

Ephraim Kanarfogel

Compromise and Inclusivity in Establishing *Minhag* and *Halakha*: Contextualizing the Approach of R. Meir of Rothenburg

In two places within the Talmudic corpus, the Amora R. Nahman bar Yizhaq enunciates the principle that a God-fearing person should seek to fulfill both positions in a halakhic dispute or debate: “One who fears Heaven will acquit himself according to both views” (ירא שמים יוצא ידי שניהם).¹ A similar strategy is employed in a number of instances by the Amora Rav Pappa, who suggested combining two competing liturgical variants into one inclusive statement or blessing (הילכך נימרינהו לתרוייהו) in situations ranging from the blessing to be recited after a public reading of the *megilla* on Purim, to the proper text of the *modim* prayer recited during the repetition of the *amida* (מודים מדרבנן).² Rav Pappa also advocated this methodology for resolving several halakhic issues.³

1 See *Berakhot* 39b (regarding an argument between Rav Huna and R. Yohanan concerning the proper procedure for making the blessing of *hamotzi* when both whole and partial pieces of bread are present), and *Shabbat* 61a (regarding differing views about the proper procedure for putting on one’s right and left shoes). Rashi to *Shabbat* 61a, s.v. *yoze yedei shneihem*, interprets R. Nahman’s position as “to act in accordance with both opinions” (עביד כתריויהו). The phrase, “one who fears Heaven will fulfill both” (ירא שמים יוצא ידי שניהם), appears to be a paraphrase of Ecclesiastes 7:18, “one who fears the Lord will do all of them” (כי ירא א-להים יצא את כולם). In context, the verse as a whole urges that proper balance be maintained between seemingly disparate religious behaviors or values that had been previously delineated, “it is good to hold on to this and not to let your hand leave that” (טוב אשר תאחז בזה וגם מזה אל תנח את ירך); and see the comments of Rashi, Yosef Qara, Rashbam and R. Isaiah di Trani, “that is to say, fulfill both of these aspects” (כלומר מקיים שני המדות האלו), in M. Cohen, ed., *Miqra’ot Gedolot ha-Keter*, vol. 16 (Ramat Gan: Bar-Ilan University, 2012), 174–75, rather than differing halakhic observances. Note, however, Ibn Ezra’s comment: “Do not search elsewhere for what to do, simply follow the Torah of our Lord deviating from it neither to the right or to the left, and keep the commandments that sustain man when he does them... for one who fears the Lord fulfills all of them in truth” (ואינו צריך לחפש מה יעשה רק ילך אחר תורת א-להינו ולא יסור ממנו ימין ושמאל וישמור המצות אשר יעשה אותם האדם וחי בהם... כי ירא א-להים יצא את כולם לאמת). *Qohelet Rabbah* identifies the two areas of endeavor that must both be grasped as Scripture (*miqra*) and Mishna, signifying written Law and Oral Law. See also Chaim Kanievsky, ed., *Perush ha-Roqeah ‘al ha-Megillot*, vol. 2 (Bnei Brak: Julius Klugmann and Sons, 1984), 158–59.

2 See *Megilla* 21b; *Sotah* 40b; *Berakhot* 59a–60b; *Ta’anit* 6a–7b. A variant reading to a passage in *Berakhot* 11b (found, for example, in Alfasi’s *Halakhot* and in *Pispei ha-Rosh*) includes Rav Pappa’s name on this same approach, concerning the recitation of the Torah blessings (ברכות התורה) in the morning liturgy.

Avraham Grossman has noted a related formulation from the northern French exegete, R. Yosef b. Simeon Qara, as he perhaps received it initially from R. Qalonymus b. Shabbetai of Rome, who arrived at the Talmudic academy in Worms during the late eleventh century when Yosef b. Qara was a student there. According to them, the classical *payyetan* Eleazar ha-Qallir sought to include competing midrashic and aggadic interpretations in his *piyyutim*: “Wherever he encountered competing rabbinic opinions, he attempted to espouse both approaches” (וכה משפט הישיש [=הקליר] שבכל מקום שמצא רבותיו חלוקין בדבר) (מקיים דברי שניהם).⁴ Although there are also a number of instances in which these principles were applied in liturgical contexts during the Geonic period, formal expressions of such a strategy are hardly found.⁵

In the first volume of his *Minhagei Yisra'el: Meqorot ve-Toladot*, Daniel Sperber devotes a chapter to the role of the principle of “fulfilling all of the views” (*lazet yedei kol ha-de'ot*) and its corollaries (including the related notion of “removing himself from the dispute of others” [*la-afugeh nafskeh mi-plugteh*]) in the formation of *minhagim*. Sperber presents a passage from R. Meir ha-Kohen’s *Haggahot Maimuniyyot*,⁶ in which Meir ha-Kohen describes how his teacher, R. Meir (Maharam) b. Barukh of Rothenburg (d. 1293), combined the practice prevalent in northern France of cutting a loaf of newly baked bread from the bottom, since this was the portion that touched the warm oven (and was therefore the most thoroughly baked section, which best merited the blessing over the bread according to the underlying Talmudic analysis), along with the German practice of cutting the loaf at the top, since this was the part of the bread that

3 See *Shabbat* 20a; and *Hullin* 46a, 65a, 76b. Virtually all of the passages in this note and the one above are briefly described in Daniel Sperber, *Minhagei Yisra'el*, vol. 2 (Jerusalem: Mossad Harav Kook, 1991), 23–24 (n. 1).

4 See Avraham Grossman, *Hakhmei Zarefat ha-Rishonim* (Jerusalem: Magnes, 1995), 337–39. A brief appendix by Grossman on this topic appears in Sperber, *Minhagei Yisra'el* 2, 72–75.

5 See, for example, *Ozar ha-Geonim li-Berakhot* (responsa), 29 (sec. 52); *ibid.*, 7–8 (sec. 10); Simcha Emanuel, ed., *Teshuvot ha-Geonim ha-Hadashot* (Jerusalem: Ofek Institute, 1995), sec. 96; and Sperber, *Minhagei Yisra'el* 2, 23–25, 34–35 (n. 6). Among the sources cited by Sperber on p. 25 is *Arba'ah Turim, Orah Hayyim*, sec. 49, “and the Geonim ruled... that one should fulfill both” (והגאונים הכריעו... לצאת ידי שניהם). See also below, n. 10.

6 See *Haggahot Maimuniyyot, hilkhot berakhot*, 7:3[3]; and the variant cited in Yitzhak Ze'ev Kahana, ed., *Maharam mi-Rothenburg: Teshuvot, Pesaqim u-Minhagim*, vol. 1 (Jerusalem: Mossad Harav Kook, 1957), 1, 188 (*Pesahim*, sec. 131). On the phrase מפלוגתא נפשיה לאפוקי נפשיה, see *Tosafot Berakhot* 39b, s.v. *ha-kol modim* (“and on occasion, Ri would extricate himself from a dispute” [אפוקי נפשיה מפלוגתא]); and *Tosafot Berakhot* 18a, s.v. *le-mahar* (“Rizba typically did not remove them [the *tzizit*] from the corners [of the *talit* of the deceased], but rather he tied them and pressed them into the corners to remove himself from a dispute, [הריצב'א היה רגיל, (שלא להסירם מן הכנף אלא לקשרם ולהדקם בתוך הכנף לאפוקי נפשיה מפלוגתא”).

was actually baked first within the oven. Maharam of Rothenburg would make a cut on both the top and the bottom of the loaf and would then split the loaf between those two cuts (“to fulfill all of the views” [*lazet yedei kulam*]).⁷

Sperber shows how this practice played out among Ashkenazic halakhic authorities through the days of Moses Isserles and beyond. He then notes how rabbinic figures from R. Jacob of Marvege, author of *Teshuvot min ha-Shamayim* (which was composed in the early thirteenth century), through R. Ya’akov ba’al haTurim (d. 1349), and onto R. Yosef Karo (d. 1575, who notes in his *Beit Yosef* that a number of northern French Tosafists had already done this), all urged that one should wear both the *tefillin* of Rashi and those of Rabbenu Tam (which have a different order of the *parshiyot* in the *tefillin shel rosh*) to ensure, as Karo also mentions explicitly in his *Shulhan Arukh* (*Orah Hayyim* 34:2), that “one who fears Heaven will fulfill both” (*yerei shamayim yezei yedei sheneihem*).⁸

In the second chapter of the second volume of his work, Sperber returns to describing this strategy of halakhic compromise or inclusivity at length through a series of additional instances. Although the large majority of examples that Sperber reproduces and discusses here are from the period of the Aharonim, one of the instances from the medieval period involves the compromise of reciting the paragraph of *ahavat rabba* just before *shema* in the morning service, and a parallel yet distinct paragraph that begins with the phrase *ahavat olam* in the evening. Already in the Geonic period, a number of medieval rabbinic authorities held that *ahavat olam* should be recited both morning and night.⁹ *Sefer ‘al haKol*,

7 Daniel Sperber, *Minhagei Yisra’el*, vol. 1 (Jerusalem: Mossad Harav Kook, 1989), 39–40.

8 *Ibid.*, 1, 41–42. See also Yaakov Gartner, *Gilgulei Minhag be-‘Olam ha-Halakhah* (Jerusalem: Y. Gartner, 1995), 147–52; and see below, n. 42. On the dating of *Teshuvot min ha-Shamayim* (and the origins of its author), see Israel Ta-Shma, *Knesset Mehqarim*, vol. 4 (Jerusalem: Bialik Institute, 2010), 112–29 and Ephraim Kanarfogel, “Dreams as a Determinant of Jewish Law and Practice in Northern Europe during the High Middle Ages,” in *Studies in Medieval Jewish Intellectual and Social History: Festschrift in Honor of Robert Chazan*, ed. David Engel, Lawrence H. Schiffman, and Elliot R. Wolfson (Leiden: Brill, 2010), 134–35 (n. 53). After noting several other lesser examples (1, 43–45), Sperber discusses at length the placement of a *mezuzah* on the doorpost as well (1, 46–56). Here, too, the diagonal placement that is typical would seem to be a “compromise” between the views of Rashi and Rabbenu Tam which held, on the basis of differing Talmudic analyses, that the *mezuzah* should be placed either vertically (Rashi) or horizontally (Rabbenu Tam). To be sure, these various compromises are of different qualities. When donning two pairs of *tefillin*, the views of both Rashi and Rabbenu Tam (which are mutually exclusive) are thereby fulfilled. In the case of *mezuzah*, however, the so-called compromise of the diagonal placement in a sense goes against both positions. It represents a kind of middle approach that does not so easily fulfill both views. Partly as a result, Sperber posits a different underlying reason for the diagonal placement of the *mezuzah*.

9 See Sperber, *Minhagei Yisra’el* 2, 25.

a liturgical treatise written by a student of the northern French Tosafist, R. Moses b. Shne'ur of Evreux (d. c. 1250), notes that while R. Moses's colleague, the Tosafist R. Netan'el (of Chinon), recited only *ahavat olam*, "Ra"m indicated that we now recite *ahava rabba* in the morning and *ahavat olam* in the evening in order to remove ourselves from their argument" (והר"מ אומר שעכשיו אנו אומרים אהבה רבה) (שחרית, וערבית אהבת עולם, לאפוקי נפשי מפלוגתיהו¹⁰).

Although Ra"m in this passage connotes R. Moses of Evreux rather than R. Meir of Rothenburg, Sperber further notes that Maharam himself invoked the principle of "removing oneself from an argument" (*la'afuqeh nafsheh miplugta*), with regard to the recitation of the *sheheheyanu* blessing on the second night of Rosh haShana. Since there is a halakhic question as to whether Rosh haShana is to be treated as two separate and distinct days or as one long day (*yoma ariha*), R. Meir would wait to drink wine produced from the new harvest until that point so that his *sheheheyanu* on the second evening of Rosh haShana could be recited over the wine as well. Other texts suggest that R. Meir recommended that one should either eat a new fruit at that meal, or that a new garment should be

¹⁰ Ibid., 33–35, citing Meir Zvi Weiss, ed., *Sefer 'al ha-Kol, Ha-Goren*, vol. 7 (Berditschew: Scheftel Publishing House, 1907), 81. This approach is also found in *Tosafot Berakhot* 11b, s.v. *ve'rabbanan*: "therefore they ordained that *ahava rabba* be said in the morning service, while *avahat 'olam* should be said in the evening service" (הלכך תקינו לומר בשחרית אהבה רבה ובערבית אהבת) (עולם). These *Tosafot* originated in the study hall of R. Judah b. Isaac Sirleon, with whom the brothers of Evreux had contact; see Ephraim E. Urbach, *Ba'alei ha-Tosafot* (Jerusalem: Bialik Institute, 1980), 1, 480; 2, 600–01. However, the complete version of Nissan Zaks, ed., *Tosafot R. Yehudah Sirleon 'al Massekhet Berakhot* (Jerusalem: American Academy for Jewish Studies, 1969), 134–35, s.v., "We don't say *ahavat rabba* but *ahavat olam*" (אין אומרים אהבה רבה אלא), attributes this compromise to the Geonim ("the Geonim have written, however, to fulfill both" [מ"מ כתבו הגאונים שיש לקיים שניהם]). Indeed, two other passages by direct Tosafist students of R. Judah Sirleon also include the attribution to the Geonim. See R. Moses of Coucy, *Sefer Mizvot Gedolot, mizvat 'aseh* 19 (Venice, 1547), fol. 102b; *Sefer Or Zarua'*, pt. 1 (Zhitomir, 1862), *hilkhot qeri'at Shema*, fol. 12b (sec. 21). The same is true for *Tosafot haRosh* (to *Berakhot*, ad loc.), which also contains material from the *Tosafot* of R. Judah Sirleon; see Urbach, *Ba'alei ha-Tosafot*, 2, 589–90, 595–96. On the other hand, *Tosafot Rabbenu Perez ha-Shalem 'al Massekhet Berakhot* (Jerusalem: Matam, 1996), fol. 12b, whose main editor and compiler, R. Perez b. Elijah of Corbeil, studied in Evreux with R. Moses's brother, R. Samuel (Urbach, 2, 576), does not specifically mention the Geonim: "And there are those who explain that it was therefore ordained to recite *ahava rabba* in the morning service and *ahavat olam* in the evening service, to remove himself from a dispute" (ויש מפרשים דלכך תיקנו לומר אהבה רבה בשחרית ואהבת עולם בערבית) (לאפוקיה נפשיה מפלוגתא). See also Avigdor Aptowitz, ed., *Sefer Rabiah*, vol. 1 (Brooklyn, 1983), 21, "and it seems to me that that we practice both" (ונ"ל דאנו נוהגין בחרייהו).

worn as a proper means of addressing this element of doubt or *safek*.¹¹ I would add that since Maharam studied at the Tosafist academy in Evreux with R. Moses's brother, R. Samuel b. Shne'ur, this pattern is not surprising.¹² Indeed, R. Samuel of Evreux also constructed a compromise regarding the longstanding debate over whether putting on the *tefillin* should be done with two blessings or with one, arguing that it is best not to make a blessing for which there is an element of doubt.¹³

In a subsequent footnote to a much later custom (of reciting a brief *viddui* as a kind of prayer of expiation, *tefilla zakka* in an undertone, just before the onset of Yom Kippur), Sperber notes that in order to allow for the view of the German Tosafist R. Simhah of Speyer (d. c. 1230), R. Meir of Rothenburg would recite a blessing over the public readings of *megillot* Shir HaShirim, Ruth and Eikha in a whisper (*belahash*), as a kind of compromise in this matter as well, since most authorities did not allow the blessing to be made for the reading of these *megillot* (as was mandated for the reading of *Megillat Esther*).¹⁴ As recorded by his student R. Hayyim b. Isaac Or Zaru'a, Maharam prayed the afternoon service on Shabbat by himself before the third meal (and then went through the motions of praying in the synagogue) in order not to run afoul of the position of Rabbenu Tam that one should not eat the third meal until after he had prayed

11 See Sperber, *Minhagei Yisra'el* 2, 34 (n. 5). See also the sources in Kahana, *Maharam* 1, 298–99 (*Pesahim*, secs. 531–35), in which Maharam addresses the *sheheheyamu* for the kiddush on the second day, and for the blowing of the shofar on that day as well.

12 On the Tosafist academy at Evreux, and R. Meir of Rothenburg's presence there, see Urbach, *Ba'alei ha-Tosafot*, 1, 479–86, and 2, 528; and Ephraim Kanarfogel, *Peering through the Lattices: Mystical, Magical and Pietistic Dimensions in the Tosafist Period* (Detroit: Wayne State University Press, 2000), 61, 115, 236.

13 See the sources cited in Israel Ta-Shma, *Ha-Nigleh shebe-Nistar* (Tel Aviv: Hakibbutz Hameuchad, 2001), 73–77. Rabbenu Yonah of Gerona, who also studied in Evreux in his youth (see Israel Ta-Shma, *Knesset Mehqarim*, vol. 2 [Jerusalem: Bialik Institute, 2004], 110–17), effected an interesting compromise position regarding the point at which the blessing *she'asa nissim* is to be recited at the kindling of the Hannuka lights, depending on whether this blessing relates to the performance of the commandment (*birkat mitzva*), or to the seeing of the lights once they are lit (*birkat haro'eh*); see R. Yeroham b. Meshullam, *Toledot Adam ve-Havvah*, 9d, cited in *Darkhei Mosheh to Orah Hayyim*, 676:1.

14 See Sperber, *Minhagei Yisra'el* 2, 37 (n. 11); and Kahana, *Maharam*, 1, 281 (*Pesahim*, sec. 471). Maharam interacted with R. Simhah's sometimes unique halakhic views in a number of additional instances. See, for example, Avraham Grossman, *Hasidot u-Moredot* (Jerusalem: Zalman Shazar Center, 2001), 112, 165, 390–95; and Shmeha Emanuel, *Shivrei Luhot* (Jerusalem: Magnes, 2006), 158–59, 163–66.

the afternoon service.¹⁵ Moreover, when Passover eve occurred on Shabbat, R. Meir would eat the Shabbat third meal at his non-Passover table in the morning and would then eat another meal of fruit in the afternoon because Rabbenu Tam held that the third meal could only be eaten in the afternoon.¹⁶

Somewhat more complex was the practice advocated by Maharam concerning the wearing of *tefillin* (and *talit*) on Tisha b'Av. Earlier authorities were split as to whether this day was akin to the first day of the *shiva* period, during which the depth of the mourning precluded the possibility of wearing *tefillin* at all, or whether it was equivalent to the remaining days of the *shiva* when *talit* and *tefillin* were donned by the mourner during the morning service as usual. Meir of Rothenburg's solution was to don *talit* and *tefillin* during the afternoon *minha* prayer. Although this was clearly not an even compromise, it does represent a creative effort to take both views into account.¹⁷

These examples involving R. Meir of Rothenburg blend into the many other texts adduced by Sperber from subsequent periods and locales. Sperber notes and discusses these positions taken by Maharam *inter alia*, but does not gather them or explain Maharam's overall approach in any particular way (although he does perceptively point out that reading in an undertone or doing something quietly is a very effective way to fulfill more than one view). Nor does he return in any of the subsequent volumes of his *Minhagei Yisra'el*, as far as I can tell, to discuss R. Meir of Rothenburg in this regard. However, the relatively sparse or limited use of the approach of "fulfilling all views" (לצאת ידי כל הדיעות), and its allied principles by the Geonim and their successors in both the east and the west during the high Middle Ages on the one hand, and the pronounced up-

15 See Sperber, *Minhagei Yisra'el* 2, 38–39. See also Kahana, *Maharam* 1, 201–02 (*Pesahim*, sec. 185). Maharam did not recite the verses following the paragraph of *sheheheyanu*, or the final blessing of *yir'u 'einenu* as part of the evening *shema* unless he led the prayer service, in which case he did in order not to cause confusion. See Sperber, *Minhagei Yisra'el* 2, 26–27. 16 *Ibid.*, 2, 40.

17 *Ibid.*, 2, 44–45; and see also Yitzhak Zimmer, *'Olamke-Minhago Noheg* (Jerusalem: Zalman Shazar Center, 1996), 181–82. As Sperber notes, R. Meir's practice to wear the *talit qatan* on the morning of Tisha b'Av under his clothing (where others do not see it) is also part of this strategy. See also Yitzhak Ze'ev Kahana, *Maharam mi-Rothenburg: Teshuvot, Pesaqim u-Minhagim*, vol. 3 [*hilkhot semahot*] (Jerusalem: Mossad Harav Kook, 1963), 84 (*Pesahim*, sec. 60), and see *ibid.*, 81 (sec. 54), with regard to publicly wearing a *talit* during personal mourning periods. Although wearing *tefillin* during the afternoon service (of Tisha b'Av), as long as sunset had not yet occurred) is certainly permitted, wearing *tefillin* throughout the day was not at all a typical occurrence in Ashkenaz by the period in which Maharam lived. See Ephraim Kanarfogel, "Rabbinic Attitudes toward Nonobservance in the Medieval Period," in *Jewish Tradition and the Non-Traditional Jew*, ed. Jacob J. Schacter (Northvale: Aronson, 1992), 7–14.

swing of such usages during the early modern period, suggest that R. Meir of Rothenburg's policies perhaps constituted a significant phenomenon or turning point.

Indeed, there at least five additional instances in which R. Meir employs this methodology, several of which are found in areas of Jewish law beyond the kinds of ritual acts and liturgical formulae described to this point. The full range and scope of Maharam's view suggest that he was in fact a rather purposeful practitioner of these customary compromises. Moreover, these were not simply acts of personal piety or a function of the proliferation of newly developed competing opinions. Rather, they were the result of focused rabbinic considerations on his part.

Here are some examples that reflect Maharam's tendency to favor compromise solutions in the realms of blessings and food rituals that can be added most easily to those that have been presented to this point. Quite similar to Maharam's solution for reciting the blessing over the reading of *megillot* other than Esther on Purim (namely, to read it in an undertone, *belahash*) is his suggestion for allowing the *sheheheyanu* blessing to be recited over the reading of *Megillat* Esther when it is read again on Purim day (and not only when it is read initially at night). As recorded by his students, Maharam recited this blessing *belahash* as well, since its recitation once again during the day was the subject of a controversy that pitted the view of Maimonides against that of Rabbenu Tam. As most of the earliest manuscripts of the relevant passage in the *Sefer Mordekhai* explain, Maharam did this, "to acquit himself according to all the rabbinic positions" (לאפוקי מידי כל רבוותא).¹⁸

Similarly, Maharam donned his *talit* on the eve of Yom Kippur before nightfall, since there was a dispute as to whether a blessing may be recited over the *talit* if it was donned only at night. This approach of Maharam, which was also adopted by his leading student, R. Asher b. Yehi'el, is characterized as some-

¹⁸ See Kahana, *Maharam* 1, 323–24 (*Pesahim*, sec. 620), based on *Haggahot Malmuniyyot, hilkhot megillah*, 1:3 [6]. This passage reads: שערק המצוה ביום וכן כיון וברך זמן כיון שערק המצוה ביום וכן נראה שיהא חדר ומברך זמן כיון שערק המצוה ביום וכן הנתיב מהר"ם וכן בעל וילפין מוהימים האלה... אמנם נהגו העם כרבינו המחבר [=הרמב"ם, שאין אומרים]. וכן הנתיב מהר"ם וכן בעל חיקקה. שוב מצאתי כתוב בשם הר"ם [המהר"ם] שהוא בעצמו היה מברך שהחיינו ביום בשעת עניית אמן של פושב"ם דאין ערד לברך זמן ביום כיון שכבר בירך בלילה. See also the passage in Rabinowitz, Meir A, ed., *Sefer Mordekhai ha-Shalem le-Rabbenu Mordekhai ben Hillel 'al Massekhet Megillah* (Jerusalem: Machon Yerushalayim, 1997), 15–16 (sec. 781). שחיו הקהל עונג אמן וי"ת אומר דגם ביום יש לברך זמן דעיקר מצות קריאה ביום וכו' ומור"ם היה רגיל לומר זמן היום בלחש בתוך כך לאפוקי מידי כל רבוותא. See *ibid.*, n. 134 for the manuscript reading. See also Simcha Emanuel, ed., *Teshuvot Maharam mi-Rothenburg ve-Haverav* (Jerusalem: World Union of Jewish Studies, 2012), 2:943 (sec. 485) for Maharam's ruling concerning a mourner's presence in the synagogue on Purim when it occurs at the conclusion of Shabbat.

thing that was done “to remove himself from a dispute” (*la’afuqeh nafheh mi-plugta*).¹⁹

A Cambridge manuscript passage records another such solution proposed by R. Meir. Given the paucity of written prayerbooks through the thirteenth century and even beyond, medieval rabbinic authorities had to deal with the problem presented by a Talmudic ruling that biblical verses should not be recited “by heart,” but needed instead to be read from a text. Sephardic rabbinic figures tended to argue that the prayers were specifically excluded from this Talmudic restriction for a variety of reasons. This leniency also allowed the prayer leader, the *shaliah zibbur*, to say the verses on behalf of those congregants who were unable to do so for themselves.

On the other hand, Tosafists and other Ashkenazic rabbinic figures considered the Talmudic ruling to be in effect even with regard to prayer, but allowed the verses to be recited by heart by members of the congregation for one of two reasons: either because these verses were considered *shegurim befihem* (lit. established in their mouths), thoroughly familiar to the worshipers who could recite them flawlessly by heart (which negated the Talmudic concern, since the verses would always be recited fully and properly), or because this prohibition was understood to be limited to a situation where one was reciting the verses in question by heart on behalf of another person in order to fulfill their obligation for them. However, an individual who wished to recite verses by heart for himself could do so without encountering any such difficulty.²⁰

The Cambridge manuscript passage reports initially that *Hasidei Ashkenaz* were accustomed to read *kriat shema* from a text, and to make sure that at least the *shaliah zibbur* did so in order to entirely sidestep this problem. R. Meir of Rothenburg, however, endorsed the practice of the *shaliah zibbur* reciting the *shema* in an undertone so that no one in the congregation could attempt to fulfill their obligation to recite *shema* through him. By endorsing this convention, R. Meir meant to ensure that neither of the entrenched Tosafist understandings of this prohibition (outlined just above) would be favored—or ignored.²¹

¹⁹ See Kahana, *Maharam* 1, 304 (*Pesahim*, sec. 551). See also Zimmer, ‘*Olam ke-Minhago Noheg*, 288.

²⁰ See Ephraim Kanarfogel, “Levels of Literacy in Ashkenaz and Sefarad as Reflected by the Recitation of Biblical Verses Found in the Liturgy,” in *From Sages to Savants: Studies Presented to Avraham Grossman*, ed. Joseph R. Hacker, Benjamin Z. Kedar, and Yosef Kaplan (Jerusalem: Zalman Shazar Center, 2010), 187–211 (Hebrew).

²¹ See ms. Cambridge Add. 1022.1, fol. 100v, where the passage reads: ולכן נוהגין חסידי אשכנז להתפלל קריאת שמע מתוך הכתב וביפרט שליש ציבור. מה"ר מאיר מרוטנבורק כ[תב]ן שאסור לקרא[תו]ן שלא מן הכתב וכ"ש שאר מרשיית של תורה. ולכן בכל מקום שלוחי ציבור האשכנזי קורין ק"ש בלחש.

R. Meir ruled that a *kohen* who had apostatized (and subsequently returned to the Jewish community) should not pronounce the priestly blessing. If, however, this *kohen* had ascended before the ark on his own, he should not be removed and was permitted to pronounce the blessing. In this instance as well, there was an ongoing controversy between earlier authorities (including figures such as Rabbenu Gershom, Rashi, and Maimonides). R. Meir therefore expressed his position in a way that avoided “taking sides,” despite the fact that an unnecessary blessing was possibly at stake.²²

But R. Meir also constructed compromise or inclusionary positions in areas beyond performance of ritual and liturgical texts or procedures. Writing a personal letter on *hol hamoed* was the subject of rabbinic debate not only in Ashkenaz during the twelfth and thirteenth centuries, but also during the Geonic period and within Spain and North Africa as well. The debate centered on whether the Talmudic allowance to write an *iggeret reshut* referred to a personal or optional letter (*reshut*), or to a letter that was associated with the ruling authority (in the sense of *rashut*). Maharam was therefore careful to produce personal missives using “broken letters that were separated in the middle.”²³ Although R. Isaac b. Asher (Riva) ha-Levi ha-Zaqen of Speyer, and his student, R. Shemaryah b. Mordekhai of Speyer, had recommended this format to permit the writing of business documents in situations where there was the danger of loss,²⁴ Maharam was the first Ashkenazic authority to apply this approach to the broader category of personal letters as a means of compromising between the two essential positions, which either disallowed such letters completely or permitted them without any change whatsoever.²⁵

22 See *Arba'ah Turim*, O. H. sec. 128 (כתב הרמב"ם ז"ל אפילו שב בתשובה). אבל על שאר עבירות אין מונעין אותו מלישא כפיו. ורש"י כתב כיון ששב בתשובה יכול לישא כפיו. וכ"כ רבינו (גרשום והביא ראייה מן הירושלמי וכו'). והר"ם מרוטנבורג כתב שאין אומרים לו לעלות ואם עלה אין מוחין בידו. Cf. Micha Perry, *Tradition and Transformation* (Tel Aviv: Hakibbutz Hameuchad, 2010), 190–91 (Hebrew).

23 See *Haggahot Maimuniyyot, hilkhot Yom Tov*, 7:14 [10] (וכן נהג מהר"ם להחמיר לכתוב בשינוי אותיות). R. Meir ha-Kohen notes that Rif (Rabbi Isaac Alfasi), *Sefer ha-'Arukh*, Rambam and Tosafot (*Mo'ed Qatan* 18b, s.v. *ve-igrot*) were lenient with regard to the writing of personal letters, based also on a passage in the Jerusalem Talmud. *Halakhah Gedolot* ruled that writing personal letters was prohibited, while the *she'iltot* required a significant and recognizable level of change (“the letters should be written in an unusual way, to change them from how they typically look on other days” [כותבים שלא כדרךן כדי לשנות משאר יומין]).

24 See *Sefer Roqeah*, sec. 308. The passage reads: ו' שמריה החיר לכתוב משכונת בחש"מ על ידי שינוי משום דדבר האבד הוא...מפי רבי' יב"א הלוי 'Azmi (Jerusalem: Magnes, 1985), 60–64; and Emanuel, *Shivrei Luhot*, 282–85.

25 See Kahana, *Maharam* 1, 288–89 (*Pesahim*, sec. 49).

Later Ashkenazic authorities debated whether such an obvious distortion or change was required. R. Israel Isserlein (d. 1480) maintained that a change in the way of holding the writing instrument was sufficient whether or not the reader of the letter could discern that the writer had done anything differently in composing the letter. Maharil (Yaakov ben Moshe Levi Moelin, d. 1427), however, followed Maharam's view, maintaining that the writing style itself had to be changed in such a way that the recipient would clearly notice a recognizable degree of deviance or difference, although he also did suggest other leniencies.²⁶ In any event, Maharam's application of this compromise methodology in this instance, a case of *issur veheter* (matters of prohibited and permitted activities), moves this strategy well beyond the realm of ritual or liturgical custom.

Indeed, R. Meir also appears to apply this approach to a much more sensitive case and category of possible prohibitions (*issur veheter*). R. Meir was asked about a situation in which a woman found a blood stain upon wiping herself following urination, after the flow of urine had stopped. The questioner noted that unnamed rabbinic authorities in Cologne (*Rabbotenu mi-Qolonyah*) were inclined to rule leniently, that this was not to be considered as *dam nida*. R. Meir counters that, while earlier, unnamed collections of legal rulings (*Sefer Haposkim*) did indeed rule leniently, they did so only in a related situation where the blood appeared together with the urine.

However, R. Meir expresses surprise and concern that these collections did not specifically distinguish between this case and one in which the urination had concluded, when the blood is found not in conjunction with the urine but only afterwards during wiping (as per the case at hand). Indeed, even with regard to the first instance (where the blood appeared together with the urine), an interpretation by Rabbenu Hanan'el of an underlying Talmudic *sugya* suggests, in conjunction with a related view expressed by Tosafot on a different *sugya* in tractate *Nidah*, that we must be stringent in this case not only with regard to the higher standards of *tum'a vetahara* (as this relates to foods that were designated as ritually *tahor* [pure] and could be allowed for contact even with those who served in the Temple, and so on), but even with regard to the somewhat less encumbered matter of allowing the husband and wife to remain together.

—R. Meir describes his inner conflict regarding these applications in the midst of his fairly lengthy responsum: *libbi mehases*, “my heart—or perhaps, my think-

²⁶ See *Terumat ha-Deshen* (response), sec. 87; Shlomo Spitzer, ed., *Sefer Maharil* (Jerusalem: Machon Yerushalayim, 1989), 194–95 (*hilkhot Hol ha-Mo'ed*, sec. 5); *Beit Yosef*, O. H., sec. 545, s.v. *u'mah she'katav rabbenu sheyesh mefarshim*; and *Darkhei Mosheh*, ad loc.

ing—is hesitant.” His conclusion (*sof davar*) continues to reflect his sense of hesitation, and is formulated as follows: “When blood appears together with the urine, I cannot consider her to be prohibited (to her husband) and I cannot rule that she is permitted” (אני רואה בה לא איסור ולא היתר). He goes on to write that he cannot prohibit her because there are those aforementioned collections of legal rulings (*sifrei pesaqim*) that make no distinction in this kind of situation (where the blood appears in conjunction with urination, and is not simply a random bloodstain that appears), which suggests that these decisors permitted (or discounted) such a stain as well. Indeed, since there are other grounds to be generally more lenient in cases of stains that appear (*ketamim*), this view may be relied upon even though R. Meir then asserts (again) that he himself cannot rule leniently here (*veheter eini ro'eh bo*) because of the consideration that he had enunciated above (with regard to the interpretations of Rabbenu Hanan'el and Tosafot). R. Meir's final word is that in the actual case at hand, however, where blood was discovered only during the wiping and not together with the urine at all, no one would permit the woman to her husband, and she is considered to be *anida*.²⁷

R. Meir did not offer a compromise in the actual case that he was asked to rule upon—he clearly and simply overruled the lenient ruling suggested by the unidentified rabbinic figures in Cologne. However, in the related case about which he was not asked, in which the blood appeared together with the urine, R. Meir expresses a seemingly remarkable view: “I cannot consider her to be prohibited (to her husband) and I cannot rule that she is permitted.” In this situation (which remains a theoretical one, only because it was not the question that he was asked), R. Meir was unprepared to rule according to either position, creating a kind of negative compromise. Although one might suggest that R. Meir was expressing here a degree of *yirat hahora'a*, fear of issuing a ruling in such a complex case (with the laws of *nida* at stake) rather than putting forth a compromise,²⁸ this would constitute perhaps the only such instance in his volumi-

27 See Moshe Aryeh Bloch, ed., *Sha'arei Teshuvot Maharam ben R. Barukh* (Berlin, 1891), 170–71 (#51).

28 See Yedidiah Dinari, *Hakhmei Ashkenaz be-Shilhei Yemei ha-Benayim* (Jerusalem: Bialik Institute, 1984), 36 (n. 117). The self-effacing way in which Maharam sometimes referred to himself in his responsa (noted by Dinari, *ibid.*, 18, n. 7) was much more likely a function of the difficult circumstances of his era rather than an indication of a genuine hesitation on his part to offer halakhic rulings. See the passage in *Sefer Or Zarua'* that Dinari cites immediately following his reference to the responsum of Maharam discussed here (37, n. 117); and see Ephraim Kanarfogel, *Jewish Education and Society in the High Middle Ages* (Detroit: Wayne University Press, 1992), 73–74.

nous corpus of responsa and halakhic rulings, a point to which I shall return below.

There can be no doubt that R. Meir intended to satisfy the halakhic demands of both of the standard approaches regarding another significant matter of *issur veheter*, the burial of a Jew on *yom tov sheni shel galuyyot*, the second day of a festival in the Diaspora. He ruled that in such a case, a non-Jew should dig the grave and manufacture the shrouds and coffin for a Jew who had to be buried on that day, while Jews should carry the coffin. This ruling effectively bridged the opposing positions of R. Isaac b. Moses Or Zarua' of Vienna (d. c. 1250), who held with the *she'iltot* that Jews should not be involved at all with the burial of a Jew even on *yom tov sheni* (unless no Gentiles were available), and R. Isaac's teacher R. Eli'ezer b. Jo'el ha-Levi (Rabiah), who not only rejected the position of the *she'iltot* for the second day of *yom tov* and allowed Jews even to prepare the shrouds and the gravesite on that day, but who also required that Jews carry the coffin if the burial took place on the first day of the festival, even though they could not dig the grave or prepare the shrouds on that first day.²⁹

It is my contention that Maharam's uniquely nuanced position with respect to the workings of communal government was, in large measure, another (and rather striking) result of his tendency to compromise in the sense of compromise and inclusivity (*lazait et yedai kol hashitot*). The late twelfth and early thirteenth centuries witnessed, especially in Germany, renewed and strenuous halakhic debate about the way that individual communities were required to make and ratify communal decisions. The dominant view held that a majority of the community, or of the *tuvei ha-'ir* (*bon viri*) who managed the affairs of the community, was sufficient to carry such decisions. A second, somewhat less accepted approach, associated initially in northern France with R. Yosef Tov 'Elem (c. 1100) and with Rabbenu Tam (1171) and some of his students, and subsequently with the rabbinic court of Mainz in the early thirteenth century and several German Tosafists, required unanimous agreement in order to enact communal policies and decisions.³⁰

R. Meir of Rothenburg put forward the following unusual position: in matters of religious policy or other areas in which members of the community

²⁹ See Jacob Katz, *Goi shel Shabbat* (Jerusalem: Zalman Shazar Center, 1984), 169, for a presentation and discussion of these sources.

³⁰ See Ephraim Kanarfogel, "Unanimity, Majority, and Communal Government in Ashkenaz during the High Middle Ages: A Reassessment," *Proceedings of the American Academy for Jewish Research* 58 (1992): 79–100; and idem, "The Development and Diffusion of Unanimous Agreement in Medieval Ashkenaz," in *Studies in Medieval Jewish History and Literature* III, ed. Isadore Twersky and Jay M. Harris, (Cambridge, Mass.: Harvard University Press, 2000), 21–44.

could truly benefit in their lives (referred to as *migdar milta*), a majority was sufficient. In apportioning the tax burden, however, Maharam followed the other rabbinic position, that unanimity was required. Although several juridical principles have been put forward to explain this seeming discrepancy, a most plausible explanation is that Maharam extended his strategy of compromise even to this important issue of public policy and economic law.³¹

Perhaps as a subset of this discussion, R. Meir allows the majority of a community to compel the minority to undertake the process of securing a competent prayer leader. At the same time, he recommends that the communal prayer leader or *hazan* of choice be appointed by a large majority, and that the cantor for the High Holy days should be chosen through unanimous agreement. Although it is possible to understand R. Meir's shifting views in these matters as a function of the religious status of the *hazan*, the fact that this is a matter of communal policy suggests that this is yet another instance in which R. Meir negotiated, by means of compromise, between the various views that had been enunciated in this matter. The issue of whether to undertake the appointment of a *hazan* for the community is one of *migdar milta* for which a majority is sufficient. At the same time, however, R. Meir adopts the position of a number of leading rabbinic authorities in both Germany and northern France that the initial appointment of a particular candidate to serve as *hazan* requires unanimity or near unanimity.³²

How should these pronounced tendencies of R. Meir of Rothenburg toward compromise and inclusivity in matters of custom and law be understood? Despite the hundreds of his responsa that are extant, R. Meir's tendencies toward strictness (*humra*) or leniency in his halakhic rulings elude precise classification.

31 See Moshe Aryeh Bloch, ed., *She'elot u-Teshuvot Maharam b. R. Barukh defus Prague* (Budapest, 1895), #941, 968; idem, *Teshuvot Maharam* (ed. Berlin: Mekitse Nirdamim, 1891), 206 (#128), 209 (#140), 320 (#865, pt. 1= *Teshuvot Maimuniyyot le-Sefer Qinyan*, #27); Irving Avraham Agus, *Rabbi Meir of Rothenburg* (Philadelphia: Dropsie College, 1947), 1, 119–21; Samuel Morell, "The Constitutional Limits of Communal Government in Rabbinic Law," *Jewish Social Studies* 33 (1971): 87–107; and Kanarfogel, "Unanimity, Majority, and Communal Government," 101–05. See also Joseph Isaac Lifshitz, "The Political Theology of Maharam of Rothenburg," *Hebraic Political Studies* 1, no. 4 (2006): 383–412.

32 *She'elot u-Teshuvot Maharam b. R. Barukh* (Lemberg, 1860), #111 (end); Irving Avraham Agus, ed., *Teshuvot Ba'alei ha-Tosafot* (New York: Yeshiva University Press, 1954), 175–76 (sec. 91); *Sefer Mordekhai le-Massekhet Bava Batra*, sec. 479; Simcha Emanuel, "Teshuvot Hadashot le-Maharam mi-Rothenburg," *Ha-Ma'ayan* 33 (1993): 12–13; Simcha Goldin, *Ha-Yihud vaha-Yahad* (Tel Aviv: Hakibbutz Hameuchad, 1997), 152–54; and Ephraim Kanarfogel, "The Appointment of *Hazzanim* in Medieval Ashkenaz: Communal Policy and Individual Religious Prerogatives," in *Spiritual Authority: Struggles over Cultural Power in Jewish Thought*, ed. Howard Kreisel, Boaz Huss, and Uri Ehrlich (Beer Sheva: Ben-Gurion University of the Negev Press, 2009), 5–31.

For every programmatic statement that appears, one can find examples that contradict it. In one instance, R. Meir writes that:

in all matters where the *gedolim* disagree, I rule with the stricter view, unless there is an obvious leniency that has been transmitted and adopted (*heter pashut shepashat hetero*) in the practices of earlier sages who have preceded us.³³

Yet there are more than a few responsa in which R. Meir challenges his predecessors directly and rules leniently, against their view. Nonetheless, R. Meir's proclivities in deciding matters of Jewish law may be accurately described as conservative, especially as compared to the tendencies of many of his Tosafist predecessors.³⁴

R. Meir's specific tendency toward compromise in the realm of custom and religious conduct may well reflect a position found in *Sefer Hasidim* and in the thought of the German Pietists more broadly. Following a section entitled '*Inyanei shehita, tahora uperishut*, *Sefer Hasidim* writes that:

...in all situations where rabbinic scholars argue but there is no issue of monetary loss or damage to others, and one position is lenient while the other is strict, even if the law is according to the lenient view it is better to follow the stricter view in a situation where the two positions do not contradict each other.³⁵

This pietistic notion would appear to be behind Maharam's overarching strategy, as described above.

Despite the series of Tosafist teachers with whom he studied in both northern France and Germany, Maharam's affinities with *Hasidei Ashkenaz* in general, and with the pietistic, masoretic, magical, and mystical teachings of R. Judah he-Hasid and R. Eleazar of Worms in particular, are numerous, broad-based, and quite substantive, even as his teachers at Evreux (and elsewhere) had their own connections to the thought and corpus of *Hasidei Ashkenaz*.³⁶

33 See Bloch, *Teshuvoṭ Maharam*, Berlin ed., 294 (#386).

34 See Urbach, *Ba'alei ha-Tosafot* 2, 447–51; Agus, *Rabbi Meir of Rothenburg*, 1, 41–48; and Dinari, *Hakhmei Ashkenaz*, 94 (n. 117); *Terumat ha-Deshen*, responsum 101; and see Yehudah Levi, "Humrot Meshubbahot, Hedyotot ve-Appiqorsiyut," *Ha-Ma'ayan* 18, no. 2 (1975): 19–33.

35 See Judah Wistinetski, ed., *Sefer Hasidim* (Parma) (Frankfurt, 1924), sec. 1661; Haym Soloveitchik, "Three Themes in the *Sefer Hasidim*," *AJS Review* 1 (1976): 318–19.

36 See Kanarfogel, *Peering through the Lattices*, 67–68, 82, 92, 115–17, 123–24, 234–49; idem, *Jewish Education and Society in the High Middle Ages*, 74–79; and Tušhma, *Ha-Nigleh shebe-Nistar*.

Emblematic of the role of *Hasidei Ashkenaz* in the matter of compromise in custom and practice is the assertion by R. Jacob b. Barukh of Karlin (d. 1845), a leading Russian rabbinic authority and the grandson of R. Barukh of Shklov, that *Hasidei Ashkenaz* typically tried to fulfill all views. As R. Jacob notes, this claim certainly rings true for R. Meir of Rothenburg.³⁷

A second significant factor in Maharam's methodology and strategy of compromise may be his larger tendency toward the preservation of Ashkenazic rabbinic teachings. As I have suggested elsewhere, several unique aspects of Maharam's publication program and his instructions to his students support the idea that inasmuch as R. Meir was aware of the decline and impending downfall of Ashkenazic Jewry and scholarship as it had flourished during the twelfth and thirteenth centuries, he took concrete steps to preserve the rabbinic literature and teachings that had been generated during the Tosafist period. This is seen in the writing and collection of his own numerous responsa and those of as many of his predecessors as possible, which had never occurred among Ashkenazic rabbinic scholars until his day.

It is also seen in his clear suggestion to his students (such as R. Asher b. Yehi'el, R. Mordekhai b. Hillel, and R. Meir ha-Kohen) that they not only make extensive use of the halakhic writings of Rif and Rambam, but that they go as far as to append their own works to these towers of Sephardic *halakha*—again a first in Ashkenaz—so that Ashkenazic teachings could acquire additional avenues for preservation and ongoing dissemination in conjunction with these works. Indeed, even the detailed recounting of Maharam's personal halakhic practices and customs by his student, R. Samson b. Zadoq in the *Sefer Tashbez* fits this pattern. The same can be said for Maharam's inclusionary or compromise meth-

37 See Jacob ben Aron, *Mishkenot Ya'akov* (Jerusalem: Keren Orah, 1960), vol. 1, sec. 155 (In a marginal note to fol. 131a). The passage reads: ומצינו שגדולי חסידי אשכנז לא סמכו לעשות מעשה: בעצמם נגד החולקים כגון חיבור כלאים ע"י דבר אחר שכל הגדולי חלקו על הרמב"ם שאוסר והם התיירו, ואעפ"כ העידו על מהר"ם ומהר"י והרא"ש [שהחמירו על עצמם ולא רצו להקל נגד הרמב"ם בזה]. This reference, which specifically mentions the German Pietists and includes three leading rabbinic successors of this movement (R. Meir of Rothenburg and his students, R. Hayyim b. Isaac *Or Zarua'* and R. Asher b. Yehi'el), was brought to my attention many years ago by my revered rebbe, HaRav Herschel Schechter, *shlita*. Note also that the compromise phrasing of the text of the *amida* on erev Shabbat put forward by R. Meir b. Isaac Shatz (*shaliah zibur*), in late eleventh-century Worms; see Zimmer, *Olam keMinhago Noheg*, 123–27. R. Meir was venerated by *Hasidei Ashkenaz* as "fully knowledgeable and well-versed in esoteric teachings, *midrashim*, and the reasons for the commandments (or perhaps the proper syntax and recitation of the prayers)" (בקי... בסודות ובמדרשים ובעצמים). See ms. Budapest Kaufmann A399, fol. 34r; and Avraham Grossman, *Hakhmei Ashkenaz ha-Rishonim* (Jerusalem: Magnes, 1981), 294.

odology, which allowed for multiple earlier positions to be preserved and practiced in a meaningful way.³⁸

As the first of the last, the towering leader of the “last ones” (*batra’ei*) that he was considered to be (and as his title *Morenu ha-Rav R. Meir* also suggests), Maharam’s policies of preservation had an impact on subsequent Ashkenazic rabbinic leaders in the fourteenth and fifteenth centuries, including R. Israel Isserlein, author of *Terumat ha-Deshen*, and many others.³⁹ This can be seen not only in their preference for composing mainly responsa, as R. Meir of Rothenburg did, as well as collections of personal *Minhagim* in the model of *Sefer Tashbez* (such as *Leqet Yosher* by R. Isserlein’s student Joseph b. Moses of Hochstadt, and the *Minhagim* of Maharil, as compiled by his student Zalman of St. Goar), but also in the fact that these scholars and their successors continued in a significant way to maintain Maharam’s strategy of *lazet yedei kol hashitot*, and *la’afuqei nafsheih miplugta*.⁴⁰

For Dinari, these pronounced tendencies of compromise during this later period in Ashkenaz were principally a reflection of either simple stringency (*humra*), or the “fear of ruling” (*yir’at hahora’a*), which became significant points of focus and concern for leading rabbinic authorities in the later period.⁴¹ For Maharam, however, neither of these values or concepts appears to have been crucial in his formulation of this approach. Nonetheless, the central role that Maharam played in shaping this approach, as we have seen here, can perhaps provide additional perspective on subsequent developments as well. Nothing less than deep considerations of rabbinic piety, hearkening back to the German Pietists and their progenitors—if not to the Amoraic exemplars noted at the begin-

38 See Ephraim Kanarfogel, “Preservation, Creativity and Courage: The Life and Works of R. Meir of Rothenburg,” *Jewish Book Annual* 50 (1992–93): 249–59.

39 See Ephraim Kanarfogel’s entry (for the year 1286) in Sander L. Gilman and Jack Zipes, eds., *Yale Companion to Jewish Writing and Thought in German Culture, 1096–1996* (New Haven: Yale University Press, 1997), 27–34.

40 See, for example, R. Israel Isserlein, *Terumat ha-Deshen*, responsum 24 (cited in Sperber, *Minhagei Yisra’el* 2, 40) and Sperber, *Minhagei Yisra’el* 1, 44 (n. 18); *Terumat ha-Deshen*, responsum 142 (*latzet yedei hovato aliba dekulhu*, to fulfill his obligation according to all); Spitzer, *Minhagei Maharil*, *hilkhot se’udah*, 457–58 (cited in Sperber, *Minhagei Yisra’el* 1, 40, and 2, 42); and idem, *Minhagei Maharil*, 262 (cited in Sperber, *Minhagei Yisra’el* 2, 41). R. Yosef Karo makes noticeable use of these principles, which are often attributed to Ashkenazic sources, in both his *Beit Yosef* and *Shulhan Arukh*. See, for example, *Beit Yosef*; OH 2, s.v. *keshe-yin’ol*; 168, s.v. *umah shekatav rabbenu akhal et hashalem*; 174, s.v. *vehanei mileh shezarikh*; 197, s.v. *katav haRif*; 475, s.v. *umah shekatav vetov lehazer*; 600, s.v. *ule’inyan zeman*; *Shulhan Arukh*, OH 9:6, 590:4; YD 181:11; and see also above nn. 8 and 26.

41 See Dinari, *Hakhmei Ashkenaz*, 34–40, 93–102.

ning of this study—were at the root of Maharam's studied methods for ensuring inclusivity and compromise in the establishment of both *minhagim* and halakhic rulings.⁴²

Bibliography

- Agus, Irving Avraham. *Rabbi Meir of Rothenburg*. Philadelphia: Dropsie College, 1947.
- Agus, Irving Avraham, ed. *Teshuvot Ba'alei ha-Tosafot*. New York: Yeshiva University Press, 1954.
- Aptowitzer, Avigdor, ed. *Sefer Rabiah*. Vol. 1. New York: Mekitse Nirdamim, 1983.
- Bloch, Moshe Aryeh, ed. *Sha'arei Teshuvot Maharam ben R. Barukh*. Berlin, 1891.
- Bloch, Moshe Aryeh, ed. *She'elot u-Teshuvot Maharam b. R. Barukh defus Prague*. Budapest, 1895.
- Cohen, Menahem, ed. *Miqra'ot Gedolot ha-Keter*. Vol. 16. Ramat Gan: Bar-Ilan University, 2012.
- Dina'i, Yediyah. *Hakhmei Ashkenaz be-Shilhei Yemei ha-Benayim*. Jerusalem: Bialik Institute, 1984.
- Emanuel, Simcha. "Teshuvot Hadashot le-Maharam mi-Rothenburg." *Ha-Ma'ayan* 33 (1993): 12–13.
- Emanuel, Simcha, ed. *Teshuvot ha-Geonim ha-Hadashot*. Jerusalem: Ofek Institute, 1995.
- Emanuel, Simcha. *Shivrei Lohot*. Jerusalem: Magnes, 2006.
- Emanuel, Simcha, ed. *Teshuvot Maharam mi-Rothenburg ve-Haverav*. Jerusalem: World Union of Jewish Studies, 2012.
- Gartner, Yaakov. *Gilgulei Minhag be-'Olam ha-Halakhah*. Jerusalem: Y. Gartner, 1995.
- Goldin, Simcha. *Ha-Yihud veka-Yahad*. Tel Aviv: Hakibbutz Hameuchad, 1997.
- Grossman, Avraham. *Hakhmei Ashkenaz ha-Rishonim*. Jerusalem: Magnes, 1981.
- Grossman, Avraham. *Hakhmei Zarefat ha-Rishonim*. Jerusalem: Magnes, 1995.

42 For the perceived conceptual relationship between the Tosafists and the Amoraim, see Ephraim Kanarfogel, "Rabbinic Authority and the Right to Open an Academy in Medieval Ashkenaz," *Michael* 12 (1991): 233–50; idem, "Progress and Tradition in Medieval Ashkenaz," *Jewish History* 14, no. 3 (2000): 287–315; and see above, nn. 33–34. The Spanish Talmudist Ritva (d. c. 1325), as cited in *Shitah Mequbbezet to Beizah* 30a (Chaim Gedalia Zimballist, ed., *Qovez Rishonim 'al Massekhet Bezah* [Tel Aviv, 1988], 465), identifies Maharam as one of two Tosafists who sought to severely limit the exemption of *mutav sheyihyu shoggein ve'al yihyu mezidin*, an exemption that allowed the common folk to continue to espouse practices whose permissibility was somewhat dubious (העיד הריטב"א בשם רב גדול מאשכנז שהעיד בשם רבותיו הצרפתים ובכללם ר"י והרב) מרוטנבורג שלא נאמרו דברים הללו [הכלל של מוטב שיהיו שוגגים וכו'] אלא לדורוהם. אבל בדור הזה שמקילין בכמה דברים וראוי לעשות סייג לתורה אפילו מדרבנן, מחינן וקנסינן להו עד דלא לעבדו לא בשוגג ולא במחזיר (ושכן הוא במדרש ירושל' [מי] והדבר נראה ונכון). As I will show in a separate study, this position (attributed in the Ritva passage to Ri [Isaac ben Samuel] of Dampierre as well) runs counter to the thinking of a series of leading Tosafists in both Germany and northern France during the twelfth and thirteenth centuries. Here again, overarching issues of rabbinic piety relative to the observance of Jewish law and custom lie at the core of Maharam's (and Ri's) unusual position.

Minhagim

Custom and Practice in Jewish Life

Edited by

Joseph Isaac Lifshitz, Naomi Feuchtwanger-Sarig,
Simha Goldin, Jean Baumgarten and Hasia Diner

DE GRUYTER