

CHANGING ATTITUDES TOWARD APOSTATES  
IN TOSAFIST LITERATURE, LATE TWELFTH–EARLY  
THIRTEENTH CENTURIES

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I

More than a half century ago, Jacob Katz published a pioneering study on the theme of “*Yisra’el she-hata’, ’af ’al pi she-hata’, Yisra’el hu’* (a Jew, even though he has sinned, remains a Jew).” According to Katz, this talmudic principle, as it was interpreted and applied by Rashi, became the dominant policy with respect to the status of the apostate in medieval Ashkenazic society. Those who succumbed under duress and were forcibly converted to Christianity during times of persecution, as well as those who had willfully abandoned Judaism, could return (or revert) to the Jewish community at any time. Moreover, a returning apostate could once again participate in prayer services (and in other aspects of religious and communal life) without any additional requirements or representations, other than a renewed commitment to be a loyal and law-abiding member of the Jewish religious community. Indeed, Katz asserts that Rashi’s underlying intent was to delineate that conversion to Christianity via the baptismal font did not diminish in any way the apostate’s ability to return, swiftly and completely, to full participation in Jewish life.<sup>1</sup>

As a corollary of this approach, during the time that an apostate was living (religiously and socially) outside of the Jewish community (as a Christian), the members in good standing of the Jewish community ought not consider him (or relate to him) in either personal or economic matters as a non-Jew (although there were limitations placed on certain forms of fraternization, such as partaking of the food of an apostate). Thus, for example, the apostate’s betrothal of a Jewish woman (presuming her acceptance or acquiescence) was considered to be binding, just as it was prohibited for a Jew to lend money to an

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<sup>1</sup> Jacob Katz, “‘Af ’al pi she-hata’, Yisra’el hu’,” *Tarbiz* 27 (1958): 203–17 [= idem, *Halakhah ve-Kabbalah* (Jerusalem, 1986), 255–269].

apostate (or to borrow from him) at any rate of interest. At the same time, once an apostate made the decision to return to the practice of Judaism and to the Jewish community, other Jews were permitted immediately to “consume his bread and to drink his wine”; there was no need for a waiting or probation period in order to establish that his return had been undertaken with full intention and in “good faith.”<sup>2</sup>

These interwoven policies, according to Katz, were accepted by almost all of the leading Tosafists and rabbinic authorities in northern France and Germany during the twelfth and thirteenth centuries, with limited exceptions.<sup>3</sup> For example, in Rashi’s day (and even beforehand), there were Ashkenazic rabbinic authorities who maintained that a Kohen who had reverted to Judaism could not pronounce the priestly blessing upon his return. This was to be understood, however, as a particular stringency associated with the precept of *birkat Kohanim*, rather than as an evaluation of the overall status of the Kohen as a Jew.<sup>4</sup>

To be sure, Katz made note of less than a handful of rabbinic texts from the thirteenth century that referred to an existing practice which required the reverting apostate to undergo ritual immersion. Based on their (small) number and muted tone, however, Katz judged these texts to be a reflection of a popular societal practice that was in vogue, rather than of a considered rabbinic requirement. Indeed, this is also how Yosef Yerushalmi (writing a decade or so after Katz) understood the direct reports that the inquisitor Bernard Gui received in Provence during the early fourteenth century (which also may have included Jews who lived at some point in Germany) about the vigorous preparations and immersions that apostates who wished to return to the Jewish community had to undergo. In the absence of any hard evidence for such a requirement in medieval codes or other halakhic texts, these were popular procedures that allowed members of the Jewish community to “un-baptize” those Jews who had been led astray. They did not necessarily have the approbation or the input of the rabbinic leadership, although Yerushalmi notes that this type of procedure was to be

<sup>2</sup> See, e.g., *Teshuvot Rashi*, ed. I. Elfenbein (New York, 1943), nos. 168, 171, 174, 175.

<sup>3</sup> See also Jacob Katz, *Beyn Yehudim le-goyim* (Jerusalem, 1961), 79 [= idem, *Exclusiveness and Tolerance* (New York, 1961), 71–72].

<sup>4</sup> See Avraham Grossman, *Hakhmey 'Ashkenaz ha-rishonim* (Jerusalem, 1981), 122–126, 155 (n. 181), 224–225; and idem, *Hakhmey Tzarefat ha-rishonim* (Jerusalem, 1995), 152–153; and cf. *Teshuvot Rashi*, no. 170.

found in the writings of the rabbinic authorities in Eastern Europe during the early modern period.<sup>5</sup>

In fact, however, a series of manuscript passages (and some additional published texts) indicate that several Tosafists from both northern France and Germany (beginning in the late twelfth and early thirteenth centuries) explicitly supported or mandated an act of ritual immersion for a Jew who wished to revert from Christianity. Nonetheless, these Ashkenazic rabbinic authorities maintained (with virtually no exception) that this immersion did not have to be performed in the presence of witnesses or a duly constituted rabbinic court (as was the case for one who wished to convert to Judaism), nor did the candidate typically have to be questioned or examined by a rabbinic tribunal (as did a convert). Similarly, the reverting apostate's immersion could be undertaken at night (akin to the ritual immersion of a *niddah*, for example), rather than by day (which is when the immersion of a new convert had to take place, since it was being conducted under the aegis of a rabbinic court).

The Ashkenazic authorities who embraced this practice of (informal) immersion for a returning apostate included such luminaries as R. Isaac b. Samuel of Dampierre (Ri, d. 1189), R. Simhah b. Samuel of Speyer (d. ca. 1230), R. Eleazar of Worms (d. 1237), "the brothers of Evreux" (R. Moses and R. Samuel b. Shneur, d. ca. 1250), and R. Meir b. Baruch of Rothenburg (Maharam, d. 1293). Between them, they advanced or implied a number of different reasons for this requirement: as a visceral means of reminding the returning apostate of what his (renewed) religious and communal responsibilities would be (and as a means of binding him to those responsibilities); as an act of penance or penitence on the part of the returnee; as a kind of un-baptism or separation from the spiritual and physical corruption of idolatry that accrues even when simply living with idolaters; or as a tangible sign of the change in the apostate's personal status as he or she returned to full membership in the Jewish community (couched in quasi-halakhic terms, *mishum ma'alah*).

None of these authorities appears to have rejected the concept of 'af 'al pi she-hata', *Yisra'el hu'* as a core value; indeed, several of them

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<sup>5</sup> See Yosef H. Yerushalmi, "The Inquisition and the Jews of France in the Time of Bernard Gui," *Harvard Theological Review* 63 (1970): 317–319, 363–374, and see also Joseph Shatzmiller, "Converts and Judaizers in the Fourteenth Century," *Harvard Theological Review* 74 (1981): 63–77.

explicitly mention it. At the same time, however, they clearly perceived (and posited) the existence of a larger gap between Jewish and Christian societies that had to be traversed by the returning apostate (for which the act of immersion was necessary) than did Rashi, or those Tosafists who continued to suggest that no immersion whatsoever was required, such as R. Isaac b. Asher ha-Levi [Riba] of Speyer (d. 1133), and Ri's student, R. Isaac b. Abraham [Ritzba] of Dampierre (d. 1209).<sup>6</sup>

At stake here perhaps was the extent to which Ashkenazic rabbinic authorities (following Rashi's lead) could continue to maintain that baptism made no lasting impact (from either the halakhic or societal perspective) on the apostate. Those who required a form of ritual immersion were suggesting that it had become necessary, perhaps on a psychological level, for the returning apostate to undergo an act that would mark the genuineness of his return and also signify a rejection or refutation of where he had been.<sup>7</sup>

## II

The present study deals with another aspect of the status of an apostate in medieval Ashkenaz for which Rashi's approach of *'af 'al pi she-hata', Yisra'el hu'* was not disparaged or rejected, but was again considered insufficient by several (German) Tosafists during the late twelfth and early thirteenth centuries. Although this view is expressed regarding the somewhat uncommon precept (or ceremony) of *halitzah* (by which a childless widow is released from having to marry her deceased husband's brother), it is precisely its rich theoretical underpinnings that allowed these Tosafists to develop and to fully formulate their competing view, which in turn had important implications for additional dimensions of the status of an apostate, as we shall see.

The case in point concerns the need for an apostate who had *not* reverted to perform *halitzah*, which would then permit his deceased brother's wife to remarry in a situation where there was no other

<sup>6</sup> See my "Returning to the Jewish Community in Medieval Ashkenaz: History and Halakhah," in *Turim: Studies in Honor of Dr. Bernard Lander*, ed. Michael Shmidman, vol. 1 (New York, 2007), 69–97, and below. Cf. *'Otzar ha-Ge'onim*, ed. B. M. Lewin, vol. 7 [*Yevamot*] (Jerusalem, 1936), 111–113 (secs. 258–262).

<sup>7</sup> This is similar to the way that Shatzmiller, "Converts and Judaizers," explained the differing views of Rashba and Ritba (in Spain, ca. 1300) on whether ritual immersion was required for a returning apostate.

brother available or willing to nullify the *zikah*, the halakhic tie that binds the wife to one of her husband's brothers until an act of *halitzah* is performed.<sup>8</sup> Rashi's opinion in this specific matter is fully consistent with his larger view, and completely unequivocal: the apostate must perform *halitzah* in all circumstances (and his brother's wife is not free to remarry until he does).<sup>9</sup> As Katz explained Rashi's view, to exempt the woman from undergoing *halitzah* and to allow her to remarry without this ceremony (as much as such an allowance might ease her plight, since it was unclear whether the apostate would cooperate), actively suggests that the brother who was an apostate had the status of a non-Jew, a development that Rashi could not countenance under any circumstance.<sup>10</sup>

In this instance (as opposed to the case of ritual immersion), most subsequent Ashkenazic authorities appear to have supported and adopted the approach of Rashi, that *halitzah* was required. Katz was aware of the "lenient" view of R. Isaac b. Moses of Vienna 'Or Zarua' (d. ca. 1250), who studied with a number of leading Tosafists in both northern France and the German Rhineland,<sup>11</sup> and his son, R. Hayyim Eliezer, who systematically condensed his father's often discursive legal work in a form that was intended to make it less unwieldy and more

<sup>8</sup> *Yibbum* (through which a surviving brother married the widow) by the apostate was obviously not an option (even though the apostate is referred to in many of the rabbinic texts cited below, by convention, as a *yavam*, just as the wife of the deceased brother with whom there is a *zikah* is called a *yevamah* or a *shomeret yavam*). See also below, n. 15. On the issue of whether *yibbum* or *halitzah* was generally preferred in medieval Ashkenaz, see Katz, *Halakhah ve-Kabbalah*, 136–155, and Avraham Grossman, *Hasidot u-moredot* (Jerusalem, 2001), 156–173. Parts of the rabbinic correspondence about the case of a married *yavam* who refused to perform *halitzah* without compensation (that involved R. Nethanel of Chinon and R. Jehiel of Paris), noted in Avraham Grossman, "R. Netan'el mi-Chinon: Mi-gedoley Ba'aley ha-Tosafot be-Tzarafat ba-me'ah ha-13," in *Mehkery Talmud*, ed. Y. Sussmann and D. Rosenthal, vol. 3 (Jerusalem, 2005), 175, n. 6 (on the basis of *Teshuvot Maharik* and *Teshuvot Binyamin Ze'ev*), can be found in MS Bodl. 672 (*Kitzur Mordekhai le-R. Shemu'el Schlettstadt*; Ashkenaz, 1393; IMHM #20588), fol. 89r, in the margin.

<sup>9</sup> See *Teshuvot Rashi*, ed. Elfenbein, no. 173.

<sup>10</sup> See Katz, *Halakhah ve-Kabbalah*, 265–266. See also the similar halakhic position taken by Rabbenu Gershom (without recourse to the larger notion of 'af 'al pi she-hata', *Yisra'el hu*'), in *Sefer Mordekhai 'al massekhet Yevamot*, sec. 28 (= *Teshuvot Rabbenu Gershom*, ed. S. Eidelberg [New York, 1955], 118, no. 40): תשובת שאלה לרבינו גרשום. יבמה שנפלה לפני יבם משומד אינה נפטרה בלא חליצה שאם קידש, קדושו צריך לענין חליצה נמי צריך קידושין וצריכה גט, לענין חליצה נמי צריך. Cf. below, n. 36.

<sup>11</sup> See Ephraim E. Urbach, *Ba'aley ha-Tosafot* (Jerusalem, 1980), 1:436–439.

useful.<sup>12</sup> This view was built upon several geonic responsa that did not require an apostate to perform *halitzah*.<sup>13</sup>

Katz also notes that Rashi had already rejected the geonic approach (upon which the passage in *Sefer 'or zarua'* is based) as not fully consistent, since these geonic sources ruled that the *halitzah* need not be performed only in a situation where the brother became an apostate before his brother's marriage took place. When the apostasy occurred after the marriage, however, the Geonim held that *halitzah* was required (since in such a situation, the wife could not maintain that she had acquiesced to the marriage with the stipulation that she would not be subject to a *zikhah* that involved this apostate).

Indeed, the approach of R. Isaac and R. Hayyim 'Or *Zarua'* is further contraindicated by a passage in a responsum by R. Meir of Rothenburg (who studied in his youth with R. Isaac, albeit briefly, and was a teacher of R. Hayyim).<sup>14</sup> Maharam notes that he had been prepared to present a strong proof for the geonic view, based on a passage toward the end of Tractate *b. Bava' kamma'* (110b–111a), in which the Talmud considers the possibility that a woman effectively stipulates at the time of her marriage that she will not allow herself to be subject in any way to a subsequent levirate *zikhah* that involves a brother with pronounced physical blemishes. Maharam concludes, however, that despite this proof, he could not bring himself to disagree with the approach of Rashi in practice, and he therefore ruled that the apostate must perform *halitzah* in all such circumstances, irrespective of when the brother became an apostate.<sup>15</sup>

<sup>12</sup> See Urbach, *Ba'aley ha-Tosafot*, 1:442–448. R. Hayyim's work is variously referred to as 'Or *zarua'* *katan/katzar*, or *Simmaney 'or zarua'*. See also *Piskey 'or zarua' le-Rabbenu Hayyim b. Yitzhak mi-Vienna*, ed. M. J. Blau (New York, 1996), editor's introduction, 8–10.

<sup>13</sup> See *Sefer 'or zarua'* (Zhitomir, 1862), pt. 1, fols. 82a–b, *Hilkhot yibbum ve-kiddushin*, sec. 605 (ed. Machon Yerushalayim [Jerusalem, 2010], vol. 1, 494–496); *Haggahot Mordekhai le-massekhet Yevamot*, sec. 107; and below, n. 49. For the geonic views on this matter, see 'Otzar ha-Ge'onim, ed. Lewin, 7:34–37.

<sup>14</sup> See Urbach, *Ba'aley ha-Tosafot*, 2:523–525, 543; *Teshuvot Ba'aley ha-Tosafot*, ed. I. A. Agus (New York, 1954), 226; Noah Goldstein, "Rabbi Hayyim Eliezer ben Isaac Or Zarua: His Life and Work and a Digest of His Responsa" (D.H.L., Yeshiva University, 1959), 18–19; and my *Jewish Education and Society in the High Middle Ages* (Detroit, 2007), 18 and 121–122, n. 14.

<sup>15</sup> See *Sefer Mordekhai 'al massekhet Yevamot*, sec. 30; *Sha'arey teshuvot Maharam b. Barukh*, ed. M. A. Bloch (Berlin, 1891), 280 (no. 130, both cited by Katz, *Halakhah ve-Kabbalah*, 266, n. 60); and see also *Teshuvot Maymoniyyot le-hilkhot 'ishut*, no. 29. At the same time, however, Maharam was asked (see *Sefer Mordekhai*, *ibid.*; *Teshuvot*

However, several manuscript passages (that are at least partially reflected in published texts as well) demonstrate that two older German Tosafist contemporaries of R. Isaac 'Or Zarua' ruled that an apostate does not perform *halitzah* for his deceased brother's wife in any situation, even when the apostate entered into this state after his brother's marriage took place. Their position is that an apostate was not required to perform *halitzah* because his status as a Jew had been compromised in a meaningful way by his apostasy. By maintaining their expanded view, these rabbinic figures avoided the charge of inconsistency that Rashi had leveled against the geonic position. We shall first identify the two earlier German views, and then proceed to look more closely at the material found in *Sefer 'or zarua'*.

A number of relatively early (and consistently reliable) manuscripts of *Sefer Mordekhai* contain the following passage (in Tractate *b. Yevamot*): "I have found written in the name of R. Abraham of Regensburg [in some texts, this rabbinic figure is called R. Abraham ha-Gadol] regarding a *yevamah* who falls before a *yavam* who is an apostate, that it is a wonderment that she requires *halitzah* from him [in some manuscript versions, R. Abraham simply states directly that she does not require *halitzah*]. This constitutes a forbidden sexual relationship with a gentile (*in flagrante* = *halo' bi-mekom 'ervah hu'*), for which 'zealots are bidden to kill such a person in the act' (*ve-kanna'im poge'im bo*); a woman who has sexual relations with a non-Jew (lit., an 'Arama'ey) is subject to (the rule of) *kanna'im poge'in bah*."<sup>16</sup> For R. Abraham, the

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*Maharam* [Berlin], no. 130 [end]; and *Teshuvot Maharam defus Prague*, ed. Bloch [Budapest, 1895], no. 491) about a situation in which there were two brothers who could perform *halitzah*, an older one who was an apostate and a younger one who lived in a faraway place (*bi-medinat ha-yam*). The questioner wondered whether in this instance, the older (and much nearer) brother could perform *halitzah*, מפני תקנת העיגון. R. Meir responded that it is preferred even in such a case for the *yavam Yisra'el* to be utilized, and the passage concludes with the remark that '*azlinan hakha' le-humra' ve-hakha' le-humra'* (meaning that an apostate is required to perform *halitzah* if he is the only brother, but in cases where another brother exists, that brother should perform the *halitzah*, even in situations where this is not so easily accomplished).

<sup>16</sup> מצאתי כתוב בשם ה"ר אברהם מרגנשבורק על יבמה שנפלה לפני יבם משומד שבוזה איכא דברים בגו כי תימה דבעי' אפילו חליצה ממנו כי במקום ערוה הוא וקנאים פוגעים בו, כי גם [זו] הנבעלת לארמאי קנאים פוגעים בה. See MS Budapest (National Museum) 2\*1 (Ashkenaz, 1373), fol. 268a; MS Vienna 72 (Ashkenaz, 1392), fol. 218v (and cf. Samuel Kahn, "R. Mordekhai b. Hillel ha-'Ashkenazi," *Sinai* 14 [1944]: 316); MS Cambridge Add. 490 (Ashkenaz, 1397), fol. 74b; MS Bodl. 667 (Ashkenaz, sixteenth century), fol. 122b; and MS Vercelli C235/4 (Italy, 1453), fol. 290a–b. *Haggahot Mordekhai 'al massekhet Yevamot*, sec. 108, refers to this formulation as a responsum (*teshuvah*) composed by R. Abraham, and see also the concluding passage in the

point at which the apostate accepted Christian observances (relative to his brother's marriage) is irrelevant. The apostate is excluded, in all cases, from performing *halitzah*, inasmuch as he has the status of a non-Jew (and therefore no *zikhah* exists).

To be sure, R. Abraham of Regensburg is not a particularly well-known Tosafist figure, and there are some historical (and literary) circumstances that perhaps account for this. R. Abraham was the son of R. Moses Zaltman b. Joel, a member of the rabbinic court in Regensburg (during the second half of the twelfth century) along with two well-known students of Rabbenu Tam (and important Tosafists in their own right), R. Ephraim b. Isaac and R. Isaac b. Mordecai (Ribam). R. Moses b. Joel composed *Tosafot* to several tractates, which have been lost for the most part. Indeed, his son R. Abraham also composed *Tosafot* (at least to tractate *Bava' batra'*) that have been mostly lost. However, more than ten remnants of these *Tosafot* are cited in manuscript texts of the *Sefer Mordekhai* to *Bava' batra'*.<sup>17</sup>

R. Abraham b. Moses was also a member of the rabbinical court in Regensburg together with Rabbenu Tam's student, R. Isaac b. Jacob of Bohemia (known as Ri ha-Lavan), and subsequently with R. Baruch b. Isaac of Regensburg (not to be confused with the R. Baruch b. Isaac who was a French student of Ri of Dampierre and author of *Sefer ha-terumah*), and with R. Judah he-Hasid (d. 1217, who moved to Regensburg from Speyer, ca. 1195). Several court decisions and other rulings from this group of rabbinic judges in Regensburg are extant, including one that is recorded at some length in *Sefer hasidim*.<sup>18</sup>

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glosses of *Shiltei ha-gibborim* to *Mordekhai 'al Yevamot*, sec. 30, n. 6. Katz, *Halakhah ve-Kabbalah*, 267, was aware of R. Abraham's position only from its citation in the fifteenth-century *Terumat ha-deshen* (by R. Israel Isserlein) in sec. 223, and he considered it to be a "lone voice, without any [broader] social support." Katz was also aware that *Haggahot Mordekhai*, *Yevamot*, sec. 107, maintained that *halitzah* by an apostate was not required in all cases, irrespective of when the individual became an apostate (cf. below, n. 36), but he was (justifiably) unaware of the other relevant formulation by R. Abraham of Regensburg in this matter (below, n. 22). Cf. Gerald Blidstein, "Who is not a Jew?—The Medieval Discussion," *Israel Law Review* 11, no. 3 (1976): 380, and Bernard Rosensweig, "Apostasy in the Late Middle Ages in Ashkenazic Jewry," *Dine Israel* 10–11 (1981–1983): 65.

<sup>17</sup> See Urbach, *Ba'aley ha-Tosafot*, 1:207–208; my "Religious Leadership during the Tosafist Period: Between the Academy and the Rabbinic Court," in *Jewish Religious Leadership: Image and Reality*, ed. Jack Wertheimer, vol. 1 (New York, 2004), 271, 282 (n. 69), 301; and Simcha Emanuel, *Shivrey luhot* (Jerusalem, 2006), 83–86.

<sup>18</sup> See *Sefer hasidim*, ed. J. Wistinetzki (Frankfurt, 1924), secs. 1592–1593; *Sefer Ravyah*, sec. 1032, ed. D. Deblitzky, vol. 3 (Bnei Brak, 2005), 444–445; Israel M. Ta-Shma,



A *siddur* that belonged to R. Abraham is cited in connection with one of his prayer customs.<sup>19</sup> It should also be noted that R. Isaac 'Or Zarua' studied in Regensburg in his youth with both R. Judah he-Hasid and with R. Abraham b. Moses, and he mentions a practice of theirs in *Sefer 'or zarua'*, concerning the fulfillment of the weekly requirement to review *shenayim Mikra' ve-'ehad Targum*.<sup>20</sup>

Moreover, R. Simhah of Speyer, a leading Rhineland Tosafist and rabbinic authority at this time (and one of R. Isaac 'Or Zarua's major teachers), addressed several halakhic queries to R. Abraham of Regensburg for his opinion and guidance. Similarly, R. Abraham, along with his colleague R. Baruch of Mainz (whom we shall discuss shortly), was asked by the Italian Tosafist, R. Eleazar b. Samuel of Verona (a student of Ri of Dampierre) to ratify a ruling of his, that allowed an 'agunah to remarry under difficult circumstances.<sup>21</sup>

R. Abraham of Regensburg is also mentioned in another passage that has a direct bearing on our discussion of the status of an apostate

*Keneset mekharim*, vol. 1 (Jerusalem, 2004), 250–253; Emanuel, *Shivrey luhot*, 224; and my “R. Judah he-Hasid and the Rabbinic Scholars of Regensburg: Interactions, Influences and Implications,” *Jewish Quarterly Review* 96 (2006): 17–37.

<sup>19</sup> See MS Parma (de Rossi) 929 (Ashkenaz, 1391), fol. 91r: והשיאנו בראש השנה וביום הכיפורים. והא שנחשבים כיום טוב היינו שאין בהם אבילות. וכן כתב מורי הר"ר אברהם ב"ר משה דאין נ"ל לו' והשיאנו לא בראש השנה ולא ביום הכיפורים דאין רגלים. בתפילות שלנו אין כתו' ובראשי חדשיכם וכו' [בר"ה]... ורבינו יעקב בן יקר וכל בני דורו לא התפללו אותו... ובתפילות של מורי הר"ר אברהם ב"ר יעקב בן יקר וכל בני דורו לא התפללו אותו. וכן סובר ספר חפץ שאין לאומרו e.g., *Piskey ha-Rosh le-Rosh ha-Shanah*, 4:14.

<sup>20</sup> See *Sefer 'or zarua'*, *Hilkhot ker'iat Shema'*, pt. 1, fol. 11c (section 11, ed. Machon Yerushalayim, 1:47). See also pt. 1, fol. 104c (*she'elot u-teshuvot*, sec. 744, ed. Machon Yerushalayim, 1:628) בתשובתו שהשיב לה"ר אלעזר מווירונא, וז"ל ולמורי הר"ר אברהם מריגנשבורק *Hilkhot Shabbat*, pt. 2, fol. 12a–b (sec. 53, ed. Machon Yerushalayim, 2:65); and Uzi Fuchs, “Iyyunim be-Sefer 'or zarua' le-R. Mosheh mi-Vienna,” (M.A. thesis, Hebrew University, 1993), 16, 18–19, 29, 33–39. It is likely that R. Isaac b. Moses left the study hall of R. Abraham of Regensburg well before R. Abraham expressed his view concerning the issue of *halitzah* by an apostate, and *Sefer 'or zarua'* (below, nn. 42–43) thus does not mention R. Abraham's (similar) position.

<sup>21</sup> See Urbach, *Ba'aley ha-Tosafot*, 1:434–435, 437–438; *Sefer Ravyah*, sec. 901, ed. Deblitzky, vol. 3, 38–42; *Milley de-bey hillula' al 'inyaney 'erusin ve-nissu'in*, ed. Y. Hershkowitz (New York, 1998), 25–26 (on the nature of *birkat 'erusin*, and the marriage of converts); *Shibbolei ha-leket—ha-helek ha-sheni*, ed. S. Hasida (Jerusalem, 1988), 222–223 (sec. 48: תשובת ר' אברהם מריגנשבורק ישמחו השמים ותגל הארץ; לך מורי הרב ר' שמחה נר מערבי, מפני שאתה מצוה עלי לדון לפניך על נדר על דעת רביים הנני דן לפניך לפי עיויתי נראה וכו') and *Derashah le-Pesah le-R. El'azar mi-Vermayza*, ed. S. Emanuel (Jerusalem, 2006), editor's introduction, 28, n. 102. Cf. *Teshuvot u-pesakim*, ed. E. Kupfer (Jerusalem, 1973), 255.

with regard to *halitzah*. R. Samuel b. Abraham ha-Levi of Worms (known as R. Bonfant), a close student of R. Simhah of Speyer, cites his teacher on the question of whether an apostate can divorce his Jewish wife. As part of R. Simhah's discussion of this matter (which apparently did not reach a firm resolution), R. Bonfant presents a passage in the Talmud Yerushalmi (*Kiddushin*, 1:1 [end, and elsewhere], חוששין משומד מגרש את אשתו משום) and a geonic ruling (לקידושין ולגירושין דמקשינן הויה ליציאה, מה הויה אי מקדש תפסי קידושין אף יציאה), according to which an apostate's *kiddushin* and *gerushin* must be treated as effective.

In this context, R. Bonfant then presents the view of R. Abraham of Regensburg. From the fact that a minor who was converted to Judaism (a *ger katan*) could renounce his conversion if he was not informed prior to his reaching the age of bar mitzvah that he had been converted to Judaism by a *beyt din* acting on his behalf (as per *b. Ketubbot* 11a), R. Abraham sought to demonstrate that the renunciation of Judaism by a person who had converted to Judaism when he was already of bar mitzvah age or beyond (גר שחזר לסורו), as well as the attempt by a Jew who becomes an apostate to leave Judaism, are not at all effective according to Jewish law. Therefore, when an apostate marries a woman (and she accepts his *kiddushin*), we recognize those *kiddushin*, and when he gives his wife a *get* (even if he had married her before he became an apostate), the bill of divorce is effective.

R. Bonfant comments that R. Simhah of Speyer did not agree with the view of R. Abraham and its (underlying talmudic) reasoning. A *ger katan* (who was not told of his conversion) can subsequently reject everything that he had done as a Jew (at any time after his conversion as a minor). Although it is clear that an older convert to Judaism who now wished to renounce his conversion, as well as a Jewish apostate, cannot reject everything that they had done as Jews (as the *ger katan* could), perhaps each of these figures can in fact reject whatever he did as a Jew from the point at which he readopted his prior religion, or became an apostate. As such, when an apostate now gives his wife (whom he had married prior to his becoming an apostate) a *get*, that *get* might well not be valid.<sup>22</sup> Ravyah also notes the existence of a view

<sup>22</sup> See *Teshuvot u-pesakim*, ed. Kupfer, 295–296 (sec. 176), and cf. Blidstein, “Who is not a Jew?” 369. R. Simhah's formulation concludes: אבל שאר ישראל שנשתמד או גר שחזר לסורו יכול למחות מאותה שעה שנשתמד, שאין לו דין ישראל לגמרי אלא לחומר. See the next note.

which maintained that the *get* of an apostate is not effective, although he does not endorse this view.<sup>23</sup>

R. Abraham of Regensburg, who maintained (unlike R. Simhah and some others) that the *gerushin* of an apostate (as well as his *kiddushin*) retains validity, apparently felt this way because the apostate was, in effect, the one who initiated both of these states (even as the woman must accept his *kiddushin* for the marriage to be valid). With respect to *halitzah*, however (where the apostate cannot live with this woman from either her or the larger communal/halakhic perspective, due to the concept of *kanna'im poge'in bah*), the apostate is not the one who initiates this state. Rather, it is initially “caused” by his brother’s marriage, and the apostate does not control it in any way. Even though a *yavam* can determine, in theory, how he wishes to proceed (whether to perform *yibbum* or *halitzah*), he is not the one who creates the *zikah* between himself and the widow. Thus, it is immaterial for R. Abraham of Regensburg (who does not mention any geonic views) whether the apostate was already one at the time that his brother married or became one only at some later point. In all cases, the apostate does not perform *halitzah*, against Rashi’s firmly-held view. As our discussion and analysis proceed further, the reason for the seeming imbalance in R. Abraham’s position, between *kiddushin* and *get* on the one hand and *halitzah* on the other, will become more precisely understood.

<sup>23</sup> See *Sefer Ravyah*, 1, sec. 151 (ויש שמחמירין בגט ואומרים כי קידושי תורה) (שקידש בעודו ישראל אין יכול להפקיע משמדותו... ואין הנידון דומה לראיה זו וכו'), ed. Deblitzky, 1:120. See also *Sefer Mordekhai li-Yevamot*, sec. 38, in the name of Ravyah’s lost halakhic work, *Sefer 'Avi'asaf* (ובהמרותו יהב גט, הוי גט. ויש מרב[ו]ותא שנסתפקו בזה ונ"ל דאפילו קידש בעודו ישראל ושוב) and *Teshuvot Maymoniyyot le-Hilkhot 'ishut*, no. 12. While R. Simhah (in the passage recorded by R. Bonfant in the above note) employs the phrase חוששין לקידושי (based on the Yerushalmi passage that R. Simhah had cited, as well as *b. Yevamot* 16b, גוי שקידש בזמן הזה חוששין, and cf. *Haggahot Mordekhai li-Yevamot*, sec. 107, where the *kiddushin* of an apostate must be considered as effective חוששין לקי[ו] as per *b. Kiddushin* 49a, רשע, אלא ודאי דיניהם בישראל בין לקולא בין לחומרא) R. Abraham presumes that both the *kiddushin* (and *gerushin*) of an apostate (and an older convert who had renounced Judaism) are effective because his (technical) status as a Jew has not been diminished (אלא ודאי דיניהם בישראל בין לקולא בין לחומרא). See also below, n. 36; and Simcha Goldin, *Ha-yihud ve-ha-yahad* (Tel Aviv, 1997), 87, 99 (for the situation in northern France, where the *gittin* of apostates were considered to be fully effective). Note that both R. Simhah and Ravyah required a returning apostate to undergo immersion, and Ravyah was especially demanding in this matter. See *Teshuvot u-pesakim*, ed. Kupfer, 290–291, sec. 71; my “Returning to the Community in Ashkenaz,” 81–87; and below, n. 40.

## III

The second German Tosafist during this period who maintained that an apostate does not perform *halitzah* is R. Baruch b. Samuel of Mainz (d. 1221), who served as an active member of the rabbinic court in that city.<sup>24</sup> R. Baruch was also the author of a voluminous halakhic work, *Sefer ha-hokhmah*, which is no longer extant. Fragments and remnants of this work indicate that it contained a wealth of responsa, as well as records (or summaries) of the proceedings of the Mainz rabbinical court, in addition to (at least partial) commentaries to a number of talmudic tractates.<sup>25</sup> In addition, R. Baruch composed *Tosafot*.<sup>26</sup> We have already noted that R. Baruch and R. Abraham of Regensburg interacted at least once, at the request of R. Eleazar of Verona. Indeed, there are indications, primarily from a passage in which R. Abraham refers to R. Baruch using various honorific terms, that R. Abraham was a student of R. Baruch (who did not have many students overall). It appears, however, that R. Abraham was actually a bit older than R. Baruch. R. Abraham's laudatory references to R. Baruch as his teacher may simply be a reflection of the style employed by many Tosafists, to refer to their questioners and colleagues (including younger scholars) as their teachers, as a sign of the esteem in which these scholars were held even by their more senior colleagues.<sup>27</sup>

In any case, a version of R. Baruch's position regarding the need for an apostate to perform *halitzah* is found in a complicated passage in the *Haggahot Mordekhai* to tractate *Yevamot*, which can be further clarified on the basis of other (slightly later) texts.<sup>28</sup> From these sources,

<sup>24</sup> See Urbach, *Ba'aley ha-Tosafot*, 1:425–427, and my “Religious Leadership during the Tosafist Period,” 267–269, 274, 287, 300.

<sup>25</sup> See Emanuel, *Shivrey luhot*, 104–153, and cf. my “The Development and Diffusion of Unanimous Agreement in Medieval Ashkenaz,” *Studies in Medieval Jewish Literature*, vol. 3, ed. Isadore Twersky and Jay Harris (Cambridge, MA, 2000), 26–28, 40 (nn. 35–36).

<sup>26</sup> See Emanuel, *Shivrey luhot*, 120–123, and cf. Urbach, *Ba'aley ha-Tosafot*, 1:428.

<sup>27</sup> See Urbach, *Ba'aley ha-Tosafot*, 1:435, n. 48; *Sefer Ravyah* and *Shibbolei ha-leket*, above, n. 21; and Emanuel, *ibid.*, 109, n. 31.

<sup>28</sup> See *Haggahot Mordekhai 'al massekhet Yevamot*, sec. 107; *She'elot u-teshuvot Mahari Mintz*, ed. A. Siev (New York, 1995), no. 12 (fols. 46a, 47b = *Mayim 'amukim* [Berlin, 1778], fols. 21d, 22a; *Mayim 'amukim* is the second volume of the responsa of R. Elijah Mizrahi, who corresponded with R. Judah Minz); and *She'elot u-teshuvot R. Eliyyahu Mizrahi* (Constantinople, 1560; repr. Jerusalem, 1938), no. 68 (fols. 231a and 232a). I thank my friend and colleague Prof. Simcha Emanuel for this last reference, although both passages attributed there to R. Baruch appear to be intertwined with material from *Sefer 'or zarua'*; see below, n. 41. To this point, manuscript research

it emerges that R. Baruch was familiar with a number of geonic texts that related to this matter. According to these geonic passages (as was the case for the geonic material with which Rashi was familiar), only when the brother had become an apostate prior to the marriage of his brother was there no requirement for him to perform *halitzah*.

R. Baruch rules, however (unlike the Geonim), that the possibility for a *zikhah* between the brother(s) of a married brother and his wife is fixed or established not at the time of the wedding (*'eyn nissu'in mappilim*, marriage does not cause the potential *yavam* to be designated), but only at the point where the married brother dies (*'ella' mitah mappolet*). As such, whether or not the potential *yavam* was already an apostate when his brother married is immaterial. At the point that his brother died, he was definitely an apostate and therefore no *zikhah* is ever created (even though this removes an apostate from the precept of *halitzah* to a greater extent than a *mamzer*, who is required to perform *halitzah* for his brother's wife).

The question of whether *mitah mappolet* or *nissu'in mappilim* is explicitly discussed twice within Tractate *b. Yevamot* (13a and 30b, in less stark contexts). In the medieval period, the earliest rabbinic authorities to rule (following Rava and Rav Ashi) that *mitah mappolet* (which remains a minority view) are Rabbenu Hanan'el b. Hushi'el of Kairouan (d. 1056) and R. Isaac b. Jacob Alfasi (Rif, d. 1103 in Lucena).<sup>29</sup>

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within texts of *Sefer Mordekhai* and *Haggahot Mordekhai* has not yielded the source of the published *Haggahot Mordekhai* passage. R. Baruch is referred to in this passage only by his initials, ר"ב (which is perhaps what caused modern scholarship to entirely overlook his view): *ור"ב הביא ראיה דקיי"ל כר"ח מדתנן פרק בית שמאי: והקשה ר"ב מאי שנא מממזר יבם וכו' וכו'.* This convention is fairly common, however, throughout *Sefer Mordekhai* and *Haggahot Mordekhai* texts (which are among the most important resources for reconstructing R. Baruch's *Sefer ha-hokhmah*). See, e.g., *Sefer ha-Mordekhai le-massekhet Kiddushin*, ed. J. Roth (Jerusalem, 1990), 161 (line 20); 224 (lines 204–205); 245 (2); 265 (93); 293 (219); 302 (275), and cf. 300 (line 25); *Sefer ha-Mordekhai le-massekhet Gittin*, ed. M. Rabinowitz (Jerusalem, 1990), 331 (line 21); 535 (line 373, *שאל ר"ב את ר"א*); 684 (line 282), and cf. 541 (line 40); *Sefer Mordekhai ha-shalem 'al massekhet Pesahim*, ed. Y. Horowitz (Jerusalem, 2008), 169 (line 2); and Emanuel, *Shivrey luhot*, 105 (n. 8); 110 (nn. 36, 41); 128; 138 (n. 157); and below, n. 35.

<sup>29</sup> See *'Otzar ha-Geonim*, vol. 7 (*Yevamot*), ed. Lewin, 305 (sec. 32), and see also 37 (to *Yevamot* 22a); *Hilkhot ha-Rif to Yevamot* 13a (fol. 3a) and 30b (fol. 8b); and cf. *Sefer ha-miktzo'ot*, ed. Simcha Assaf (Jerusalem, 1947), 11, and Blidstein, "Who is not a Jew?," 380, n. 39. Cf. *Haggahot Mordekhai li-Yevamot*, sec. 97, for the ruling by Rabbenu Hanan'el that an apostate's *kiddushin* are to be treated as fully effective (and below, n. 32). For the (unsubstantiated) Ashkenazic tradition that Rif was a direct student of Rabbenu Hanan'el, see *Sefer ha-yashar le-Rabbenu Tam (Helek ha-teshuvot)*, ed. S. Rosenthal (Berlin, 1898), 89, and cf. I. Ta-Shma, below, n. 45.

Until R. Baruch of Mainz, however, no Ashkenazic rabbinic figure (as far as I can tell) followed this view. Moreover, R. Baruch presents additional support for Rabbenu Hanan'el's approach, adducing another proof from a talmudic *sugya*' that Rabbenu Hanan'el did not mention. This *sugya*' (b. *Yevamot* 108b–109a) deals with a situation in which a man had divorced his wife and subsequently remarried her (*mahazir gerushato*, without her having married another person in between). The question raised by the Talmud is whether this woman would be permitted in such an instance to live with her husband's brother (through *yibbum*) in the event that the husband died (and she is childless), in light of the fact that she and her husband are presently together as the result of a remarriage. This matter is linked by the *sugya*' to the question raised above: Is the *zikah* created when the husband and wife are first married (in which case there may not be a *zikah* in a remarriage), or is the *zikah* created only when the husband dies (in which case the initial marriage is not at all relevant)? The Talmud rules here that *yibbum* is possible (as codified also by Alfasi), which suggests that it has adopted the position that *mitah mappolet* (and that the *zikah* is established at the time of the death of the husband). R. Baruch of Mainz has thus identified additional support for the view of Rabbenu Hanan'el (which he also accepted). This is so for every case of potential *zikah*, including all situations that involve an apostate. Thus, an apostate would never be required to (and indeed could not) undertake *halizah*.<sup>30</sup>

It is possible that R. Baruch ruled as he did mainly in order to provide leniency for the wife of the deceased that would help her avoid becoming an *'agunah* (since it is quite possible that the apostate will not perform the *halitzah*).<sup>31</sup> However, it appears from a passage in

<sup>30</sup> R. Baruch concludes his proof as follows (*Haggahot Mordekhai li-Yevamot*, sec. 107): ובגמ' [קט ע"א] מפרש דפליגי בנישואין מפילין והלכה כחכמים [דלית להו]: 107): נישואין ראשונים מפילין] וכן פסק רב אלפס. וא"כ, אפילו המיר לאחרי כן [=נישואין אחיו], אינה חולצת. The standard *Tosafot* to *Yevamot*, for example (which originated in northern France; see Urbach, *Ba'aley ha-Tosafot*, 2:620–623), consistently assume that *nissu'in mappilin*. See, e.g., *Tosafot Yevamot* 13a, s.v. *nissu'in*; 30a, s.v. *ve-ne'esrah*; 84b, s.v. *ve-ki*; and cf. below, n. 42.

<sup>31</sup> On this kind of consideration in halakhic decision-making, see, e.g., Gerson Cohen's review of Benzion Netanyahu, *The Marranos of Spain: From the Late XIVth to the Early XVIth Century according to Contemporary Hebrew Sources* (New York, 1966), in *Jewish Social Studies* 29 (1967): 178–181; and David Berger, "Jacob Katz on Jews and Christians in the Middle Ages," in *The Pride of Jacob: Essays on Jacob Katz and His Work*, ed. Jay M. Harris (Cambridge, MA, 2002), 54–55.

*Sefer ha-hokhmah* which has survived that R. Baruch ruled this way because he believed that an apostate was not to be treated as a full Jew by the community (against the view of Rashi).

The passage from *Sefer ha-hokhmah* reads:

I, Baruch, heard that in (northern) France (*Tzarefat*), they permitted apostates to borrow money [from Jews] at interest, and they allowed apostates to lend money at interest [to Jews]. Their proof comes from the second chapter in Tractate *b. 'Avodah zarah* (26a–b, which deals with the status of heretics and informants, who need not be given any economic support). The only (economic) obligation is to return the lost object of an apostate [since Deut 22:3 mandates the return of “all of your brother’s losses (*le-kol 'avedat 'ahikha*),” in which the word “brother” is otherwise superfluous and therefore comes to include the losses of an apostate as well] but for other instances, he is not your brother. My teacher and relative (*mori kerovi*) was wont to say that when a person pushes away permitted Jewish practices and adopts prohibited ones, he is a heretic and should be treated accordingly (as per the *sugya*’ in Tractate *b. Gittin* 46b–47a, concerning a person who sold himself to an idolater). But I say that it is [nonetheless] prohibited for him to borrow from or to lend to a Jew at interest, because who has allowed him [to transgress these commandments]? And since it is prohibited for him to do so, we also may not lend to him or borrow from him [at interest] because of *lifney 'ivver*, similar to the prohibition of handing a cup of wine to a *nazir*.<sup>32</sup>

<sup>32</sup> See *Sefer ha-hokhmah*, sec. 151, partially cited in Emanuel, *Shivrey Luhot*, 108, from (the uncensored version of) *Shittah mekubbetzet* to *Bava' metzi'a* 71b. See, e.g., *Shittah mekubbetzet* (*Hiddushey Bava' metzi'a*, vol. 2), ed. Oz ve-Hadar (Jerusalem, 1996), fols. 553b–554a (and see fol. 551b for the indication of censorship): מספר החכמה לה"ר ברוך סימן קנא. אני ברוך שמעתי שבצרפת מתירין להלוות לישראלים משומדים ברבית וללות מהם. וראיתם וכו'. ומורי קרובי היה אומר היכא דשביק היתירא ואכיל איסורא זהו מין ומורידין אותו וראייה מגיטין פרק השולח ההוא גברא דזבין נפשיה ללודאי וכו'. ואני אומר בע"כ לדידיה אסור ללות ולהלות לישראל ברבית דמי התייר לו. וכיון דלדידיה אסור, גם לנו אסור להלות לו או ללות ממנו משום ולפני עור וגו'. Interestingly, the piece that follows in this section of *Shittah mekubbetzet* cites the commentary of Rabbenu Hanan'el (loc. cit.), in the name of רב שלום גאון ישראל that it is prohibited to lend to or to borrow from an apostate at interest, since his *kiddushin*, *gittin*, and *halitzah* are considered to be effective (קידושין קידושין ולא משתריא מיניה אלא בגט ולגבי גט יהיב לאיתתיה ופטר) והואיל, ורבי הוא כישראל לגבי קידושין וגט וחליצה דאמר שמא יתחרט ויעשה תשובה לפיכך אסור ורחמנא אמר לא תשך לאחדך אסור. As such, R. Baruch of Mainz's use of Rabbenu Hanan'el's ruling on *mitah mappolet* (which excludes the apostate from being a *yavam*) led R. Baruch to a different position than Rabbenu Hanan'el himself appears to have held in this matter (a result that is not uncommon, however, within medieval talmudic and halakhic interpretation). See also above, nn. 23, 29; and below, n. 36.

The “teacher and relative” referred to by R. Baruch is R. Eliezer b. Samuel of Metz (d. 1198), a Tosafist student of Rabbenu Tam (and author of *Sefer yere'im*).<sup>33</sup> Katz had noted that R. Eliezer of Metz (as well as his teacher Rabbenu Tam) permitted the lending of money to apostates at interest (and ostensibly the possibility to borrow from them at interest as well) on the basis of a special, limited exclusion (rather than a systemic diminution of the status of an apostate), since Leviticus 25:36 and Deuteronomy 23:20–21 specify that interest may not be taken or received only from one who is “your brother (*'ahikha*).” Indeed, this limited allowance was intended mainly to protect or to stimulate a significant aspect of Jewish economic endeavor in northern France.<sup>34</sup> On the one hand, R. Baruch of Mainz does not endorse this view on moneylending in practice but, on the other hand, he clearly does not agree with the view of Rashi, who did not countenance lending at interest to (or from) an apostate in any way (even in theory), since the dictum of *'af 'al pi she-hata' Yisra'el hu'* required that the apostate be seen (and treated) fundamentally as a Jew.

R. Baruch's nuanced approach meant that even though it was technically permitted for members of the Jewish community to lend to and borrow from an apostate at interest, since he was not considered to be “your brother,” the apostate, from his own perspective, was still obligated as a Jew to avoid involvement in usurious transactions of any kind, as either lender or borrower. As such, members of the Jewish community could not actually lend to or borrow money from him at interest either, since this would, in effect, lull or beguile him (in violation of the prohibition of *lifney 'ivver*) into doing something that was (still) prohibited for him to do. From his own perspective, the apostate remains a Jew (which also includes his ability to offer *kiddushin* and to give a *get*). From the perspective of others, however, he is viewed to

<sup>33</sup> See Emanuel, *Shivrey luhot*, 107–108, and Urbach, *Ba'aley ha-Tosafot*, 1:154–164, for R. Eliezer's intellectual biography and corpus.

<sup>34</sup> See Katz, *Halakhah ve-Kabbalah*, 262, 266, where he notes that this served as justification for extant economic practices (*nohag*), which apparently included the collecting of interest from apostates, and that the view of Rabbenu Tam represents a return to a geonic position that had been rejected by Rashi. Simcha Emanuel has shown, however, on the basis of a series of textual clarifications, that the Geonim (across the board, and followed by Rashi) prohibited lending to an apostate at interest. As such, Rabbenu Tam and R. Eliezer of Metz were the first halakhic authorities to allow this practice. See Simcha Emanuel, “Teshuvot ha-Ge'onim ha-ketzarot,” in *'Atarah le-Hayyim: Mehkarim ba-sifrut ha-Talmudit ve-ha-rabbanit li-kevod Profesor Hayyim Zalman Dimitrovsky*, ed. Daniel Boyarin et al. (Jerusalem, 2000), 447–449.



a significant extent (and with respect to *halitzah*, treated in actuality) as a non-Jew.<sup>35</sup>

R. Moses of Couçy (d. ca. 1250), the author of *Sefer mitzvot gadol* who flourished in northern France a generation or so after R. Baruch of Mainz, presents this same distinction (and policy) concerning lending at interest to an apostate in the name of his northern French Tosafist colleague, R. Samuel b. Solomon of Falaise: in practice, it is prohibited to lend at interest to an apostate (only) because of the prohibition of *lifney 'ivver*. R. Moses of Couçy himself maintained, however, based on the ruling of R. Eliezer of Metz in his *Sefer yere'im* (which R. Moses cites), that it is permitted to lend to a full-fledged, willful apostate (משומד להכעיס; the parallel phrase in *Sefer yere'im* reads, אם הוא משומד [להכעיס] דקא שביק התירא ואכיל איסורא at interest. R. Moses adduces a passage in the Talmud Yerushalmi (first suggested by Ri ha-Zaken of Dampierre, as we shall see in a moment) to further support this allowance, that when the Cutheans subverted their actions (and lost their status as true converts, *gerey 'emet*, based on their idolatrous practices that were revealed), it became permitted to lend to them at interest.

At the same time, however, R. Moses of Couçy (still citing R. Eliezer of Metz) notes that the policy of treating an apostate as a non-Jew is limited only to the issue of lending money at interest (and perhaps to returning his lost object as well), where the Torah specifically associates this precept (and its prohibitions) with one's brother (שהרי לגבי רביית אחוה כתיב ביה). When it comes to matters of marriage

<sup>35</sup> There is one version of a passage in which R. Baruch (ר"ב) is cited as allowing interest to be taken from apostates in practice, but a different (Hebrew) initial (ר"צ) appears in older (and ostensibly more accurate) textual witnesses; see Emanuel, *Shivrey luhot*, 108, n. 25. An earlier version of the present study was given at a video-broadcast session (in Hebrew) at the Fifteenth World Congress of Jewish Studies at the Hebrew University of Jerusalem (entitled "Nashim, mumarim, vahakhamim be-'Ashkenaz u-be-Tzarefat bi-Yemey ha-Beynayim," <http://www.youtube.com/watch?v=DPD3nGFqSAA>, accessed February 20, 2011), for which David Berger served as chair and respondent. In his response, Berger noted that the position of R. Baruch of Mainz (and others, as we shall see below) regarding money lending (and especially the consideration of *mi hittir lo* that led to the application of *lifney 'ivver*) serves to confirm the psychological or emotional factor and concern that he had added (see above, n. 31) to those suggested by Jacob Katz, as to why medieval Jews wished to consider an apostate as Jewish: "Jews wanted to see the sins of apostates as sins... as long as they remain Jews, every desecration of the Sabbath, every taste of forbidden food increases the hellfire prepared for them." Berger also noted that the formulation of R. Isaiah di Trani, below, n. 53, clearly supports this conceptualization as well.

and divorce, however, R. Moses of Couçy and R. Eliezer of Metz both assert that the apostate's actions are considered to be effective (והא דאמרין בסנהדרין אף על פי שחטא ישראל הוא, דוקא לענין דברים דלא כתיב בהו אחוה כגון לענין קידושין וגיטין כדאיתא ביבמות... חושן-שין לקידושין), which was also the view of Rabbenu Tam. Indeed, there does not appear to have been a single northern French Tosafist who was prepared to consider the apostate as a non-Jew (or less than a full Jew) in these areas, including the need for *halitzah*.<sup>36</sup>

<sup>36</sup> See *Sefer mitzvat gadol* (Venice, 1547), fol. 207b, Positive Commandment no. 162 (the precept of giving charity); MS Parma (de Rossi) 93, fols. 227d–e; MS Paris BN Heb. 370, fols. 405d–406a; MS British Museum 506, fols. 188b–c; and cf. MS Paris BN Heb. 374, fols. 283a–b. See also *Teshuvot Maimuniyyot le-Sefer mishpatim*, #36; *Sefer yere'im ha-shalem* (Vilna, 1892–1902; repr. Jerusalem, 1973), fols. 73b–74a, at the end of sec. 156 (lending to a poor person, and see also MS Bodl. 678, fols. 114d–115a, cited in Emanuel, “Teshuvot ha-Ge'onim ha-ketzarot,” 448, n. 43, and above, n. 32); and *Sefer ha-yashar le-Rabbenu Tam (Helek ha-hiddushim)*, ed. S. Schlesinger (Jerusalem, 1959), 434, sec. 743. See also *Semag*, Positive Commandment no. 48, fol. 125c: ישראל משומד שקידוש, אף על פי שעבד עבודה זרה מרצונו, הרי אלו קידושין גמורין כדאיתא במגילת ר. Samuel b. Solomon of Falaise's position is also recorded in his name in the summary of the *Semag* passage contained in *Kitzur Sefer mitzvat gadol le-R. Avraham b. Efrayim*, ed. Y. Horowitz (Jerusalem, 2005), 13, and in a number of *Sefer Mordekhai* manuscripts (to Tractate *b. 'Avodah zarah*), e.g., MS Budapest 2<sup>a</sup>1, fol. 229a; MS Parma 929, fol. 216v; MS Vienna 72, fol. 181c; MS Vatican 141, fol. 125f; and MS Vercelli C235, fol. 117a). However, in (the standard) *Sefer Mordekhai 'al massekhet 'Avodah zarah*, sec. 814, this position appears in the name of Eliezer b. Solomon. R. Eliezer b. Solomon posed a question to Rabbenu Tam that is recorded in *Sefer ha-yashar* (see Urbach, *Ba'aley ha-Tosafot*, 1:61–62), and he authored two *selihot*, for Rosh Hashanah and the Ten Days of Repentance (see *Mahazor Vitry*, ed. S. Hurwitz [Jerusalem, 1938], 566; Leopold Zunz, *Literaturgeschichte der synagogalen poesie* [Berlin, 1865], 293–294; and *Seder ha-selihat [Minhag Lita']*, ed. D. Goldschmidt, 226–228 [Jerusalem, 1965], sec. 84). *Haggahot Mordekhai to Yevamot*, sec. 107, attributes this position to a R. Samson (which possibly connotes R. Samson b. Joseph of Falaise, Rabbenu Tam's brother-in-law [see Urbach, *Ba'aley ha-Tosafot*, 1:61, 118]). Although it is possible that the view which *Semag* associates with R. Samuel of Falaise (with whom R. Moses of Couçy was in direct contact; see Urbach, *Ba'aley ha-Tosafot*, 1:461, 465) was expressed in northern France already in prior generations, the more likely possibility is that R. Samuel of Falaise's name became transposed or otherwise garbled in some of these texts. Cf. *Kitzur Semag*, ed. Horowitz, 88, 235; and *Tosafot ha-shalem*, ed. J. Gellis, vol. 2 (Jerusalem, 1985), 192 (secs. 8–9). At the end of *Haggahot Mordekhai*, sec. 107 (which establishes, on the basis of the views of R. Baruch of Mainz and R. Isaac 'Or Zarua' [see above, n. 28, and below, nn. 49–50]), that an apostate is not required to do *halitzah* since no *zikh* is formed, מכל אלה היה, ר' שמואל הכותב (perhaps the compiler (perhaps the compiler (perhaps the compiler) cf. above, n. 8, and Emanuel, *Shivrey luhot*, 318, n. 48) maintains that R. Moses of Couçy nonetheless requires an apostate to perform *halitzah*, since there is a *zikh*: ולי הדיוס הכותב נ"ל דסמ"ג ס"ל דמומר זוקק שהרי במצות לגרש כתב וז"ל: מי שיש לו אח מ"מ אפילו ממזר ואפילו עובד כוכבים עכ"ל. The passage to which the compiler refers is found in *Semag*, Positive Commandment no. 51, fol. 105d, and cf. *b. Yevamot* 22a (in the Mishnah). The compiler also refers the reader to his commentary

A responsum by Ri of Dampierre, cited in his name in several texts (and implicitly reflected in a number of others), allows a Jew to lend money to an apostate at interest (as Rabbenu Tam and R. Eliezer of Metz did), since there is no requirement for a Jew to support or aid an apostate (based on a passage in *b. 'Avodah zarah* 26a–b, and supported by the Yerushalmi passage about the Cutheans noted above). Ri adds, however, that the precept of *lifney 'ivver* prohibits a Jew from borrowing from an apostate at interest, since the apostate is being thrust into the situation of violating the prohibition of lending at interest.<sup>37</sup> Although this last part of Ri's approach is consonant with that of R. Baruch of Mainz (and Ri was also among those Tosafists who recognized that a returning apostate must undergo immersion),<sup>38</sup> Ri nowhere departs from the essential French position that an apostate was to be treated as a Jew with respect to all marital matters (including *halitzah*). Indeed, even R. Samuel of Falaise, who appears to have been in complete agreement with the position of R. Baruch of Mainz regarding moneylending (that *lifney 'ivver* proscribes both lending

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at the end of *Bava' kamma*; cf. MS Halle-Universitaetsbibliothek Yb Fol. 7. See also *Teshuvot Mahari Mintz* (above, n. 28), no. 12, fols. 47a–48a, citing a passage by a R. Tuvyah which seems to suggest that for *Semag*, no *zikah* with an apostate is created (and *Semag*'s view is also linked there to that of R. Baruch of Mainz). Although this name might well refer to the Tosafist colleague of R. Moses of Coucy (and teacher of R. Abraham b. Ephraim), R. Tuviah b. Elijah of Vienne, to this point I have not been able to locate this assessment of *Semag* (or its attribution to R. Tuvyah) in any other source. Cf. Kahn, "R. Mordekhai b. Hillel ha-'Ashkenazi," 69; and below, n. 52.

<sup>37</sup> Ri's responsum is (partially) reproduced (based on MS Berlin [Staatsbibliothek, Or. Phillip] 1392, fols. 188v–190v) in Urbach, *Ba'aley ha-Tosafot*, 1:242–243, and several other texts that cite this responsum in the name of Ri (or his position, anonymously, including *Tosafot 'Avodah zarah* 26b, s.v. *va-'ani*) are listed by Urbach in n. 56\*. [The reference there to *Shibbolei ha-leket* should be updated to *Shibbolei ha-leket—ha-helek ha-sheni*, ed. S. Hasida (Jerusalem, 1988), 186–190 (sec. 46).] See also *Tosafot ha-Rosh le-'Avodah zarah*, loc. cit., s.v. *le-kol*; *Hiddushey talmidey Rabbenu Yonah 'al massekhet 'Avodah zarah*, ed. H. Zarkowski (Brooklyn, 1955), 37 (which attributes the Yerushalmi passage to R. Elhanan b. ha-Ri); *Hiddushey ha-Ramban 'al massekhet Bava' metzi'a*, ed. M. Hershler et al. (Jerusalem, 2002), 401–404 (*Bava' metzi'a* 71b); *Piskey ha-Rosh, Bava' metzi'a* 5:55; and *Sefer ha-Mordekhai 'al massekhet Bava' metzi'a*, sec. 335 (= MS Vercelli C235, fol. 46a, and MS Parma 929, fol. 146r); and cf. Goldin, *Ha-yihud ve-ha-yahad*, 91–92.

<sup>38</sup> See MS Vercelli C235, fol. 291v: [א] שכל זמן שאיני [ב] לך לא צריך ג' טובל ומקבל עליו דברי חכמים הוא מוחזק כגוי [אוסר יין במגעו]. לך לא צריך ג' לקבל לפנייהם דבקל יש לנו לדעת ששב אל בוראו כיון שנוהג עצמו כדת יהודי [ת]. See also *Tosafot Bekhorot* 31a, s.v. *ve-kullan she-hazeru*; *Tosafot Shantz 'al massekhet Bekhorot*, ed. Y. D. Ilan (Bnei Brak, 1997), 61–62; *Shittat ha-Kadmonim 'al massekhet 'Avodah zarah*, ed. M. J. Blau (New York, 1969), 45 (*'Avodah zarah* 7a); and cf. *Tosafot 'Avodah zarah* 64b, s.v. *'eyn*.

to and borrowing from an apostate at interest) does not extend or link this issue to any other areas of Jewish law. He employs this concept only to undercut the economic allowance (to lend to an apostate at interest) that Rabbenu Tam had been the first to formulate in northern France.<sup>39</sup>

Even more than the issue of moneylending (which remained prohibited on the practical level), the precept of *halitzah* provided R. Baruch of Mainz with an opportunity to distinguish between the status of the apostate in the eyes of others (where R. Baruch clearly disagreed with the position of Rashi), and the apostate's status from his own perspective (for which the notion of *'af 'al pi she-hata', Yisra'el hu'* remained operative). An apostate was not eligible to perform *halitzah* since he was to be viewed as a non-Jew by the members of the community; his personal status (as a Jew) was not relevant here. This would seem to be the view of R. Abraham of Regensburg as well, who also distinguished

<sup>39</sup> R. Samuel of Falaise is cited in *Semaq* only with respect to lending to an apostate, since that was the specific matter under discussion. It is clear, however, from the view of Ri, that if lending to an apostate at interest is prohibited because of *lifney 'ivver*, borrowing from him at interest is surely prohibited. The teachers of R. Samuel of Falaise, R. Judah Sir Leon, R. Solomon of Dreux and R. Baruch b. Isaac of Worms, were all students of Ri, and it is possible that R. Samuel simply intended to extend Ri's view along similar lines. In any case, it is unlikely that R. Samuel of Falaise derived his view from R. Baruch of Mainz, since the period between approximately 1175 and 1215 (corresponding roughly to the later days of Ri and his students) has recently been shown to be one in which the major Tosafist centers in Germany and northern France were largely cut off from one another. Thus, while R. Baruch of Mainz was aware of the view of his teacher, R. Eliezer of Metz (which followed that of Rabbenu Tam), as well as the prevalent practice in northern France that allowed money lending with an apostate in both directions (and he could also have been aware of Rabbenu Tam's view through Rabbenu Tam's student, R. Moses ha-Kohen of Mainz; see Emanuel, *Shivrey luhot*, 108), he seems to have been unaware of the more limiting view held by Ri (and his use of *lifney 'ivver*), precisely because of the relative lack of contact between northern France and Germany just described. (It has been suggested that R. Moses ha-Kohen of Mainz also studied with Ri, but there is no evidence for this; see S. Emanuel, "'Ve-'ish 'al mekomo mevo'ar shemo'—le-toledotav shel R. Baruch b. Yitzhak," *Tarbiz* 69 [2000]: 433, n. 44.) On the extent of (and the minor exceptions to) the so-called *tekufat ha-netek* in Ashkenaz, see, e.g., Haym Soloveitchik, *Halakhah, kalkalah, ve-dimmuy 'atzmi* (Jerusalem, 1985), 97–98; Ya'akov Sussmann, "Mif'alo ha-madda'i shel Prof. Ephraim Elimelekh Urbach," *Madda'ey ha-Yahadut: Musaf* 1 (Jerusalem, 1993): 39 (n. 63), 48–54; my "Religious Leadership during the Tosafist Period," 295–305; Emanuel, "'Ve-'ish 'al mekomo mevo'ar shemo,'" 438, and n. 68, and cf. idem, *Shivrey luhot*, 134, n. 138; Rami Reiner, "Rabbenu Tam u-beney doro: Kesharim, hashpa'ot, ve-darkhey limmudo ba-Talmud," (Ph.D. diss., The Hebrew University of Jerusalem, 2002), 60–68; and idem, "From Rabbenu Tam to R. Isaac of Vienna: The Hegemony of the French Talmudic Schools in the Twelfth Century," in *The Jews of Europe in the Middle Ages*, ed. C. Cluse (Turnhout, 2004), 273–282.

between the effectiveness of the *get* and the *kiddushin* of an apostate, and his inability to perform *halitzah*. For these German Tosafists, the diminished religious status of an apostate extended, in an important way, beyond the economic realm alone (which was the limit for the Tosafists of northern France).<sup>40</sup>

#### IV

We are now prepared to discuss the (lengthy) passage in R. Isaac b. Moses of Vienna's *Sefer 'or zarua'* regarding an apostate and *halitzah* in greater detail. As noted, the passage begins with extensive citations from several geonic texts, including a passage from the work entitled *Sefer basar 'al gabbey gehalim* (which contains material from the geonic period that is cited only by subsequent Ashkenazic authorities, and also includes a smattering of Ashkenazic material from the eleventh century).<sup>41</sup> The conclusion of this portion of R. Isaac b. Moses'

<sup>40</sup> R. Simhah of Speyer appears to subscribe to the more diminished status as well; see above. Ravyah's overall approach is more difficult to gauge, but it also tended toward stringency. An unusually strict regimen for a returning apostate is attributed to Ravyah ('*Avi ha-'ezri*') in R. Moses of Zurich's *Semak mi-Zurich*, ed. Y. Har-Shoshanim, vol. 2 (Jerusalem, 1977), 49 (*mitzvah* 156). (See also MS Paris BN 381, fol. 46v [sec. 152]; MS Bodl. 879, fol. 95v [sec. 157]; MS Parma 172, fol. 73r; MS Moscow 187, fol. 59v; Goldin, *Ha-yihud ve-ha-yahad*, 94–95; and my "Halakhah and Metz'ut [Realia] in Medieval Ashkenaz: Surveying the Parameters and Defining the Limits," *Jewish Law Annual* 14 [2003]: 211–216.) This regimen required the returning apostate to shave and immerse himself as a convert does (lit. *ka-ger*), and to (re-)accept Judaism before three people (although the immersion did not have to take place during the day). On the other hand, Ravyah states in his *Sefer Ravyah* (sec. 151, and see also *Sefer Mordekhai al massekhet-'Avodah zarah*, sec. 814) that permitting interest to be taken from an apostate (in accordance with the view of his teacher, R. Eliezer of Metz, who is not cited) is different (and a lesser and more prudent step) than declaring an apostate's *get* to be ineffective (as some wished to do; see above, n. 23): דבממונו ראי לקונסו. The end of *Sefer Mordekhai li-Yevamot*, sec. 39, notes that Ravyah ruled (in his *Sefer Avi'asaf*) that the child of a female apostate (and a gentile) is to be treated as a full Jew, with respect to both the effectiveness of his *kiddushin*, and the prohibition for a Jew to lend him money at interest. On this passage, see also R. Joel Sirkes, *Bayit hadash* to '*Arba'ah turim, Yoreh de'ah*, sec. 159, s.v. *meshummad she-kafar* (end). See also below regarding inheritance. As far as I can tell, however, there is no direct discussion by either R. Simhah or Ravyah concerning an apostate and *halitzah*.

<sup>41</sup> See Y. N. Epstein, *Mehkarim be-sifrut ha-Talmud u-bi-leshonot Shemiyot*, vol. 1 (Jerusalem, 1984), 274–277; Ta-Shma, *Keneset mehkarim*, vol. 4 (Jerusalem, 2010), 213, n. 3; and cf. Avraham Grossman, *Hakhmey 'Ashkenaz ha-rishonim*, 254–257. *She'elot u-teshuvot* R. 'Eliyyahu Mizrahi links R. Baruch of Mainz to the passage from *Sefer basar 'al gabbey gehalim*, but this appears to be a conflation of the material in *Sefer 'or zarua'*.

presentation is that in a situation where the brother became an apostate prior to the marriage of his brother, no *halitzah* is required. R. Isaac asserts that even though the various geonic texts did not adduce explicit proofs from talmudic *sugyot* to support their position, he is prepared to accept it, and he suggests a rabbinic proof of his own for this approach.<sup>42</sup>

On the basis of geonic material that he had cited, R. Isaac then adds that if the brother had been an apostate at the time of his brother's wedding, but subsequently repented and remained in this state of repentance until the time that his brother died, a *zakah* with the wife of the deceased is created (which, in theory, can lead to either *halitzah* or *yibbum*), even though he had been an apostate at the time of the marriage itself. R. Isaac supports his addendum with the *sugya*' in *b. Yevamot* noted above (30b), in which Rava and Rav Ashi maintained that the death of the brother is what creates the *zakah* (*mitah mappolet*), rather than the marriage. Rabbenu Hanan'el had decided in favor of the view of Rava and Rav Ashi. Since the brother who had repented remained in this state at the time of his brother's death, the death creates an appropriate *zakah* between the widow and the (now)

<sup>42</sup> *Sefer 'or zarua'*, *Hilkhot yibbum ve-kiddushin*, sec. 605 (above, n. 13), ed. Machon Yerushalayim, 1:494b–496a: כתוב בתשובות הגאונים, שומרת יבם שנפלה לפני משומד... והכי אמר רב נחשון גאון בר ישראל דקדיש לא משתריא לעלמא עד דחליץ לה... והכי אמר רב נחשון גאון בר ישראל דקדיש אשה והוה ליה אח משומד בשעת קידושין ומת ההוא בר ישראל בלא בניס, אשתו פטורה מן החליצה ומן היבום כיון דקדים שמדותיה דאח לקידושין... משום דנישואין הראשונים מפילים את האשה לפני יבם... וכן מצאתי בספר בשר על גבי גחלים... ולא משתריא [האשה] לעלמא עד שחלצה מן ההוא יבם משומד... אבל [אם] כד נסבה בעל ההוא יבם היה משומד קודם לכן לא צריכה חליצה מיניה, עכ"ל. עוד מצאתי תשובת רבותינו... יבמה שנפלה לפני יבם משומד זקוקה ליבם... דאמרין נישואים הראשונים מפילים. אבל ודאי כי נסבה בעל, ההוא יבם משומד הוה קודם לכן, לא צריכה חליצה. זו היא התשובה שמצאנו בה מן הגאונים אע"ג שלא הרבו בראיות, ידענו שתשובתם נכונה והגונה וכדי הם לסמוך עליהם... וכן אם מקדש בן ישראל אשה ויש לו אח ישראל ונש-תמד, כיון דבשעת קידושין הוה ליה ישראל, אמרין דזקוקה ליה דכל המקדש אדעתא דהכי מקדש... ולהכי אמר נישואים הראשונים מפילים. אבל אם בשעת קידושין אותו יבם משומד היה, מי איכא למימר אדעתא דרבנן מקדש וקיימי רבנן ומתקני מילתא דאית בה לידי תקלה. ותורה שכתבה כי ישבו אחים יחדיו ומת אחד מהם וגו' יבמה יבא עליה, מי קאמ' אפי הוא משומד יבא אליה והא כתיב דרכיה דרכי נועם. אלא מקיש ישיבת אחים להדדי, ומה אם מת אחד מהם ביהדות, אף יבמה יבא עליה ביה-דות... ואם נפש אדם לומר הרי כבר שנינו [יבמות כב ע"א] מי שיש לו אח מכל מקום זוקק את אשת אחיו לכל דבר... לא במשומד קמיירי... דאיכא אח משומד זוקק אשת אחיו ליבום, כדמפרשי רבנן דמתיתבא, דקדשה אחיו כשהוא אכתי ישראל... ואיכא אח משומד דאינו זוקק אשת אחיו ליבום כי נשתמד מקמי נישואין דאח... ולתקנת עגונות חיישינן... ואע"פ שלא הוצרכנו לטהודי על תשובת הגאונים שכדאי הוא לסמוך עליהם, כתבנו לידידינו לפי מיעוט דעתנו סמך וראיה Cf. above, n. 36.



R. Isaac b. Moses does not mention the parallel view of his older contemporary, R. Baruch of Mainz. This omission is also not surprising, however, in light of the fact that R. Isaac cites R. Baruch only on a handful of occasions (apparently because he did not study directly with R. Baruch).<sup>47</sup> Nonetheless, the approaches of R. Baruch of Mainz and R. Isaac 'Or Zarua' constitute a (new and) purposeful trend in German halakhic literature, to rule in accordance with Rabbenu Hanan'el (and the position of Rava and Rav Ashi) regarding the point at which the *zikhah* is established, in order to completely remove an apostate from the performance of *halitzah*. The broader implications of this ruling are also detected in the particular phrasing employed in *Sefer 'or zarua'*, especially when he declares, at the very end of the passage, that the apostate was "not a Jew" at the time of his brother's death.

R. Isaac 'Or Zarua''s son, R. Hayyim, relates to his father's discussion of *halitzah* and an apostate in two places. In his abridgement of his father's *Sefer 'or zarua'*,<sup>48</sup> R. Hayyim reduces the lengthy passage described above to only a few lines:

R. Nahshon Gaon, *Sefer basar 'al gabbey gehalim*, and the responsa of our rabbis (*teshuvot rabbotenu*) rule that a [potential] *yavam* who is an apostate at the time of his brother's marriage [and is still in this state when his brother dies] does not form a *zikhah* with his brother's wife, and she is allowed to marry anyone else (*mutteret la-shuk*) without *halitzah*. And if he repents after his brother dies, we do not pay attention to this. According to the commentary of Rabbenu Hanan'el, however, even if he had been a proper Jew (*Yehudi kasher*) at the time of his brother's wedding, if he was an apostate when his brother died, he does not perform either *halitzah* or *yibbum*.<sup>49</sup>

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שריא וחולצת או מתיבמת ואע"ג דבשעת נישואי אחיו לא חזיא ליה... וכן מסתבר דהא קי"ל כרבא פ"ק [דף יג ע"א]... דקסבר מיתה מפלת. ובפ' ד' אחין [דף ל ע"ב] כתב בפר"ח דקי"ל כרבא ורב אשי. הלכך הואיל וקי"ל מיתה מפלת אע"ג דלא איחזיא ליה בשעת נישואין הואיל ואיחזיא ליה בשעת מיתה אחיו או חולצת או מתיבמת.

<sup>47</sup> See Emanuel, *Shivrey luhot*, 141.

<sup>48</sup> See above, n. 12.

<sup>49</sup> See *Sefer 'or zarua'*, ed. Machon Yerushalayim, 1:494b, in the margin [= *Piskey 'or zarua' le-Rabbenu Hayyim b. Yitzhak mi-Vienna*, ed. M. J. Blau, 1:117, sec. 18]: רב נחשון גאון וספר בשר על גבי גחלים ותשובות רבותינו פוסקי' דיבם שהיה משומד בשעת קידושי אחיו ועדיין כשמת אחיו הוא עומד בשמדותו, אינו זוקק את אשת אחיו ליבום ופטורה לשוק בלא חליצה, ואפי' חזר לאחר מיתה אחיו לא אשגחין ביה. ולפר"ח, אפי' היה יהודי בשעת נישואי אחיו, אם היה משומד בשעת אחיו אינו חולץ ולא מייבם. See also MS Vatican 148, fol. 138v; MS British Museum 249, fol. 114r-v; and MS Bodl. 881, fol. 153c.



R. Hayyim understood from his father's presentation that the ruling of Rabbenu Hanan'el was highly significant and useful, even though R. Isaac had expended a great deal of effort (and space) in presenting and discussing the geonic view. Thus, in R. Hayyim's abridgement, the position of Rabbenu Hanan'el is treated as equal (in terms of the space devoted to it and its importance) to the ruling of the Geonim, which exempted the apostate from *halitzah* only in a more limited way. Indeed, in one version of his 'or zarua' *katzar*, R. Hayyim (representing his father's approach) rules explicitly in accordance with Rabbenu Hanan'el.<sup>50</sup>

As recorded in one of his responsa, R. Hayyim was asked to further clarify his father's stance in this matter. Did R. Isaac 'Or Zarua' rule in this matter like "the view of our northern French teachers" who, following the approach of Rashi, required the apostate to perform *halitzah* in all situations, or did R. Isaac agree with those who were "lenient (*ke-divrey ha-mattirim*)," that the apostate did not have to do *halitzah*?<sup>51</sup> (R. Hayyim's rabbinic questioner admits that he found the lenient view difficult to understand.) The precise identity of these lenient ones is not mentioned in R. Hayyim's response, although it is likely that this term refers to those who supported the geonic position. Based on what we have seen, however, it is also possible that this term refers to those rabbinic scholars in Germany (such as R. Abraham and Regensburg and R. Baruch of Mainz), who exempted the apostates from performing *halitzah* in all instances, in full opposition to the approach taken in northern France.

In clarifying his father's position (which certainly sided with the more lenient approach overall in terms of *halitzah*), R. Hayyim mentions the

<sup>50</sup> See *Haggahot Mordekhai 'al massekhet Yevamot*, sec. 107 (where R. Hayyim's work is referred to as "אז"ק: או"ז עכ"ל כרבינו חננאל עכ"ל וקיי"ל"); MS Bodl. 650, fol. 253r; and *Teshuvot Mahari Mintz* no. 12 (above, n. 28). R. Judah Minz concludes that R. Isaac 'Or Zarua' fully supported the position of Rabbenu Hanan'el over the geonic view, because he refers to it already in his discussion of the case of an apostate who repented before his brother died.

<sup>51</sup> See *Teshuvot Maharah 'or Zarua'*, no. 114, ed. M. Abittan (Jerusalem, 2002), 105a: "על דבר הזקוקה למשומד שנשתמד בשעה שנתקדשה כדברי רבותינו הצרפ" תים... אם הכריע מוריניו רבינו אביך בספרו כדברי המתירים אם לא כי טעמם לא היבנו. וטעם האוסרים מבורר דמשומד ישראל מקרי כמו שכתב רש"י בתשובה." Note that R. Hayyim lived in various locales in Germany and Austria (and points east), including Wiener-Neustadt, Prague, Regensburg, Mainz, and perhaps Cologne. Suggestions that he resided for a time in France, however, cannot be substantiated. See Goldstein, "Rabbi Hayyim Eliezer ben Isaac Or Zarua" 23–26.

ruling found in *Sefer mitzvot gadol* in the name of R. Eliezer of Metz (noted above), that it is permitted to lend money to an apostate as long as he has not recanted, since he is not “your brother.” R. Hayyim continues by noting that “as such, with regard to *yibbum* as well, the apostate is to be uninvolved because there, too, the Torah makes [specific] reference to brothers [in Deut 25:5, “When brothers dwell together and one of them dies and she has no child... her *yavam* shall perform levirate marriage].” Although R. Hayyim goes on to note that the connotation of the word “brother(s)” is not the same in both of these contexts in the Torah, he nonetheless links them in order to explain his father’s position as part of a unified, larger approach.<sup>52</sup>

It is also possible to detect a reference to the lenient group of German rabbinic decisors with regard to an apostate and *halitzah* in a responsum sent by R. Isaiah b. Mali [= Emanuel] di Trani (Rid; d. ca. 1240) to R. Isaac ‘*Or Zarua*’. In this responsum, Rid implores R. Isaac (וחלילה הזוה וחלילה הוא לך וחולין הוא לך מעשות כדבר הזה), on the basis of a number of halakhic sources, not to side with those who ruled that a *yevamah* who had fallen before an apostate does not require *halitzah*.

For an apostate (*meshummad*) is akin to a full Jew (*ke-Yisra’el gamur hu*), whether to marry or to divorce, whether to exempt from *yibbum* or whether to require it. It is not reasonable to revoke his holiness [as a Jew] from him so that he becomes like a complete non-Jew. Rather, he is to be called a wicked Jew, whose marriage is binding and whose *get* and *halitzah* are effective, as they are for all Jews, and he creates a *zikah* with the *yevamah* and must discharge it.

*Inter alia*, Rid chides R. Isaac for being swayed by geonic views that appear to be against talmudic ones. Indeed, Rid concludes his plea: “Do not become one of the lenient, who permits a Torah prohibi-

<sup>52</sup> See *Teshuvot Maharash 'Or Zarua*, no. 116, ed. Abittan, 106–107b: ועל דבר הזקוקה למשומד כתב רבינו אבא מארי בשם הגאונים דכל היכא דנשתמד קודם נישואי אחיו המת שאינה זקוקה לו ולא בעיא חליצה מיניה, דנישואין הראשונים מפילים וההיא שעתא לאו אחיו הוא. ואתה כתבת כי טעם האוסרים מבורר דמשומד ישראל מקרי ולא היא, שכך כתב בספר המצות [סמ"ג] אומר רבינו אליעזר ממיץ... משומד להכעיס מותר להלוותו ברבית שהרי גם ברבית כתיב כי ימוך אחיך וגומ' אל תקח מאתו נשך ותרבית. והא דאמר בסנהדרין חטא ישראל, אף על פי שחטא ישראל הוא, דוקא לענין דברים דלא כתיב בהו אחוה כגון לענין קידושין וגיטין... עכ"ל. ומעתה, גם לענין ייבום לא תיזקק למשומד דאחים כתיבי והא לאו אחיו הוא. ואעפ"י שאין כל כך ראייה כאן, כי דוקא בשאין הפסוק מדבר באחוה ממש אלא שקורהו אחיו מחמת שאחיו הוא במצות שייך לומר כן, אך כשמדבר באחוה ממש כמו גבי ייבום, אין למעט משומד... מטעם דלאו אחיו מקרי... See *Terumat ha-deshen*, sec. 219, and Blidstein, “Who is not a Jew?”, 380–381, n. 42.

tion with impunity (אל תהיה מן המקיליו ומן המתירים איסור תורה) (ב"ד רמה), and without any proof from the Talmud.<sup>53</sup> Rid penned an additional responsum in this matter (in defense of some of his earlier remarks), in which he asserts axiomatically that “even though an apostate had done evil and blasphemed and given himself to idolatry, he cannot be stripped of his *kedushat Yisra'el*.”<sup>54</sup>

Rid was aware of Tosafist materials from both northern France and Germany, since he studied in Speyer in the late twelfth century with R. Isaac 'Or Zarua's teacher, R. Simhah b. Samuel, where he was also exposed to the teachings of a number of German rabbinic figures who had studied with Rabbenu Tam. Moreover, even after he returned to Italy, Rid remained in written contact with both R. Simhah and with R. Isaac 'Or Zarua,<sup>55</sup> although it is not possible to date this particular exchange between R. Isaiah and R. Isaac with any precision. Nonetheless, Rid's plaint to R. Isaac that he should not place himself among the lenient ones in this matter suggests that there was in fact a group of contemporary rabbinic authorities who had adopted a markedly more lenient approach to apostasy and the need for *halitzah* than had Rashi (and his successors) in northern France.<sup>56</sup>

<sup>53</sup> See *Teshuvot ha-Rid le-Rabbenu Yesha'yah di Trani ha-Zaken*, ed. A. Y. Wertheimer (Jerusalem, 1975), 326, no. 64: חלילה חלילה לך וחולין הוא לך מעשות כדבר הזה... ולא תהיה משכלה הזאת תחת ידך, כי המשומד כישראל גמור הוא חשוב לכל דבר איסור בין לקדש בין לגרש בין לפטור מן הייבום בין לזקוק לייבום, דלא כל ימנו להפקיע עצמו מן הקדושה ולהיות כגוי גמור אלא ישראל רשע מקרי וקידושיו קידושין וגטו גט וחליצתו חליצה ככל בר ישראל זוקק ופוטור... והיאך נניח דברי התלמוד ונתפוש דברי הגאונים... ואני ראיתי בדבריך שגם כבודך מגמגם על דבריהם ממאי דאמרי' בפרק שני דיבמות [דף כב ע"א] דכל הפוטור זוקק והמשומד פוטור דישאל רשע הוא וקידושיו קידושין... אלא ודאי הדברים מחוורים כשמלה שבין זה ובין זה זוקק, שכיון שאם קידש קידושיו וקידושין, הרי הוא כבר ישראל גמור לכל דבריו ופוטור מן הייבום וזוקק לייבום... בבקשה ממך אל תהיה מן המקילין ומתירין איסור תורה ביד... רמה בלי שום ראייה מן התלמוד... Although Rid may have been referring specifically to the geonic presentation itself (which was short on talmudic prooftexts; see above), he generally decided all matters of Jewish law based on the strength of the talmudic proofs available. See my “Progress and Tradition in Medieval Ashkenaz,” *Jewish History* 14 (2001): 287–291, 303–305.

<sup>54</sup> *Teshuvot ha-Rid le-Rabbenu Yesha'yah*, 486, no. 99: יפה למדנו מכל זה השיטה שישראל משומד אע"פ שהרשיע וכפר והפקיר עצמו לע"ז, לא כל הימנו להפקיע קדושת ישראל מעליו.

<sup>55</sup> See Ta-Shma, *Keneset mehkarim*, vol. 3 (Jerusalem, 2005), 20–25, 40–43; Emanuel, *Shivrey luhot*, 154–155, 164–165; and *Perushey Nevi'im u-Ketuvim le-Rabbenu Yesha'yah ha-rishon mi-Trani*, ed. A. Y. Wertheimer, vol. 1 (Jerusalem, 1959), editor's introduction, 54–55.

<sup>56</sup> Interestingly, however, Rid writes that it was Rabbenu Tam (rather than Rashi) who prohibited the lending of money at interest to an apostate (*Teshuvot ha-Rid*, ed. Wertheimer, 330, although see n. 32 for the editor's suggestion that the text of the

Although there were a number of leading German rabbinic figures who continued to follow Rashi's approach regarding *halitzah* (including R. Meir of Rothenburg, who spent many of his student years in northern France, studying with Tosafists such as R. Samuel of Falaise, R. Ezra of Moncontour, R. Jehiel of Paris, and R. Samuel of Evreux),<sup>57</sup> the group of German Tosafists from the late twelfth and early thirteenth centuries that we have identified with regard to *halitzah* and other matters (R. Abraham of Regensburg, R. Baruch of Mainz, R. Simhah of Speyer, and R. Isaac 'Or Zarua') considered the notion of 'af'al pi she-hata', *Yisra'el hu'* to be only partially effective. The apostate was still considered to be a Jew for himself, but his Jewish status vis-à-vis other Jews (and the larger Jewish community) was significantly weakened or compromised. These policy changes are evident not only in the broader halakhic formulations that these German Tosafists put forward, but also in the specific formulations, terminology and extensions of the reasoning that they employed.<sup>58</sup>

## V

The question remains: How should one understand this development within German halakhic thought? It is possible to chart these positions in narrow halakhic terms, although such an approach, to my mind, misses a significant moment in the history of Halakhah regarding the

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responsum here should be emended from *רבינו שלמה* to *רבינו תם*, and he cites the position that a returning apostate does not require ritual immersion in the name of unspecified Geonim (ibid., 329) rather than from Ashkenazic sources. Indeed, Rid does not mention the names of any (other) German Tosafists in his presentation to R. Isaac of Vienna. He does take brief notice of the view of Rava (against that of R. Nahshon Gaon) that *mitah mappolet* (ibid., 331), although he uses it only to highlight the inconsistency (noted already by Rashi) within the geonic view. On Rid's fealty to Rashi's larger position, see below, n. 61.

<sup>57</sup> See Urbach, *Ba'aley ha-Tosafot*, 2:527–528.

<sup>58</sup> See also Ravyah's formulation in *Sefer 'or zarua'*, *piskey Bava' batra'*, sec. 103, ed. Machon Yerushalayim, vol. 3, fol. 437b, concerning the inability (in practice) of an apostate to inherit: *וכן כתב מורי ר' אליעזר בן יואל הלוי שכמו שהוא מוריש לבניו, כך יורש את אביו, דאף על פי שחטא ישראל הוא. אך יש כח ביד חכמים להפקיר ממונו, דהפקר בית דין הפקר כדאמר ר'... יהבינן לה קנס... אף על פי שיש לחלק בין קנס לירושה מיהו בכל ענין ראוי לקונסו דהבא על הכותית קנסוהו כדאיתא פרק שור שנגח ובירושלמי פ"ב דע"ז גרסינן להלין כותאי דקסרי, מותר להלוותן ברבית מפני שקלקלו מעשיהם. Cf. *Sefer 'or zarua'*, secs. 102, 104–105; *Teshuvot R. Natrona'i b. Hilla'i Ga'on*, ed. R. Brody (Jerusalem, 1994), 2:544–547; Blidstein, "Who is not a Jew?," 382–384; Goldin, *Ha-yihud ve-ha-yahad*, 93; and Edward Fram, "Perception and Reception of Repentant Apostates in Medieval Ashkenaz and Pre-modern Poland," *Association for Jewish Studies Review* 21, no. 2 (1996): 300, n. 5.*

status of apostates in Ashkenazic society during the High Middle Ages. Included among the German Tosafists and halakhists in the late twelfth and early thirteenth centuries who required or supported immersion for a reverting apostate (as noted above) are Ravyah, R. Simhah of Speyer, and R. Eleazar of Worms, all of whom were teachers of R. Isaac 'Or Zarua' (and contemporaries of R. Abraham of Regensburg and R. Baruch of Mainz). This suggests that the group of German Tosafists involved with the issue of *halitzah* arrived at their (new) policy on the basis of larger halakhic and social considerations. Just as Rashi's initial use of and support for the principle of 'af 'al pi she-hata', *Yisra'el hu'*, according to Jacob Katz, was undertaken (at least in part) in response to the increased number of conversions of Jews in the Rhineland and elsewhere, these German Tosafists may have adjusted their halakhic positions in light of contemporary events, as a means of strengthening their communities and protecting them from further damage, spiritual if not physical, at the hands of the Christians.

There were a number of significant changes during this period in the relationship between Christians and Jews in northwestern Europe. In his *Sefer zekhirah*, R. Ephraim b. Jacob of Bonn (d. 1197) lists and describes no fewer than eleven instances of small-scale but intense persecutions, in which Jews were killed in a particularly harsh or cruel manner, and Jewish property and assets were taken and destroyed in unprecedented ways. These events occurred in northern France and especially in Germany between the years 1171 and 1196. The seven incidents that took place in the Rhineland or elsewhere in Germany occurred in Cologne in 1171, Boppard (1180), Neuss (1186), Speyer (1196), and again in Boppard (and in Austria), also in 1196. Ramifications from the Third Crusade were felt in Germany ca. 1190, and already in Würzburg in 1147 Jews were accused by Christians of an act of ritual murder.<sup>59</sup>

This sequence of persecutions did not occur in a vacuum. A number of scholars have drawn attention to the newly articulated and pernicious accusations that Christians leveled against Jews in this period and in the decades before. Already in the first quarter of the twelfth century, Rupert of Deutz (near Cologne), followed by Peter the Venerable,

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<sup>59</sup> These developments are surveyed (on the basis of *Sefer zekhirah*) by Robert Chazan, *Medieval Stereotypes and Modern Antisemitism* (Berkeley, 1997), 53–78, and cf. my "Returning to the Jewish Community in Medieval Ashkenaz," 94–97. On the ritual murder charge in Würzburg, see *Sefer zekhirah: Selihot ve-kinot le-R. Efrayim b. Ya'akov*, ed. A. M. Habermann (Jerusalem, 1970), 22–23.

abbot of Cluny (d. 1156), asserted that the Jews had become the arch-enemies of Christianity, and the gap that existed between the two religions was widened and sharpened as a result.<sup>60</sup> It is hard to imagine that these developments had no impact on the customs and halakhic practices of Ashkenazic Jewry. Indeed, it is likely that the increasingly negative attitude toward apostates that we have seen with respect to *halitzah* (and other issues) in Germany is a reflection of or response to the changes in Christian attitudes and rhetoric.<sup>61</sup>

Within Ashkenazic society, the apostate was now becoming something of a spiritual enemy as well, at the very least as an aid to the powerful enemy that Christianity already was.<sup>62</sup> German Tosafists took the lead in incorporating these views, and in limiting the doctrine of ‘*af al pi she-hata*’, *Yisra’el hu*’ in several ways. French Tosafists and rabbinic figures adjusted their position vis-à-vis the apostate to a lesser extent, perhaps because they remained more loyal to the earlier view developed by Rashi.<sup>63</sup> Only with regard to moneylending did several northern French Tosafists in the twelfth century suggest a (specialized) deviation from Rashi’s approach. By the middle of the

<sup>60</sup> See, e.g., Amos Funkenstein, “Ha-temurot be-vikkuah ha-dat she-beyn Yehudim le-Notzrim ba-me’ah ha-12,” *Zion* 33 (1968): 137–143; Anna Sapir Abulafia, *Christians and Jews in the Twelfth-Century Renaissance* (London, 1995), chap. 6; and Jeremy Cohen, *Living Letters of the Law: Ideas of the Jew in Medieval Christianity* (Berkeley, 1999), 147–166, 254–270.

<sup>61</sup> Cf. David Berger, “Jacob Katz on Jews and Christians.”

<sup>62</sup> Cf. Avraham Reiner, “L’attitude envers les prosélytes en Allemagne et en France du XI<sup>e</sup> au XIII<sup>e</sup> siècle,” *Revue des études juives* 167, nos. 1–2 (2008): 99–119. Reiner shows that from the second half of the twelfth century through the first half of the thirteenth century, a number of Tosafists embraced more positive attitudes toward Christian converts to Judaism than had been the case in the prior period. This change is explained by Reiner as a function of the worsening position of the Jews in medieval Europe. Although the increasingly negative perception of Jews led fewer Christians to convert to Judaism at this time, it also caused Ashkenazic society and its rabbinic leadership to be markedly more accepting of those who did. See also Fram, “Perception and Reception of Repentant Apostates,” 307–309. For references in Ashkenazic polemical literature and *piyyut* to baptism as pollution (*tinmuf*) or defilement (*shemetz*), see, e.g., Susan Einbinder, *Beautiful Death* (Princeton, 2002), 34–35, and David Berger, *The Jewish-Christian Debate in the High Middle Ages* (Philadelphia, 1979), 94 (sec. 78).

<sup>63</sup> Although he will disagree at times, R. Isaiah di Trani was generally quite “loyal” to Rashi’s comments and views, frequently referring to Rashi as the *moreh* in both his talmudic and biblical commentaries and writings. Rid’s loyalty is certainly manifest with respect to the status of an apostate. Like Rashi, Rid held that it was fundamentally prohibited to lend to an apostate at interest, that an apostate must perform *halitzah*, and that a returning apostate need not immerse himself in a ritual bath. See Piskey *ha-Rid le-massekhet ‘Avodah zarah* (Jerusalem, 2006), 40–41 (and see also *Tosafot ha-Rid* to ‘*Avodah zarah* 26b).

thirteenth century, however, there is significant evidence in northern France as well of rising tensions concerning the status of an apostate from the Tosafist study hall at Evreux, which mandated the immersion of a reverting apostate as a kind of reversal of his baptism (comparing this immersion, in halakhic terms, to the requirement for immersing a Canaanite slave at the point of his release, when he became a fully obligated member of the religious community).<sup>64</sup>

The approaches toward apostates maintained by Rashi and his Tosafist critics (in both Germany and northern France) were vigorously debated from the fourteenth century onward.<sup>65</sup> Indeed, the present study also suggests that the sharp distinction made by Jacob Katz between the Middle Ages and the early modern period regarding the image and perception of the apostate—that an apostate was considered to be less Jewish (by both halakhic authorities and Ashkenazic society as a whole) only in the latter period, as the societal gap between Judaism and Christianity changed with the onset of modernity—must also be re-evaluated.<sup>66</sup> Much of the relevant rabbinic material from the late medieval period has been published, although there are additional texts that remain in manuscript whose impact must be assessed. For the period of the High Middle Ages, Hebrew manuscripts have already made invaluable contributions to a deeper and more precise understanding of the rabbinic views and their underpinnings, and will undoubtedly continue to do so as contemporary research moves forward.

<sup>64</sup> See MS Vercelli C235, fol. 291v: אמאי תימ' לטבול. ואחד עבד המשוחרר צריך לטבול. וי"ל דהיא זקוק טבילה שניה כשמשחררי' אותו והלא אינו טעון לחזור ולהטיף דם ברית. וי"ל דהיא מדרבנן כדי לעשות היכיר' בין עבדות לחירות דה"נ ישראל אף על פי שחטא ישראל הוא ואפ"ה כששב צריך טבילה... תוס' שיטה. This passage is subsequently cited by Ritba (and *Nimmukey Yosef*) to *b. Yevamot* 47b, in the name of *Tosafot 'aharonot*.

<sup>65</sup> See Rosensweig, "Apostasy in the Late Middle Ages," 55–79; Emese Kozma, "Seder teshuvah li-meshummadamim she-hozirim la-Yahadut be-Austria ba-me'ah hahamesh 'esreh," (unpublished paper), 1–7; and Fram, "Perception and Reception of Returning Apostates," 316–321. See also Shlomo Spitzer, "Piskey rabbotenu she-be-'Ashkenaz ba-dor ha-samukh li-gezerat Kof-Tet," *Moriah* 8, nos. 2–3 (1978): 6 [sec. 18]; *Teshuvot Maharil he-hadashot*, ed. Y. Satz (Jerusalem, 1977), 347–348, sec. 207; *She'elot u-teshuvot Maharik*, no. 85 (Jerusalem, 1988), fols. 164–165; and *Teshuvot u-piskei Maharik ha-hadashim*, ed. E. Pines (Jerusalem, 1970), 90–91.

<sup>66</sup> See Katz, *Beyn Yehudim le-goyim*, 50–52 [= *Exclusiveness and Tolerance*, 48–51], and idem, *Halakhah ve-Kabbalah*, 267–269. Cf. Elisheva Carlebach, *Divided Souls: Converts from Judaism in Early Modern German Lands, 1500–1750* (New Haven, 2001), 28–29; idem, "Early Modern Ashkenaz in the Writings of Jacob Katz," in *The Pride of Jacob*, 77; and idem, "Ich will dich nach Holland schicken: Amsterdam and the Reversion to Judaism of German-Jewish Converts," in *Secret Conversions to Judaism in Early Modern Europe*, ed. Martin Mulson and Richard H. Popkin (Leiden, 2004), 51–59.

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In Honor of David Berger

*Edited by*

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