of power non-Jews, which includes adjudication. Yet the Tur relates and provides guidance for scenarios in which Jews might engage in contracts with non-Jews and even have those contracts adjudicated in Jewish courts. There are several possible interpretations of this disparity. The first is simply that *Las Siete Partidas* was not enforced and

[204] This may be a reference to Herod or the Sadducees more broadly as a class.

[205] This is an old Roman legal view, going back to the late fourth-century Theodosian Code. See Amnon Linder, *The Jews in Roman Imperial Legislation.*

that Jews maintained positions in which they held power over non-Jews, and/or that non-Jews did willingly submit to adjudication in Jewish courts.[206] The second is that information relayed in the Tur was wishful thinking and that Jews seldom actually had power over gentiles. Precedent was included should ever the need arise. The third, and most likely, interpretation is that Christians were free to engage with Jews in contracts adjudicated within the Jewish legal system – but that Jews could not hold high office within the Christian legal system or government more broadly. Christians might feel that submitting to adjudication in Jewish courts was necessary at times as the "price of doing business." The Tur can be understood to describe a scenario in which a Christian willingly submits his contract or business dealing to review and adjudication by the Jewish legal system in the event of a dispute. While, based on the broader rule in *Las Siete Partidas*, the Christian could likely break his contract or agreement and have it instead adjudicated by a Christian judge, it is not out of the question that he would turn to the Jewish court system when doing business (or other transactions) with Jews.

A motivating factor for both the Tur (and the Rosh's responsum) may have been the extent to which non-Jews could simply opt out of adjudication in the Jewish legal system based on *Las Siete Partidas*. This may have prompted the Tur to encourage not only ease of use of the Jewish system but flexibility on the part of justices in accepting contracts that may not adhere to particular halachic stipulations but otherwise constitute an enforceable document. If the Jewish legal system was already undermined by the Christian codes that ran parallel to it (yet maintained power over it), the Tur and Rosh may have sought to do whatever possible to broaden the purview of the Jewish system and increase the chances that its justices would rule in

[206] This seems possible, but not necessarily compelling as a rationale.

an instance of imperfect but usable contracts. Implicitly, the fear was that Jews themselves might opt out of the Jewish courts.

Hoshen Mishpat 171: Laws of Adjacent Fields

The different socio-political orientations that *Las Siete Partidas* and the *Hoshen Mishpat* bring to bear upon the laws of adjacent fields are striking. Within this subset of laws, *Hoshen Mishpat* focuses on the privileges given to those with adjacent fields in one's own purchase of property. Several possible analogues for it are present in *Las Siete Partidas*. These are dedicated to questions of conquest and the presence of large estates with bonded laborers. The frames for the legal discussions are disparate, but do provide insight into the possible audience of each code and to the orientations that each took to questions of property.

In particular, there is a noteworthy parallel between "Laws of Adjacent Fields 171" in *Hoshen Mishpat* and Law 3:10:7 from *Las Siete Partidas*. *Partida* 3 in large measure details Spanish law about courts, lawyers, and litigation, so it is unsurprising that it might have content that corresponds to different passages from *Hoshen Mishpat*.

The section in *Hoshen Mishpat* discusses a field that is adjacent to one's own and the extent to which a business partner can lay claim to the right to purchase the property:

> Thus wrote the Rabbi Yehudah of Barcelona, 'And it was not expressed that the partner invalidate the purchase [by making an alternative purchase offer], but rather [that] only owner of the adjacent field can invalidate the purchase [through the purchase of the land],' as in the example of Reuven who sells the field to Shimon, and Levi has a field

> next to the field that was sold. Levi gives the equivalent price to the [one tendered by Shimon in] purchase and invalidates [the earlier sale].

While a partnership does not invalidate a sale offhand, a partner who owns an adjacent piece of land is able to invalidate a sale of a portion of the land to a third party by offering up the equivalent amount as was offered in the sale. In short, the partner has the right of first refusal to shares of land that are adjacent to his own, based on the fair market price – in this example, ascertained through the sale of the property to a third party.

Of note, however, these preliminary cases presented in Laws of Adjacent Fields 171 of *Hoshen Mishpat* presuppose agreement that the owner of one part of the field is in a partnership with the person who sold his portion of the field. It would be a fair assumption that those who held adjacent fields were business partners – whether formally (as in with shared products, sales, and purchase of inputs) or informally (by sharing tools). Further, it might be that members of the Jewish community could more readily serve as witnesses for or against the supposition of partnership, given the use of local courts to adjudicate cases and the presence of witnesses within the community who would have knowledge of the nature of a business relationship (or lack thereof). Therefore, it is reasonable to presuppose the existence of a partnership between two people on adjacent land, if one partner claims such a partnership to have existed.

Las Siete Partidas, by contrast, begins without any presumption that a partnership would exist. Law 3:10:7 stipulates,

> We also decree that, where one person makes a demand upon another to partition a tract of land, or any other property whatsoever, to which they have a common right by inheritance or partnership, or for some other reason; and he upon whom this demand is made has complete possession of said property, and denies that the other party is his associate or partner or has any right to share in it, he should not prosecute a claim of this kind, unless the plaintiff can prove, in the first place, why he has a right to ask a share of the property with respect to which the claim is made, and, this having been proved, he should be heard concerning the demand he makes for partition. But where the plaintiff is in possession of the property which he petitions to be divided, even though the defendant denies that he is his partner, the other party has no right to demand a share of said property, still a claim of this kind can be entertained. He should, however, prove and establish the right which he alleges he has in said property, and, when he has done so, the judge should order the property which he brought suit for in partition, to be divided. But where he cannot establish the right which he alleges that he has, the property shall belong to the defendant, and the plaintiff shall be deprived of control over it.[207]

There are key differences to note about the scenario presented in Law 3:10:7 from the one in Hoshen Mishpat 171. First, it appears to pertain, not to the right of first refusal for property, but rather to questions of inheritance or other scenarios of the partition of property. In essence, one might view Law 3:10:7 as the prologue to actions presented in Hoshen Mishpat

[207] This translation, due to the difficulty in finding an appropriate Spanish version (a version did appear to be available in Latin), comes from Samuel J. Parsons. See Robert I. Burns, ed. *Las Siete Partidas*, Volume 3. Philadelphia: University of Pennsylvania Press, 2001: pages 626-627.

171. Only once land has been partitioned or divided between partners can a right of first refusal be contractually established.

Herein lies the essential difference between the two codes of law with respect to the question of adjacent fields: Hoshen Mishpat presumes a right of first refusal on the part of the business partner or person with an adjacent field, while there is no evidence to suggest that *Las Siete Partidas* makes a similar assumption. *Las Siete Partidas* would likely view the sale of the field (or analogous property within a business partnership) as being governed conventionally by transactional and/or contract law. There is no special dispensation granted to a business partner, unless such dispensation is stipulated in the preliminary business agreement by which they enter into partnership. This may be due, in good measure, to the longstanding nature of Jewish laws pertaining to adjacent fields, which predate those codified in *Las Siete Partidas* by centuries.

Unique to *Las Siete Partidas*, however are laws pertaining to property that comes under control of an individual through conquest (7:4:4), in what manner a person can acquire bonded laborer for an extended duration (3:31:15), and even the extent to which (and manner in which) a person can legally rob from a territory that he has fought in battle (2:26:15). These scenarios suggest that practical necessity inspired these legal provisions related to ownership within *Las Siete Partidas*.

One wonders, however, if one can say the same for the Jewish laws pertaining to adjacent fields. It would seem that, rather than being a response to new circumstances, this set of laws was

a holdover from times in which land purchases would be made so as to facilitate business and familial partnerships. While such customs may still have existed (or been reinforced) within the Jewish community, it is unlikely that corresponding laws were responding to a new or pressing need, so much as one that had long existed. While some scenarios may have been important to clarify – notably those in which there existed more than one business partner or individual with property adjacent to that which was being sold – the presumption that a business partner would have right of first refusal to a parcel of land appears particular to Hoshen Mishpat and the broader orientation of Jewish law.

Conceptions of Loans in *Las Siete Partidas* and *Arba'ah Turim*

There are similarities in the discussions within *Las Siete Partidas* and *Arba'ah Turim* about loans. Both refer to the recipient of the loan as a 'fellow man' or 'friend' and suggest that a loan is to be understood in a positive light. They do not yet have fully developed the conception of a loan as a business venture or revenue generator in the sense that we do today (though it should be noted that Jewish law did evolve early on to turn loans for business ventures into investments). Charging interest to one's fellow was unsanctioned between fellow Jews in the Tur and between Christians in *Las Siete Partidas.* The shared understanding of loans as an act of goodwill merits further study because of these similarities.

Rather than discussing loans as a means of economic advancement for the lender, *Las Siete Partidas* describes them in terms of a good deed that one does either for the benefit of the person receiving the loan (and the kindness of the lender), mutual benefit, or benefit in status of the lender (to the exclusion of formal financial benefit). In good measure, this may be due to the Latin term *commodatum*, which provides the basis for analysis in section 5:2:1 and hints at both the influence of Roman law and early Christian bans on collecting interest for items or funds given on loan to another person. [208] Much the same may be said for the Latin term *mutuum*, which is used to frame the prior section, 5:1:1. This earlier section, which provides an overview of loans and the conditions in which they can be made, conspicuously avoids mention of remuneration and profit (beyond social or psychological) from a loan. It states,

[208] This is never explicitly mentioned. However, it appears to be a logical inference due to the absence of discussion related to compensation of the lender (beyond a return of the goods on loan).

> Lending is a means of grace that men do among themselves, loaning on the part of some to others their own [property] when they have the means to do so. Born of this [action] is a great end [as] a man is thereby helped [with access] to items as though they were his own, and comes forth and grows between men an emergent affection for this reason. And there are two means of loan, and the first is more natural than the other. It takes place when some men loan others some items to count, or weight or measure. A kind of loan done like this is called in Latin *mutuum*, which means in Latin something that is loaned that is made one's own by the recipient of the loan. Thus passes ownership of each one of these items, as stated above, to the person to whom it is given on loan. The other means of loan is of any other kind of item, which is not of the nature of these [which are measured and weighed], such as a horse, or another large animal, or book, or other similar things. And a loan of this kind is called in Latin *commodatum*, which means that it is something lent to another person [for the recipient] to take enjoyment from, but not receive ownership of through the loan.[209]

In defining only two kinds of loans, *Las Siete Partidas* limits (or eliminates) the possibility that loans would be used as a means of revenue-generation. The benefits accrued by the lender are social, ethical, and relational rather than financial.

Similarly, the *Arba'ah Turim* writes within a context that focuses on loans between Jews as among the highest forms of good deed. The Rambam categorized loans made without

[209] Gregorio Lopez, ed. *Las Siete Partidas del Rey Don Alfonso el Sabio*: *Contejadas con Varios Codices Antiguos Por La Real Academia de La Historia*, Volume 3 (Fourth and Fifth *Partida*). Paris: Lecointe y Lasserre, 1843: pages 23-24.

expectation of reimbursement as among the highest forms of *tzedakah*. Rather than undermining the dignity of the person receiving the loan by denoting it a form of charity, giving through a loan (and then not enforcing the loan agreement) could at once provide support to another person and avoid the loss of face. While interest could be charged on loans provided to non-Jews, such a practice was forbidden within the Jewish community. The focus of discussions about loans within *Arba'ah Turim* appears to relate to two key issues: avoidance of abusive loans (including *ribit* -- usury) and the ways in which a loan would be considered valid in a court of law, should one party fail to repay it.[210]

Hoshen Mishpat 72 works to avoid usury. It focuses on loans that are made based on pledges, with an eye to the potential for such a loan to become usurious. The section begins,

> [Of] the loan made to his fellow [Jew] on [the basis of] a pledge,[211] one must be careful not to use it, as it can be like usury. And if the loan is made to a poor person, it is upon the lord [wealthier person] and invalid… And if it comes to pass that the profits are too great, and cannot be reduced [on the part of the lender] except by a little bit, the recipient of the loan can deduct from the amount that he is obligated.

While the section goes on to address alternatives means of addressing this category of loan, it focuses on the potential for loans made by pledge to become predatory in nature. In part, this is

[210] This presumes, of course, that the other party did not make the loan with the understanding that it would truly be an act of charity done to enable the recipient to save face.

[211] In this case, a pledge in the sense of an oath or promise, rather than formal contract.

because loans made via verbal promise do not typically entail oversight on the part of a judge, scribe, or Jewish legal scholar, who might otherwise intervene on behalf of the recipient of the loan and insist on fairer terms.

Structural issues related to loans, and particularly those related to enforceability, are similarly present in *Hoshen Mishpat* 39, "Laws of Lending." The discussion of loans begins with questions of validity and enforceability within a Jewish court and delineates two different kinds of loan agreements:

> The one who lends to his fellow [Jew] in the presence of witnesses, this form of loan is called a verbal loan, and he [the creditor] will not collect from encumbered properties. And if the borrower gives him the writing of his hand, the creditor cannot collect from encumbered properties [as it is still basically an oral loan, after which a recollection is written and sent].

The clear preference for written contracts over verbal agreements for loans may pertain to the challenges of ascertaining the precise clauses of a verbal agreement, even in one witnessed by multiple people. It also suggests the potential for such verbal agreements to redound to the advantage of the creditor over the borrower.

Fairness in lending was clearly placed at a premium in both the Tur and *Las Siete Partidas*. However, *Las Siete Partidas* does not explicitly limit its consideration to loans only

between Christians, as the Tur does vis-à-vis the Jews. (Such limits may, however, be implicit.) Further, *Las Siete Partidas* has a far more limited section dedicated to loans when compared with the Tur. Within the Tur, discussions of loans are spread across multiple books and receive significant attention, both in terms of scope and detail. Within *Las Siete Partidas*, they are defined, but discussed in far less detail and with far greater brevity. Even if one might draw parallels about the ways in which loans given within religious communities were conceived of, the means by which such conceptions are laid out indicate a lower degree of similarity. In short, it appears possible though unlikely that *Las Siete Partidas* influenced the way in which the Tur discusses loans, as the Tur draws from longstanding Jewish legal sources on the subject.

Legal Documents Written "Nowadays"

An interesting lens into common Spanish legal practice at the time in which Jacob ben Asher was writing comes from his section dedicated to Laws of the Acquisition of Property 191 in Hoshen Mishpat. It reveals a number of new details about the nature of contracts during his lifetime, as well as other written documents that could serve as evidence in a court of law. It also shows the extent to which business agreements and exchanges could take place in absence of such written agreements.

The section, Hoshen Mishpat 191 on Laws of Acquisition, begins by explaining the significance of written contracts (or other legal documents) in the context of a commercial exchange. It notes,

> In a contract, when it is written about papyrus or about the catch of fish or about the offerings of a field, sold to you or given, it becomes his [the purchaser's] possession, according to the contract, even if there are no witnesses. This is the general principle even if there are not partners [whose assets are] worth a *perutah* [a very small coin]. In another issue, in the sale of one's field, [even] though they are neighbors, the property remains [that of the first owner]; it is not purchased via contract until compensation is given and also a contract is written in the place where it is customary to write contracts. And [in] the legal documents that are written nowadays, there are none [used] except as evidence, and there is no purchase of property through them.

It is of significance that contracts on land are no longer binding until compensation for the property purchased is made. Further, the vagueness with which Jacob ben Asher describes the "place where it is customary to write contracts" is surprising. It may indicate the need to register the purchase of land (as opposed to other forms of property, and demonstrated here by the use of the word *karka*) in an institution affiliated with the crown or Christian courts of law.

The first part of Jacob ben Asher's discussion of contracts from his time is paralleled in good measure within the fifth book of *Las Siete Partidas* (5:5:6), which is summarized in the headline of the law: "By which means can a purchase and sale are made." It goes on to specify,

> You can make [a purchase] by two means: with writing and without it. [It is] of the first kind when the buyer says to the seller 'I want of this purchase,' made in writing [of a document] or card…. It is not said to be finished until the card is made and signed; but after the card is signed by witnesses, one cannot take back any of them [the terms]. And the second method is made when a price is arrived at and the two [buyer and seller] convene for it [the transaction], one receiving the item and the other the price [payment], that from the time that he [the buyer] had given signs [of agreement] to the seller are both obligated [to make the exchange based on the terms agreed upon].[212]

[212] This translation is my own. However, it is from the text provided in the edition of D. Ignacio Velasco Perez, published by *Los Senores Viuda de Jordan e Hijos* in 1843. http://books.google.com/books?id=ggj9QJCykhwC&pg=PA452&dq=Las+Siete+Partidas+Contrato&hl=en&sa=X&ei=sJ7kUI_bF_Oy0AGl1oGIDA&ved=0CGYQ6AEwCQ#v=onepage&q=Las%20Siete%20Partidas%20Contrato&f=false.

In contrast to the Tur, these to kinds of sales, with and without a written contract for the purchase of items, appears to include land along with other categories of property. However, in subsequent sections, *Las Siete Partidas* makes specific mention of land as an item liable to particular challenges.

For example, law 5:5:20 discusses the likelihood that land defined within the scope of a purchase could be confused, as the precise boundaries of a territory might be difficult to identify. In such a case of dispute, it would no doubt be helpful to have a contract, particularly one written with significant detail and witnessed according to local custom.

Similarly, law 5:5:23 of *Las Siete Partidas* draws into question who is responsible for damage done to property that is exchanged. Likewise, in a particular example given, is the buyer supposed to pay additional money for trees planted on land that he purchased, after the purchase price was already agreed upon at a prior time, before the trees were planted or discussed? Land, it appears, was an especially thorny issue with which to engage.

Additional quandaries that *Las Siete Partidas* relates are those pertaining to issues of land acquired during a time of war. Given the regular exchange of territory, particularly in the borderlands between the Christian- and Muslim-controlled parts of Spain, it was often uncertain who truly could claim ownership of a piece of land, especially if it was just seized in the course of battle and might well revert after a subsequent one.

Yet the most likely interpretation of Jacob ben Asher's opaque words, which would probably have been glossed over in *Las Siete Partidas* by virtue of its goal to become the legal code for all of Christian Spain, is that different regions had highly disparate and idiosyncratic means of determining landownership. While it may have been difficult in some regions for Jews to gain title for a piece of property, in others it might have been simpler. Further, the process of verifying a land sale was likely dependent on local administrators and courts. While disparities in contract interpretation remained present, the clear exchange of money for property would be easy to track, witness, and verify in the case of a dispute.

Jacob ben Asher's awareness of local Spanish legal customs is likely based on his significant emphasis on process in validating a purchase. The lack of uniformity across regions in Christian Spain with respect to the purchase of property likely necessitated such measures. Jacob ben Asher is probably providing guidance for property-related transactions with the understanding that *Las Siete Partidas* had yet to bring legal uniformity to Spain by the time he wrote the *Arba'ah Turim.*

Conclusion: Evidence of Inter-Communal Inspiration and Its Significance

It is often easier to criticize a theory than to develop one. That acknowledged, while Ephraim Urbach aptly notes the dissimilarity between the Tur and other major rabbinic codes, notably Isaac Alfasi's *Halachot Rabbati* and Moses Maimonides' *Mishneh Torah*, he does not robustly substantiate his claim that the Tur's author, Jacob ben Asher, instead turned to Spanish and even Roman legal codes for inspiration.

In part, this may be due to the difficulty of imagining how Jacob ben Asher may have acquired knowledge of *Las Siete Partidas.* We do not know the extent of Jacob ben Asher's Spanish reading fluency or his awareness of Spanish legal codes. It is even more doubtful that he could read Latin or directly access Justinian's legal codes.

Far more plausible, however, is a scenario in which Jacob ben Asher came into regular contact with Christian jurists and courts, and with Jews whose business and other dealings brought them into contact with those courts. Through conversation and repeated interchange, he could have learned about the processes of codification taking place in Spain, as well as about their histories and sources and used them as grist for his ever-whirring mill of a legal mind. We see evidence of possible relationship between *Las Siete Partidas* (and precursor legal codes) and the *Arba'ah Turim*, but in a form refracted through what appears to be the creative mind of the latter's author. While *Las Siete Partidas* may not have directly inspired the *Arba'ah Turim* and its carefully crafted structure, inter-communal interaction may indeed have contributed to the reorganization of Jewish law and theory therein.

Even as this thesis focuses on a limited number of sections within each legal code and does not purport to have engaged in a comprehensive study of Jacob ben Asher and the *Arba'ah Turim*, it may provide the basis for future inquiry into the two works, as well as other works in both Jewish and (Christian) Spanish codes of law. Building upon the insights of Ephraim Urbach, it brings to bear a comparative legal analysis that could readily be extended to include other areas of focus.

Particularly fruitful could be comparative analyses of sections related to areas of life in which Jews and Christians might have had the most interaction in Spain. It is commonly understood that cities in the Christian north of Spain might well have a Jewish section, but still allowed for extensive and regular interaction between Jews and Christians.[213] Interactions could lead to similar constructions of commercial law, laws detailing prohibitions on participating in religious rituals of the other community, and family law within respective legal codes.

Likewise, it could prove meaningful to focus greater attention on questions of structure. Is there similarity in the way analogous sections of law are structured between Jewish and Christian codes-- or perhaps relative similarity, when juxtaposed with the *Arba'ah Turim* to the *Halachot Rabbati* as a basis for comparison? Such a comparative structural analysis could further elucidate areas of similarity and help clarify the mechanisms by which such similarities might have emerged.

[213] For more, see Yitzhak Baer's *A History of* Jews in Christian Spain (Philadelphia: JPS, 1993), among other books on the subject.

Even as this thesis only begins to elaborate upon Ephraim Urbach's landmark "Mi-Darkhei Ha-Codifikatziah – Al S' Ha-Turim L'R. Yaakov b. Asher," it aspires to provide a stepping-stone to further inquiry and study of the relationships between the Spanish and Christian communities in Spain – and the legal codes that sustained them.