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Rabbinic Attitudes toward Nonobservance in the Medieval Period

Ephraim Kanarfogel

Medieval rabbinic authorities encountered several different modes of nonobservance. Perhaps the most vexing consisted of Jews who were converted, either willingly or forcibly, to Christianity or Islam. Halakhists had to consider the intention and possible intimidation of the apostate, as well as the extent to which he or she upheld Jewish practices and beliefs after conversion. They had to rule on the apostate's status as a Jew in regard to issues ranging from divorce to the status of the wine he touched. In addition, they had to set the conditions for his possible return and to define the posture toward him to be adopted by members of the Jewish community.¹

¹Obviously, conversion to Islam did not pose precisely the same halakhic problems as did conversion to Christianity. See, for example, J. Katz, "Sheloshah Mishpatim Appologetiyyim be-Gilguleihem," in his *Halakhah ve-Kabbalah* (Jerusalem: Magnes, 1984), 277-90; H. Soloveit-

It would be fair to say that in both Franco-Germany and Spain, medieval halakhists attempted to keep the door wide open for those who wished to return. They stressed the ultimate Jewishness of those who had converted as a result of the Crusades or the threats of violence in late medieval Spain, and eagerly welcomed their repentance. Only those who had willfully abandoned the practice of Judaism, as a result of greed or studied rejection, were considered beyond hope.² To be sure, it was necessary to protect the community from individuals or groups who flirted with the possibility of return over a long period of time only to remain entrenched in their apostasy, while wives and families who had remained true to their Jewish faith despaired of their own personal and economic well-being.³ Nonetheless, medieval rabbinic leadership attempted to smooth the road back as much as possible. The re-adoption of Jewish practices and beliefs was often all that was required to remove any stigma.⁴

chik, "Maimonides' Iggeret Ha-Shemad: Law and Rhetoric," *Rabbi Joseph H. Lookstein Memorial Volume*, ed. L. Landman (New York: Ktav, 1980), 281-96, 310-19; and I. Twersky, *Introduction to the Code of Maimonides* (New Haven: Yale University Press, 1980), 452-53.

²See J. Katz, "Af al Pi she-Hata Yisrael Hu," *Halakhah ve-Kabbalah*, 255-67, and *idem*, *Exclusiveness and Tolerance* (New York: Schocken, 1961), 67-76; B. Netanyahu, "The Marranos According to the Hebrew Sources of the Fifteenth and Early Sixteenth Centuries," *Proceedings of the American Academy for Jewish Research* 31 (1963): 81-164. A shift in attitude may have occurred in the eighteenth century. See Katz, "Af al Pi she-Hata," 268-69, and cf. H. H. Ben-Sasson, "Musaggim u-Metziut be-Historiyyah ha-Yehudit be-Shilhei Yemei ha-Benayim," *Tarbiz* 29 (1960): 306-08.

³See G. Cohen's review of Netanyahu's *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): 178-81. Cf. H. Soloveitchik (above, n. 1), 305-08.

⁴The nature and content of separate acts of repentance that may also have been required differed between Ashkenaz and Sefarad. See Netanyahu, above, n. 2.

The notion of recognizing a Jew's inherent Jewishness, irrespective of his commitment to *halakhah*, could also be applied to other individuals or groups who were outside the normative medieval Jewish community even if they were not associated with another religion. Maimonides' multifaceted evaluation of Karaism may be understood in this manner. It was necessary for Rambam to point out to his community, in sharp fashion, that which was objectionable about Karaite doctrine. But those Karaites who had been born into the doctrines promulgated by Karaism should not be classified halakhically as dangerous rebels but as *tinokot she-nishbu*.⁵ Similarly, several *Rishonim* stressed that even inveterate

⁵This represents a plausible resolution of the seemingly contradictory statements concerning the status of Karaites within the Maimonidean corpus. See I. Twersky, *Code of Maimonides*, 84–86; G. Blidstein, "Ha-Gishah la-Kara'im be-Mishnat ha-Rambam," *Tehumin* 8 (1987): 501–10; D. Lasker, "Hashpaat ha-Qara'ut al ha-Rambam," *Sefunot* 20(1991): 145–61. (Professor Lasker was kind enough to provide me with a typescript of his article prior to its publication.) R. Yosef Haviva (*Nimmukei Yosef*) argued that the status of *tinokot she-nishbu* applied only to those who had literally been taken captive and were thus completely unaware of their religious obligations as Jews. In his view, even those Karaites who were simply following what they had been taught ought not be considered *tinokot she-nishbu*. See *Bet Yosef, Yoreh De'ah* 159, s.v. *ule-inyan ha-Kara'im*. *Shakh, Yoreh De'ah* 159:6, cited additional late medieval and early modern halakhists who concurred with the view of *Nimmukei Yosef*. The implications of this controversy for the modern period were discussed by R. Yaakov Ettlinger (d. 1871) in a well-known responsum on the status of transgressors in his day (*She'elot u-Teshuvot Binyan Tzion ha-Hadashot*, no. 23). R. Ettlinger concluded that the transgressors of his day were not to be compared to the Karaites who, in his opinion, had completely separated themselves from the normative halakhic process even with regard to such basic issues as marriage and divorce and circumcision. For an application of these sources to contemporary Jewry, see K. Auman, "The Halakhic Status of the Non-Observant Jew," *The Annual Volume of Torah Studies of the Council of Young Israel Rabbis in Israel*, ed. E. B. Quint and H. Luban, vol. 2 (Jerusalem, 1988), 31–35.

sinners (*mumarim*) who had not been exposed to proper rebuke or instruction had to be loved and could not be rejected.⁶

The different types of nonobservance in the Middle Ages described thus far would probably characterize or mirror the vast majority of nonobservant Jews today. It would be instructive to study in detail how *Rishonim* dealt with *mumarim*, *meshummadim*, and *tinokot she-nishbu*, both in theory and in practice.⁷ A more significant contribution to the contemporary scene could be made, however, by studying topics such as the limits of *ahavat Yisrael* and the requirements of *tokhahah* in medieval rabbinic literature.

Since these areas have been covered in some of the other chapters in this volume,⁸ I should like to turn to yet another mode of nonobservance that medieval rabbinic scholarship confronted.

⁶See N. Lamm, "Loving and Hating Jews as Halakhic Categories," *Tradition* 24 (1989): 113.

⁷For a thorough survey of medieval rabbinic sources dealing with *mumarim* and *meshummadim*, see Netanyahu above (n. 2). See also *Mafteah ha-She'elot u-Teshuvot shel Hakhmei Sefarad u-Tzefon Afrika*, ed. M. Elon, vol. 1 (Jerusalem: Magnes, 1981), 5, 12–13, 47–48, 63–64, 111, 115, 138–39, 176–79; vol. 2 (Jerusalem: Magnes, 1987), 23–24, 103–09; *Teshuvot u-Pesakim Me'et Hakhmei Ashkenaz ve-Tzarefat*, ed. E. Kupfer (Jerusalem: Mekitze Nirdamim, 1973), 282–97; E. E. Urbach, *Baalei ha-Tosafot* (Jerusalem: Mosad Bialik, 1980), 81–83, 242–44; M. Higger, *Halakhot va-Aggadot* (New York: Devei Rabbanan, 1933), 24–31; B. Rosensweig, *Ashkenazic Jewry in Transition* (Ontario: Laurier University Press, 1975), 26–31; A. Siev, "The Strange Path of an Apostate Jew," *Samuel K. Mirsky Memorial Volume*, ed. G. Churgin (New York: Sura Institute, 1960), 263–70; and the sources cited in *Tehumin* 1 (n. 8), 318. [On the difference between the terms *mumar* and *meshummad* and their use in rabbinic literature, see J. Katz, "Af al Pi she-Hata" (above, n. 2), and S. Zeitlin, "Mummar and Meshumad," *Jewish Quarterly Review* 54 (1963): 84–86.]

⁸See also A. Sherman, "Yahas ha-Halakhah Kelappei Ahenu she-Pershu mi-Derekh ha-Torah ve-ha-Mitzvot," *Tehumin* 1 (1980): 311–18; N. Lamm, "Hokheah Tokhiah et Amitekha," *Gesher* 9 (1985): 170–76; Y. Henkin, "Mutav she-Yihyu Shogegin ve-al Yihyu Mezidin bi-Zeman ha-Zeh," *Tehumin* 2 (1981): 272–80; G. Blidstein (above, n. 5).

This category too has relevance for contemporary religious life. Within the normative Jewish communities of medieval Europe, scholars, simple people, and sinners lived side by side. Rabbinic leaders and theoreticians had to develop strategies for dealing with common religious abuses and malfeasances that appeared within their communities. Rather than presenting a broad survey of these manifestations of nonobservance, I will describe how medieval rabbinic scholars and leaders dealt with patterns of nonobservance in three somewhat diverse areas of *halakhah*. I shall argue that rabbinic attitudes toward nonobservance in the medieval period were shaped, in large measure, by the religious character of the communities that they were dealing with and that they, in turn, helped to inform. The areas to be analyzed are the neglect of *mitzvot aseh* and *lo taaseh*—specifically, *tefillin/tzitzit/mezuzah* and *hilkhot Shabbat*; sexual promiscuity and deviation; and gambling.⁹

NONFEASANCE OF TEFILLIN, TZITZIT, AND MEZUZOT

The degree of malfeasance concerning *tefillin* varied. Several Ashkenazic sources focused on the fact that people had stopped wearing

⁹I have refrained from analyzing rabbinic responses to crimes such as murder and informing, which were committed in both Sefarad and Ashkenaz [see, e.g., H. J. Zimmels, *Ashkenazim and Sephardim* (London: Oxford University Press, 1958), 253; A. A. Neuman, *The Jews in Spain*, vol. 1 (Philadelphia: Jewish Publication Society, 1962), 13, 131–38] since the heinousness of these acts often merited unique punishments. I have likewise not dealt with detached Jewish communities in the late Middle Ages, such as those in Italy and Crete, whose overall level of observance lagged far behind the norm. See, e.g., M. Güdemann, *Ha-Torah ve-ha-Hayyim* (Warsaw: Ahi-Assaf, 1898), 3:186–97; I. Barzilay, *The Italian Enlightenment and the Jews* (New York: E. J. Brill, 1965), 206–09; and M. Benayahu, *R. Eliyahu Kapsali Ish Candia* (Jerusalem: Tel Aviv University, 1983), 42–44, 106–17.

tefillin for the entire day, which had been the preferred practice.¹⁰ The limiting of *tefillin* to the morning prayer service or slightly beyond was due mainly to the fear of becoming unclean or the professed inability of individuals to concentrate properly on the *tefillin* for a lengthy period of time. There are, however, other sources that reflect pervasive, outright neglect (i.e., that *tefillin* were not being worn at all).¹¹ In the words of one *Tosafot*: “*Amai samkhu ha-olam she-lo nahagu le-haniah tefillin?*” [“On what do those who do not put on phylacteries rely?”]¹²

As the passage just cited intimates, Ashkenazic halakhists attempted to mitigate or partially justify even the more severe forms of neglect. *Tosafot* texts maintained that the problems concerning *tefillin* in their day flowed from an inherent weakness in the fulfillment of this precept that dated back to the talmudic era and even beyond. Neglect was the “fate” of this precept, whether due to the genuine need for enhanced bodily cleanliness when wearing *tefillin* or simply because of indolence.¹³ Moreover, the complexities and numerous opinions within *hilkhot tefillin* generally, and espe-

¹⁰See *Tosafot Berakhot* 44b, s.v. *ve-livnei maarava*; *Pesahim* 113b, s.v. *ve-ein*; *Halakhot Ketanot le-R. Asher b. Yehiel, Hilkhot Tefillin*, sec. 27.

¹¹*Tosafot, Shabbat* 49a, s.v. *ke-Elisha*; *Tosafot, Rosh ha-Shanah* 17a, s.v. *karkafta*; *Shibbolei ha-Leket*, ed. S. K. Mirsky (New York: Sura Institute, 1966), 88–89. Cf. N. S. Grünspan, “Le-Korot Mitzvat Tefillin ve-Haznahatah,” *Otzar Ha-Hayyim* 4 (1928): 159–64, and Z. D. Grünburger’s response in *Otzar Ha-Hayyim* 5 (1929): 71–72. There is much evidence from the Geonic period for the neglect of *tefillin*. Here, too, some sources reflect outright neglect, to the extent that questioners asked whether it was *yuhara* to put on *tefillin* altogether, while others described the problem as one of degree. See *Shibbolei ha-Leket*, 86–87, 91; M. M. Kasher, *Torah Shelemah* 12:260–62, 265–66; *Otzar ha-Geonim*, ed. B. M. Lewin, *Berakhot*, 30 (no. 87), 41 (nos. 89–90); *Rosh ha-Shanah*, 27 (no. 17), 28 (no. 18), 29 (no. 22). Cf. Shakh, *Hoshen Mishpat* 87:41.

¹²*Tosafot R. Yehudah Sir Leon*, cited in *Teshuvot Maharik* (Venice, 1519), no. 174.

¹³See above, n. 11.

cially the major controversy between Rashi and Rabbenu Tam (whose views were mutually exclusive), caused some to abandon the *mitzvah* out of ignorance, confusion, or perhaps, concern for *berakhah le-vattalah*. As *Shibbolei ha-Leket* concludes: “*Mihu ikkar taama delo nahagu velo heheziku bahem [bi-tefillin] ha-olam mishum she-nehleku be-hilkhotehen Rashi ve-Rabbenu Tam. Hilkhakh, lo yadinan le-me’ebad ke-hilkheta.*” [“The main reason, however, that many do not maintain the precept is due to the halakhic controversies of Rashi and Rabbenu Tam. Thus, they do not know how to properly perform it.”]¹⁴ Ashkenazic sources offered excuses for the poor performance by some, satisfied that the abuses were understandable and not wholly unexpected. To improve the situation, rabbinic writers stressed the importance of this *mitzvah* in light of its neglect, and issued halakhic compendia or handbooks devoted to it in order to clarify misunderstandings and stimulate proper performance.¹⁵

A different path was taken, however, by the Tosafist R. Moses of Coucy, author of *Sefer Mitzvot Gadol*. R. Moses preached about the neglect of *tefillin* in Spain, and apparently in Ashkenazic locales as well.¹⁶ He did not offer any justification. Rather, in focused ser-

¹⁴*Shibbolei ha-Leket*, 89. See also Samson b. Eliezer, *Sefer Barukh She’amar* (Warsaw, 1880), 2–3, citing R. Abraham of Sinzheim, a student of R. Meir of Rothenburg; *Sefer Mitzvot Gadol* (Venice, 1546), *aseh* 22 (fol. 104b); R. Barukh of Worms, *Sefer ha-Terumah* (Warsaw, 1897), 110; and *Teshuvot Maharik* (above, n. 12). Cf. *Sefer Hasidim*, ed. J. Wistinetzki (Frankfurt, 1924), sec. 1031.

¹⁵See, e.g., R. Isaac b. Moses, *Sefer Or Zarua*, nos. 531, 594; I. Ta-Shema, “Kavvim le-Ofyah shel Sifrut ha-Halakhah be-Ashkenaz ba-Meot ha-Yod Gimel/Yod Daled,” *Alei Sefer* 4 (1977): 24–28, 37–41.

¹⁶Rabbi Moses of Coucy, *Sefer Mitzvot Gadol*, *aseh* 3: “*Kakh darashti mitzvah zu be-galuyyot Yisrael le-hokhiah she-kol ehad ve-ehad hayyav bi-tefillin u-ve-mezuzot.*” At the end of this passage, R. Moses noted that he was able to convince thousands of Jews in Spain to accept these precepts (as well as *tzitzit*) while preaching there during the year 1236. “*Ve-khen bishe’ar aratzot hayiti ahar kakh ve-nitkablu devarai. . .*” Other descriptions of the locales in which he preached refer specifically to lands other than

mons and words of rebuke, he forcefully urged the fulfillment of the *mitzvah* in practice. R. Moses' presentations regarding *tefillin* (and *mezuzah* as well) were occasioned by an additional impetus for neglect that was more troubling than those mentioned above. A number of normative and nonnormative commentaries and texts could be read or misunderstood as maintaining that *tefillin* represented a metaphysical concept rather than a ritual requirement. This (mis)reading made an impression in Ashkenaz,¹⁷ but it was far more prevalent in medieval Spain and Provence where the tenets of philosophical rationalism were openly taught. No matter what his source may have been, R. Moses was undoubtedly aware of it.¹⁸

Other rabbinic figures in Spain also reacted to the neglect of *tefillin*. Another well-known preacher, Rabbenu Yonah of Gerona, stressed the importance of this precept as well as the consequences

Spain that were within *galuyyot Edom* (Christian Europe). Moreover, the phrase *galuyyot Yisrael* usually refers to Spain as well as these other communities. See below, n. 62. At least some of the other locales were in northern France or Germany. [Note the use of *eretz Edom* in *aseh* 22.] See E. E. Urbach, *Baalei Ha-Tosafot* 1:466–67; J. Katz, *Ben Yehudim le-Goyim* (Jerusalem: Merkaz Shazar, 1984), 106–07; M. Schloessinger, "Moses b. Jacob of Coucy," *The Jewish Encyclopedia* 9:70; and Kitvei R. Avraham Epstein, ed. A. M. Habermann, vol. 1 (Jerusalem: Mossad ha-Rav Kook, 1950), 219–20. Indeed, what we know about the state of observance of *mitzvat tefillin* (and *mezuzah* and *tzitzit*) in Ashkenaz serves to confirm the fact that R. Moses preached there as well.

¹⁷See the commentary of R. Yosef Bekhor Shor to *Devarim* 6:8, *Bamidbar* 12:8 (and *Vayikra* 17:11); the commentary of Rashbam to *Shemot* 13:9; *She'elot u-Teshuvot Maharam b. Barukh* (Prague, 1895), no. 649; E. E. Urbach, *Baalei ha-Tosafot* 1:135–36; S. W. Baron, *A Social and Religious History of the Jews*, vol. 6 (New York: Columbia University Press, 1958), 295–96; S. Kamin, "Ha-Pulmus Neged ha-Allegoriyyah be-Ferusho shel R. Yosef Bekhor Shor," *Mehkerei Yerushalayim be-Mahshevet Yisrael* 3 (1983–84): 367–92 and below, n. 33.

¹⁸See Y. Gilat, "Shetei Bakkashot le-R. Moshe mi-Coucy," *Tarbiz* 38 (1959): 55; and below, nn. 21–23.

of its neglect, and suggested that individuals press each other to fulfill it.¹⁹ Spanish kabbalistic works with an eye toward socioreligious critique, such as the *Raaya Mehemna*, identified *ammei ha-aretz* as “wicked people, unmarked by symbols of purity, who do not have *tefillin* on their head and arm. . . .”²⁰ *Sefer ha-Rimmon* censured those who suggested that it was more effective to verbally remember the Creator than to wear *tefillin*.²¹

Spanish and Provençal sources noted that the custom to place ashes on the bridegroom’s head, in the place which normally was the site of the *tefillin shel rosh*, had been abandoned in their areas due to the fact that many did not wear *tefillin*.²² Yosef ben Zabara described at least one region in Provence in which *tefillin* and *mezuzot* were totally absent. In their place, the populace apparently substituted some form of divination that allegedly guided their actions.²³

¹⁹See A. T. Shrock, *Rabbi Jonah ben Abraham of Gerona* (London: Edward Goldstein, 1948), 129.

²⁰See the citations in Y. Tishby, *Mishnat ha-Zohar*, vol. 2 (Jerusalem: Mossad Bialik, 1961), 685–86.

²¹*The Book of the Pomegranate* (Moses De Leon’s *Sefer ha-Rimmon*), ed. E. Wolfson (Atlanta: Scholars Press, 1988), 390–92. See also the passages from the writings of R. Yaakov bar Sheshet collected in B. Dinur, *Yisrael ba-Golah* 2:4, 284–85, and Dinur’s note, 413 n. 6; Y. Baer, *A History of the Jews in Christian Spain*, vol. 1 (Philadelphia: Jewish Publication Society, 1961), 241.

²²See *Sefer Ha-Mehktam* in *Ginzei Rishonim le-Massekhet Taanit*, ed. M. Hershler (Jerusalem, 1963), 278–79; *Sefer Avudraham ha-Shalem*, 361–62; Menahem Ibn Zerah, *Tzedah la-Derekh* 3:2:1; *Bet Yosef to Even ha-Ezer* 65, s.v. *uve-tokh ha-simhah*. See also Bahya b. Asher, *Kad ha-Kemah* in *Kitvei Rabbenu Bahya*, ed. C. Chavel (Jerusalem, 1970), 444–45; *She’elot u-Teshuvot Maharam b. Barukh* (Lemberg, 1860), no. 223; and *Sefer ha-Eshkol*, ed. A. Auerbach, 2:90.

²³See Yosef b. Zabara, *Sefer Shaashuim*, ed. I. Davidson (Berlin, 1925), 142. See also Jacob of Marvège, *She’elot u-Teshuvot min ha-Shamayim*, ed. R. Margoliot (Jerusalem: Mossad ha-Rav Kook), no. 26, 63–64 [on the Provençal origin of the author, see now I. Ta-Shema, “She’elot u-Teshuvot

Justifications were also offered by Ashkenazic halakhists for the many who did not don *tzitzit*. In response to a query from his son-in-law, R. Uri (“*Mai shena de-mekillin bah rov Yisrael she-ein mit’atfin bah bekol yom*”), Raban noted that *tzitzit* were required only if one wore a four-cornered garment.²⁴ Tosafists recommended that one purposely wear a four-cornered garment (*tallit*), which would afford the wearer the opportunity to fulfill the precept of *tzitzit*.²⁵ It was apparent, however, that not everyone could or did purchase a *tallit*. Indeed, *Tosafot* formulations supported the Ashkenazic burial custom in which the *tallit* that the deceased was wrapped in had its *tzitzit* invalidated or removed. In their view, burying someone who had never fulfilled the precept of *tzitzit* during his lifetime constituted *lo’eg la-rash*, just as burying someone in invalid *tzitzit* had been considered *lo’eg la-rash* in the talmudic period.²⁶

The absence of *tzitzit* in their day was attributed by some *Tosafot* texts to a change in clothing style. Four-cornered garments were no longer part of one’s usual dress, as they were assumed to have been

min ha-Shamayim: Ha-Kovetz ve-Tosfotav,” *Tarbiz* 57 (1988): 56–63]; Reuben b. Hayyim, *Sefer ha-Tamid*, ed. B. Toledano (*Otzar ha-Hayyim* 11, 1935), 10; *Sefer ha-Minhagot le-R. Asher b. Sha’ul mi-Lunel* in *Sifran shel Rishonim*, ed. S. Assaf (Jerusalem: Mekitzei Nirdamim, 1935), 129; and R. Menahem ha-Meiri, *Kiryat Sefer*, ed. M. Hershler (Jerusalem: Ha-Mesorah, 1956), author’s introduction, 2. Cf. I. Twersky, *Rabad of Posquières* (Philadelphia: Jewish Publication Society, 1980), 23–24; C. Horowitz, *The Jewish Sermon in 14th Century Spain: The Derashot of R. Joshua Ibn Shu’eib* (Cambridge, MA: Harvard University Press, 1989), 11–14.

²⁴*Sefer Raban*, ed. S. Z. Ehrenreich, sec. 40 (fol. 30c).

²⁵*Tosafot R. Yehudah mi-Paris le-Massekhet Avodah Zarah* (*Shittat ha-Kadmonim al Massekhet Avodah Zarah*), ed. M. Y. Blau (New York: Deutsch, 1969), 313; *Tosafot Pesahim* 113b, s.v. *ve-ein*; *Sefer Mitzvot Gadol*, *aseh* 26; *Perush R. Asher b. Yehiel le-Moed Katan* 3:80. Cf. my “The Aliyah of ‘Three Hundred Rabbis’: Tosafist Attitudes Toward Settling in the Land of Israel,” *Jewish Quarterly Review* 76 (1986): 214–15.

²⁶See, e.g., *Tosafot Berakhot* 18a, s.v. *le-mahar*; *Shabbat* 32b, s.v. *ba-avon tzitzit*; *Baba Batra* 74a, s.v. *piskei hada kama*; *Avodah Zarah* 65b, s.v. *aval osin oto*; *Niddah* 61b, s.v. *aval osin otam*.

in the talmudic period.²⁷ Other texts, however, identified the nonfeasance with religious laxity.²⁸ A formulation from the mid-thirteenth century asked, "So what if they will be embarrassed [at the time of burial]? They have denigrated the precept of *tzitzit* in their lifetime."²⁹ In any event, burial in a valid *tallit* was reserved only for singular scholars, thereby sparing those who did not wear *tzitzit* from the problem of *lo'eg la-rash*.³⁰

²⁷Tosafot R. Yehudah mi-Paris (above, n. 25); Tosafot Berakhot, Shabbat, Baba Batra in the above note; Tosafot, Arakhin 2b, s.v. *ha-kol hayyavin be-tzitzit*.

²⁸Tosafot Avodah Zarah, Niddah (above, n. 26).

²⁹Perush R. Asher b. Yehiel (above, n. 25); Sefer Or Zarua, Hilkhot Avelut, sec. 421 (fol. 86a). Cf. Tosafot, Arakhin (above, n. 27), and R. Meir b. Barukh mi-Rothenburg, Teshuvot Pesakim u-Minhagim, ed. I. Z. Kahana, vol. 3 (Jerusalem: Mossad ha-Rav Kook 1963), no. 7.

³⁰See E. E. Urbach, *Baalei ha-Tosafot* 1:271. The distinctive *tallitot*, or fringed garments, worn by the German Pietists all day (in addition to their *tefillin*) were probably intended, among other reasons, to visibly remind the Ashkenazic communities of the importance of *tzitzit*. Cf. H. Soloveitchik, "Three Themes in the Sefer Hasidim," *AJS Review* 1 (1976): 329; I. Marcus, *Piety and Society* (Leiden: E. J. Brill, 1981), 98–99. It is possible that the *tallit katan*, which received approbation in Ashkenazic rabbinic literature of the late thirteenth century, was intended to address the *tzitzit* problem. See *Teshuvot R. Hayyim Or Zarua* (Leipzig, 1860), no. 4, and the practices of R. Meir of Rothenburg recorded in *Sefer ha-Agur*, ed. M. Hershler (Jerusalem: Pe'er, 1960), 21, secs. 28–29. Cf. *Sefer Mordekhai*, *Halakhot Ketanot*, sec. 943, *Sefer Or Zarua* (above, n. 29), and *Sefer ha-Agur*, sec. 26.

In the fifteenth century, however, those who wore the *tallit katan* outside or over their garments were considered to be exhibiting *yuhara*. See *Teshuvot R. Israel Bruna*, no. 96, and cf. *Magen Avraham*, *Orah Hayyim* 8:13. Interestingly, R. Meir of Rothenburg's student, and possibly R. Meir himself, was prepared to allow women to wear *tzitzit* (a *tallit*?) and pronounce the blessing over them. Maharil, however, considered this *yuhara*. See the sources and discussion in Y. Dinari, *Hakhmei Ashkenaz bi-Shilhei Yemei ha-Benayim* (Jerusalem: Mosad Bialik, 1984), 32–33. See also 215–16; cf. *Semag*, *aseh* 26.

Regarding the neglect of *mezuzot*, the rabbinic posture even in Ashkenaz tended more toward deep concern and less toward proposing possible justifications. Rabbenu Tam noted that "less than ten years have passed since there were no *mezuzot* in our entire realm."³¹ R. Meir of Rothenburg added that "had they known how salutary *mezuzah* is for them, perhaps they would not have transgressed."³² Perhaps the allegorical interpretation of *mezuzah* had gained currency in Ashkenaz.³³ Nevertheless, Maharam implicitly (and Maharil explicitly) suggested that questions and halakhic debates about which rooms and structures required *mezuzot* may have again played a role in the absence of *mezuzot* in Ashkenaz.³⁴

NONOBSERVANCE OF THE SABBATH

Outright desecration of the Sabbath was not tolerated within any medieval Jewish community. Transgression of a *mitzvat lo taaseh*, and a severe one at that, could not be viewed in the same manner as the neglect of a *mitzvat aseh*. A comprehensive comparison of Sabbath observance is beyond the scope of this study. Nonetheless, we can readily discern a significant policy difference between Ashkenaz and Sefarad in regard to the violation of rabbinic or other lesser prohibitions on the Sabbath that were usually related to personal or business needs. Rabbenu Gershom was asked about the appropriate punishment for one who agreed upon the price of a horse and also took possession of it on *Shabbat*. He ruled that the appropriate punishment was lashes. In addition, if the place where

³¹R. Tam, cited in *She'elot u-Teshuvot R. Meir mi-Rothenburg* (Cremona, 1557), no. 108.

³²Ibid. Cf. E. E. Urbach, *Baalei ha-Tosafot* 1:82.

³³Cf. *Sefer Maharil* (reprinted New York, 1973), *Likkutim* (fol. 86b); Y. Y. Yuval, *Hakhamim be-Doram* (Jerusalem: Magnes, 1989), 317–18; *Sefer Mitzvot Katan*, sec. 154, and *Haggahot R. Peretz*, ad loc.; A. Ravitzky, *Al Daat ha-Makom* (Jerusalem: Keter, 1991), 38–39.

³⁴See Maharam (above, n. 31) and *Teshuvot Maharil*, no. 94. Cf. Dinari, *Hakhmei Ashkenaz*, op. cit., 32, 217; I. Ta-Shema (above, n. 15).

this occurred was felt to be lax in regard to Sabbath observance, the rabbinical court should exercise its right to give additional lashes or punishments (*bet din makkin ve-onshin shelo min ha-Torah . . . laasot seyag la-Torah*).³⁵

R. Isaac Or Zarua witnessed Rabiah administering lashes to those who ate bread that was baked by a non-Jew on the Sabbath, even though there was some debate in medieval Ashkenaz about what food a non-Jew could prepare for a Jew.³⁶ An Ashkenazic responsum from the eleventh century recorded the case of a boat with Jews on it that landed in a particular locale on the Sabbath. The local Jews boarded the boat and ate from the food of the Jews on the boat that had obviously been brought from afar on the Sabbath. Unnamed legal decisors forbade this action “but did not administer lashes since it was unintentional (*shogegin hayu*).” Had the transgression been purposeful, it would not have been more than an *issur shevut*, which apparently would have warranted lashes nevertheless.³⁷

Shibbolei ha-Leket records the case of merchants whose wagon had broken down outside a town on *erev Shabbat*.³⁸ Their goods were being transported by hired non-Jewish workers as well as by Jews, and most of them reached the town before the Sabbath. The owners remained with the broken wagon until it was fixed (by non-Jews?), arriving in the community when the *kahal* was already leaving the synagogue on the Sabbath eve. None of the community members extended even a word of greeting. The merchants were not permitted to enter the synagogue the next morning, lest others sense that their actions were appropriate and be led to violate the Sabbath willfully. On Sunday, the community (communal court)

³⁵*Teshuvot Rabbenu Gershom Me'or Ha-Golah*, ed. S. Eidelberg (New York: Yeshiva University, 1955), no. 9, 63–64.

³⁶*Sefer Or Zarua*, sec. 358 (150, end). See also below, n. 42; cf. *Otzar ha-Geonim, Shabbat*, 114–15.

³⁷See *Siddur Hasidei Ashkenaz*, ed. M. Hershler (Jerusalem: Hemed, 1972), 257–58, and n. 1; and E. Kupfer, *Teshuvot u-Pesakim*, 112–13.

³⁸*Shibbolei ha-Leket*, ed. S. K. Mirsky, sec. 60, 276–77.

rendered its judgment, which included lashes and a fifty-day period of fasts, in addition to heavy charity donations. A second wave of fasting, for three days a month for an entire year, was also imposed. The text concludes that “if, God forbid, this had been done purposefully,” they would have been even more stringent and imposed additional restrictions, including a severe ban for thirty days.³⁹

Geonic literature mandated corporal punishment for *hillul Shabbat*, even in regard to *dinim de-rabbanan*.⁴⁰ This approach, however, was adopted only in Ashkenaz.⁴¹ While lashes were administered in Spain for a number of serious crimes, there is no report of lashes for any form of *hillul Shabbat*.⁴² Even more surprising is the fact that

³⁹The twelfth-century Tosafist R. Hayyim Kohen called upon communal religious leaders (*shoftei Yisrael*) to be more aggressive in curtailing violations that involved *amirah la-akkum*. See J. Katz, *Goy shel Shabbat*, 55.

⁴⁰See the text in S. Assaf, *Ha-Onshin Aharei Hatimat ha-Talmud* (Jerusalem: Ha-Poel Ha-Tzair, 1922), nos. 20, 26, 34. See also J. Mann, “The Responsa of the Babylonian Geonim as a Source of Jewish History,” *Jewish Quarterly Review* 10 (1919–20): 342–45, 354–55.

⁴¹Ashkenazic sources openly referred to Geonic precedent in this matter. See *Shibbolei ha-Leket* (above, n. 38), 276; *Siddur Hasidei Ashkenaz*, 269, sec. 33. Cf. *She’elot u-Teshuvot R. Yaakov Weil* (reprinted Jerusalem, 1959), *Dinim va-Halakhot*, sec. 58.

⁴²S. Assaf records instances of *malkot* being administered for various crimes in Sefarad (*Ha-Onshin*, *op. cit.*, 61–63, 70–71), but none were for cases of *hillul Shabbat*. See also *Mafteah ha-She’elot u-Teshuvot shel Hakhmei Sefarad* (above, n. 7) 1:166–67; 2:84–85, 104–05. Cf. Judah b. Barzillai, *Sefer ha-Ittim* (Cracow, 1903), sec. 30, 46–47. For the more restrained reaction in Spain to cases similar to that of Rabiah (above, n. 36), see Rashba, *Responsa* 1:709, 808. There is evidence for *issurei shevut* being punished in Spain by monetary fine. See Y. Baer, *History of the Jews in Christian Spain* 1:234–35. [On severe abuses of Sabbath observance in medieval Spain, see Shrock, *Rabbi Jonah*, 126–27; C. Horowitz, *The Jewish Sermon in 14th Century Spain*, 47–48; Judah b. Asher, *Zikhron Yehudah* (Berlin, 1846), no. 91 (fol. 44a–b).] Of course, as J. Katz has noted [*Goy shel Shabbat*, 56], not all Tosafists would have agreed with the position taken by Rabiah. What

Ashkenazic halakhists, who proposed suggestions for circumventing certain rabbinic prohibitions, responded so harshly when an *issur de-rabbanan* was violated. Spanish halakhists, on the other hand, were less creative in terms of *heterim*, but also less vigorous in the punishment of deviations.⁴³

SEXUAL PROMISCUITY

Sexual promiscuity and even adultery were never absent from any region in the medieval Jewish world. The rabbinic reactions in Ashkenaz and Sefarad, however, reflected different patterns of abuse. Jewish men commonly kept Jewish and non-Jewish concubines in Moslem Spain and later in Christian Spain.⁴⁴ The challenges that these relationships posed to the rabbinic leadership were complex. Prolonged affairs, even with Gentile women, were religiously and morally reprehensible. At the same time, the widespread nature of these relationships, and the presence of even more

is significant is that Rabiah resorted to lashes where he felt they were necessary, based on an established tradition in Ashkenaz to administer lashes even for minor Sabbath violations.

⁴³All of the attempts to reconcile halakhic guidelines with actual practices in medieval Europe that were analyzed by Prof. Katz in his *Goy shel Shabbat* emanated from Ashkenaz. See *Goy shel Shabbat*, 36, 167–72, 175–80. This pattern was also noted by Prof. Katz in regard to setting the time for *tefillat maariv*. See his “Maariv bi-Zemano u-Shelo bi-Zemano—Dugma le-Zikah ben Minhag, Halakhah, ve-Hevrah,” *Zion* 35 (1970): 35–60. In regard to pawnbroking, see H. Soloveitchik, *Halakhah, Kalkalah ve-Dimmui Atzmi* (Jerusalem: Magnes, 1985), 111–14, 118–19. See also his “Religious Law and Change: The Medieval Jewish Example,” *AJS Review* 12 (1987): 205–22.

⁴⁴Perhaps due to their proliferation, Jewish and non-Jewish *pilagshim* were sometimes referred to interchangeably in medieval Sefardic rabbinic literature, despite the different halakhic problems engendered by each type. See, e.g., M. A. Friedman, *Ribbui Nashim be-Yisrael* (Jerusalem: Tel Aviv University, 1986), 296–98, and below, n. 50.

objectionable possibilities (i.e., relations with married Jewish women) also had to be considered.

R. Moses of Coucy preached at length in Spain during 1236 about the sinfulness of sexual relations with Gentile women. His audiences responded by “sending away many women (*hotzi’u nashim rabbot*).”⁴⁵ Rashba roundly condemned the actions of one man who had bought a maidservant to live with him and his Jewish wife following the birth of their daughter. After the maid conceived, the husband had her converted (as a *shifhah kenaanit*), and subsequently had yet another child with her, all to the chagrin and humiliation of his first wife and child. Rashba recommended to his questioner, a communal (rabbinic) leader, that the community in some way limit this practice and reconcile the husband with the first wife, lest others begin to deal flippantly with Jewish women.⁴⁶

A *herem* was issued in Toledo in 1281 against sexual promiscuity in general, and the keeping of non-Jewish concubines in particular. Those who did not abide by the ban were threatened by R. Todros ben Yosef ha-Levi Abulafia with severe punishment.⁴⁷ Nonetheless, many who had vowed to honor the ban could not restrain themselves and either openly flouted the ban or attempted to circumvent it. Rashba advised the rabbinical leadership in Toledo to proceed cautiously and gradually in eliminating communal vices. “Patience and consensus will cause the masses to return to the

⁴⁵*Sefer Mitzvot Gadol, lo taaseh* 112 (end). See also the letter of Ramban to his son concerning non-Jewish women, below, n. 54.

⁴⁶Rashba, *Responsa* 1:1205. See S. Z. Havlin (below, n. 50), 237–40.

⁴⁷See *Zikhron Yehudah*, no. 91 (esp. fol. 45a–b); H. Schirmann, *Ha-Shirah ha-Ivrit bi-Sefarad u-vi-Provence* 2 (Jerusalem: Mosad Bialik, 1960): 433–35; Y. Baer, “Todros b. Yehudah ha-Levi u-Zemano,” *Zion* 2 (1937): 33–44; *idem*, *History of the Jews in Christian Spain* 1:257–61; M. Oron, “Derashato shel R. Todros b. Yosef ha-Levi Abulafia le-Tikkun ha-Middot ve-ha-Mussar,” *Daat* 11 (1983): 47–51; Y. T. Assis, “Sexual Behavior in Medieval Hispano-Jewish Society,” *Jewish History: Essays in Honor of Ch. Abramsky*, ed. A. Rapoport-Albeck and S. T. Zipperstein (London: Halban, 1988), 38–40.

proper path.” For individuals, however, whose evil nature was well known, and who persisted in flouting the law, all forms of corporal punishment were to be considered.⁴⁸

Specifically in regard to concubinage, Rashba was asked to deal with the situation of one man who had acquired a Moslem concubine and had then converted her to Judaism and married her without giving her a *ketubah*. He claimed that he was exempt from the *herem*, which required the sending away of Moslem concubines (as well as single Jewish sexual partners) in the absence of a valid marriage *with ketubah*, because he was now legally married to this woman and had, in any event, announced in the presence of witnesses that he did not accept the *herem*.

Rashba responded that this individual was clearly in violation of the Toledo *herem*, which was promulgated to promote Torah observance and eliminate sinful behavior. He had no right to exclude himself unilaterally from such a *herem*. Inter alia, however, Rashba noted that while the behavior of the individual in converting and marrying the woman could not have been sanctioned a priori, she could have remained with him as a *pilegish* had it not been for the Toledo *herem*.⁴⁹ Given the gravity of the situation, and his sense that more moderate means had to be found to persuade people to change, Rashba considered a bona fide *pilegish* relationship preferable to cohabitation with a non-Jewish woman and would have been willing to allow this relationship.⁵⁰

⁴⁸Rashba, *Responsa* 5:238. Cf. *Zikhron Yehudah*, no. 63.

⁴⁹Rashba, *Responsa* 5:242.

⁵⁰Rashba's major concern in this case, as in the responsum discussed above (n. 46), was how the presence and treatment of a *pilegish* might negatively affect the structure and integrity of the family. The *pilegish* relationship per se was never criticized. In responsum 4:314, however, Rashba writes, "I do not wish to show that it is permitted to marry a Jewish girl as a *pilegish*, especially over and above his lawfully married Jewish wife." Perhaps the backing away from *pilegish* in this situation was due to the fact that the husband in question had made a Jewess by birth (as opposed to a Moslem woman) into a *pilegish* in order to damage his

There can be little doubt that these kinds of considerations were a factor in the famous responsum of Ramban on the applicability and permissibility of *pilagshut*. In writing to Rabbenu Yonah, Ramban held that *pilagshut* could be sanctioned within Jewish society at large, provided that the halakhic conventions designed to insure that the relationship would not be a promiscuous one (e.g., that she be *me-yuhedet lo*) were observed. At the very end of his responsum, however, Ramban adds a postscript: “And you, our teacher may God keep you, in your locale warn them from [taking a] *pilegash* – because if they know that it is permitted, they will act wantonly and have relations with them [even] when they are in a state of *niddut*.”⁵¹

This responsum has been understood by some to mean that Ramban approved of *pilagshut* in theory only.⁵² Others have argued that the content of the body of the responsum strongly suggests

relationship with his wife. Given these particular circumstances, *pilagshut* became an unacceptable option. This responsum also cites Rambam’s negative view of *pilagshut*, which is not found in any of Rashba’s other responsa on this topic. The heavy reliance upon Rambam alone in formulating the ruling, as well as other stylistic anomalies, has led S. Z. Havlin to question the attribution of this responsum to Rashba. As we have seen, Havlin’s skepticism is rewarded if the contents of the other responsa of Rashba concerning *pilagshut* are taken into account. See S. Z. Havlin, “Takkanot Rabbenu Gershom Me’or ha-Golah be-Inyanei Ishut bi-Tehumei Sefarad u-Provence,” *Shenaton ha-Mishpat ha-Ivri* 2 (1975): 209, 212, 237. Cf. Y. Baer, *History of the Jews in Christian Spain* 1:254–56 (and 434–36, n. 13) and E. G. Ellinson, *Nissu’in shelo ke-Dat Moshe ve-Yisrael* (Tel Aviv, 1975), 55–57. See also Rashba, *Responsa* 1:610, 628, 1187, 1249–50.

⁵¹*Teshuvot ha-Rashba ha-Meyuhasot la-Ramban*, no. 284. The text is annotated in *Kitvei ha-Ramban*, ed. C. Chavel, 1:381–82. Rabbenu Yonah was opposed to concubinage. See his *Shaarei Teshuvah* 3:94–95, 131–33 (reprinted Bnei Brak, 1970), 193–95, 212–14.

⁵²See L. M. Epstein, *Marriage Laws in the Bible and Talmud* (Cambridge, MA: Harvard University Press, 1942), 75–76; Y. Baer, *History of the Jews in Christian Spain* 1:436, n. 14; Neuman, *The Jews in Spain* 2:40–41.

that the postscript did not issue from Ramban's pen.⁵³ In light of the common attitudes toward selecting sexual partners in medieval Spain, I believe that Ramban should be included among those who were prepared to accept properly monitored *pilagshut* as an alternative to random promiscuity. He did not want it to be suggested publicly because of the pitfalls that were inherent in it, but he made it available nevertheless, either to cover those who had already gotten involved or to accommodate those who were involved in less halakhically acceptable relationships. It must be recalled that Ramban felt it necessary to warn his son, who was at the Castilian court, of the grave sins incurred by engaging in sexual relations with non-Jewish women.⁵⁴

Nahmanides' position becomes clearer if we compare his formulation with a responsum of R. Asher b. Yehiel. Rosh was asked if the family of a man who was having relations with a single Jewish woman, a servant in their home, may demand that the girl be ejected since the fact that she is his *pilegesh* is an embarrassment to them. Rosh responded that the rabbinical court should force him to remove her from the home since "it is well-known that she is embarrassed to immerse [herself] and he is thereby having relations with a *niddah*."⁵⁵ Rosh is much more strident than Ramban in expressing his concern about the possible violation of *hilkhot niddah*, but that may perhaps be explained by the fact that he was

⁵³See Ellinson, *Nissu'in shelo ke-Dat*, 72–79; R. Yaakov Emden, *She'elat Yavetz*, vol. 2, no. 15. See also the responsum of Ramban in *Sifran shel Rishonim*, ed. S. Assaf, 56, no. 1.

⁵⁴See *Kitvei ha-Ramban*, 369–70. See also *Zohar* 2:3a–b (and Y. Baer, *History of the Jews in Christian Spain*, 437 n. 19); *Zohar* 2:87b; *Raaya Mehmna* 4:124b–125a; C. Horowitz, *The Jewish Sermon in 14th Century Spain*, 45–47.

⁵⁵*She'elot u-Teshuvot le-R. Asher b. Yehiel* (reprinted Jerusalem, 1971), 32:13. The questioner had noted that "in this land [=Spain], men were often alone [*le-hityahed*] with single women [who served] in their homes." Cf. *Teshuvot ha-Rosh* 32:16, 54:8; *Teshuvot ha-Ritva*, ed. Y. Kafah (Jerusalem: Mossad ha-Rav Kook, 1959), no. 68.

responding to a specific case in which a disruption in the lives of the family members was in fact occurring. Even Rosh leaves open, albeit to a lesser extent than Ramban, the possibility that if the laws of *niddah* were observed, the *pilegash* option could be considered.⁵⁶ R. Nissim Gerondi also countenanced *pilagshut*.⁵⁷

As the formulations of Ran, Rashba, and Ramban indicate, the fact that a *pilegash* was required to have the status of *meyuhedet lo* made this option preferable to the alternatives, since the possibilities of more objectionable sexual unions were thereby diminished. This notion was found most explicitly in the writings of R. Menahem Ibn Zerah who, noting that “many people in this land [Spain] take concubines,” openly approved of these relationships and sought to insure that they would, in fact, minimize promiscuity.⁵⁸

⁵⁶Cf. *Teshuvot ha-Rosh* 36:1; and Ellinson, *Nissu'in shelo ke-Dat*, 68. Neuman's analysis of the opposing views of Rashba and Rosh regarding the overall level of morality in Spanish Jewish society (in his *The Jews in Spain* 2:3–11), could perhaps be supported by the difference in their positions concerning *pilegash*. Neuman's hypothesis, that their views were affected most heavily by their personalities and the regions in which they lived, strikes me as artificial.

⁵⁷*She'elot u-Teshuvot Rabbenu Nissim b. Reuben Gerondi*, ed. L. Feldman (Jerusalem: Moznaim, 1984), 306–07, no. 68.

⁵⁸*Tzedah la-Derekh* 3:1:2 (reprinted Jerusalem, 1977), 136. There was a high incidence of *pilagshut*, sexual relations with maidservants, and other problems associated with *bo'alei niddot* throughout the Sefardic/Moslem world. See M. A. Friedman, *Ribbui Nashim be-Yisrael*, 291–339, 352–54; “Social Realities in Egypt and Maimonides' Rulings on Family Law,” *Maimonides as Codifier of Jewish Law*, ed. N. Rakover (Jerusalem: Library of Jewish Law, 1987), 225–36; and “Harhakat ha-Niddah ve-ha-Minut etzel ha-Geonim, ha-Rambam u-veno R. Avraham al pi Kitvei Genizat Kahir,” *Maimonidean Studies*, ed. A. Hyman, vol. 1 (New York: Yeshiva University, 1990) [Hebrew Section], 1–21; S. Shtober, “Al Shetei Bak-kashot she-Hufnu el Rabbenu Avraham ben ha-Rambam (be-Inyan Shif-hah/Pilegash),” *Shenaton ha-Mishpat ha-Ivri* 6–7 (1979–80): 399–403;

There was a public controversy in at least one Spanish community in the early fourteenth century about whether it was better to try to remove promiscuous Jewish women from the town, since they did not immerse themselves ritually in addition to constantly violating the prohibition of *lo tihyeh kedeshah*, or whether it was better to allow them to remain. Banishing the Jewish prostitutes raised the specter of mixing “holy Jewish seed with foreign daughters.” Moreover, there might be political risks or concerns about physical retaliation if Christian women were involved. R. Yehudah b. ha-Rosh responded cryptically to his nephew, Asher b. Shelomoh, that non-Jewish women were to be preferred, despite the physical risks, because relations with the Jewish women carried the penalties of both a *lav* and *karet*.⁵⁹

None of the accommodations described above were ever suggested in Ashkenaz. At first blush, it would seem that this could be attributed to the fact that manifestations of sexual promiscuity were not as pervasive there as they were in Spain. Scholars have readily assumed, on the basis of a variety of sources, that the level of sexual promiscuity and adultery was quantitatively much higher in Sefarad than in Ashkenaz, even though the precise number of incidents is impossible to determine. Moreover, Spanish Jewish society as a whole appeared to have a much more permissive attitude toward certain types of sexual behavior.⁶⁰ These behaviors often threatened to become widespread. As a result, Spanish rabbis

Teshuvot ha-Rambam, ed. J. Blau, nos. 3, 189, 233, 242, 321, 353, 368–71; *Teshuvot ha-Rosh* 29:1.

⁵⁹See *Zikhron Yehudah le-R. Yehudah b. ha-Rosh*, no. 17, and Y. T. Assis, “Sexual Behavior in Hispano-Jewish Society,” 44–45.

⁶⁰See Y. Baer, *A History of the Jews in Christian Spain* 1:236–42, 250–61; H. J. Zimmels, *Ashkenazim and Sephardim*, 253–59; C. Horowitz, *The Jewish Sermon in 14th Century Spain*, 41–49; Y. T. Assis, “Sexual Behavior in Medieval Hispano-Jewish Society,” 25–51. Cf. A. A. Neuman, *The Jews in Spain* 2:8–12, and H. Soloveitchik, “Religious Law and Change: The Medieval Example,” 221.

had to view sexual transgressions not merely with regard to the individuals involved but to their larger implications as well.

At no time in the High Middle Ages were there waves of sexual violations in Ashkenaz.⁶¹ Illicit sexual encounters were considered in Ashkenazic rabbinic literature as lapses on the part of individuals rather than as a larger societal problem. It should be noted that R. Moses of Coucy's major addresses on the evils of sexual relations with non-Jews were delivered exclusively in Spain.⁶² Only in the

⁶¹For evidence of sexual promiscuity in Ashkenaz, see, e.g., H. J. Zimmels, *Ashkenazim and Sephardim*, 253; Y. Dinari, *Hakhmei Ashkenaz*, 88; B. Rosensweig, *Ashkenazic Jewry in Transition*, 33–34; Y. Y. Yuval, *Hakhamim be-Doram*, 43, 186, 329–30.

⁶²R. Moses addressed an introductory passage that he subsequently included in his *Sefer Mitzvot Gadol*, “*le-galut Yerushalayim ve-li-she’ar galuyyot Edom*,” meaning Spain as well as other areas (countries) in Christian Europe. See the end of his introduction to the *mitzvot aseh*. So, too, his introduction to the negative commandments notes that he had occasion to preach widely: “*She-asabev ba-aratzot le-hokhiah galuyyot Yisrael*.” His preachings concerning *tefillin* were offered “*be-galuyyot Yisrael*.” These words then made an impact “*bi-Sefarad* [during his mission there in 1236; see above, n. 16] . . . *ve-khen bi-she’ar aratzot*” [*aseh* 3]. His exhortations concerning the need for increased Torah study were also “*le-galuyyot Yisrael*” [*aseh* 16]. The need for Jews to deal honestly with fellow Jews and Gentiles alike, owing to the length and severity of the exile, was preached by R. Moses “*le-galut Yerushalayim asher bi-Sefarad ve-li-she’ar galuyyot Edom*” [*aseh* 74]. On the other hand, his preaching concerning *yein nesekh* was rendered only in Sefarad [*lo taaseh* 148], where there was a problem that did not exist in Ashkenaz [cf. H. Soloveitchik, “Religious Law and Change” (above, n. 43), 218] as was his advice concerning the construction of *mikvaot* [*aseh* 248]. R. Moses’ detailed assessment of the evils entailed in sexual relations with non-Jewish women was made repeatedly, but only in Spain: “*Ve-he’erakhti bi-derashot ka-elu be-galut Yerushalayim asher bi-Sefarad ve-hotzi’u nashim nokhriyyot rabbot bishnat 996 (= 1236 C.E.) . . .*” [*lo taaseh* 112]. R. Moses’ designation of particular *derashot* for each area appears to be quite precise. General remarks, standard problem areas (Torah study, honesty), and widespread problems such as *tefillin* were

fifteenth century did German and Austrian rabbinic scholars (such as R. Israel Isserlein) begin to preach publicly against these sexual liaisons.⁶³

On the other hand, the penitential literature of the German Pietists is replete with penances for those who had engaged in sexual relations with non-Jewish women, and for more severe indiscretions as well.⁶⁴ To be sure, given the hypersensitivity of *Hasidut Ashkenaz* to transgression,⁶⁵ the use of this literature as a historical

addressed to all locales that he covered. Problems endemic to Spain (*yein nesekh*, proper *mikvaot* [see above, n. 58]), as well as sexual relations with non-Jews, were spoken about only in Spanish communities. Cf. J. Katz, *Ben Yehudim le-Goyim*, 106–07.

⁶³See S. Eidelberg, *Jewish Life in Austria in the XVth Century* (Philadelphia: Dropsie College, 1962), 84–86. On the increase in sexual crimes in late medieval Ashkenaz, see also Dinari, Yuval, and Rosensweig, above, n. 61. In the second half of the fifteenth century, R. Judah Mintz of Padua, [*She'elot u-Teshuvot* (Cracow, 1882), no. 5] acknowledged that there were those in the Jewish community who approved the presence of prostitutes as a means of preventing men from committing adultery with married women. Cf. above, n. 59. R. Judah Mintz did not himself condone this policy, but could do nothing to dislodge it. Cf. Maharam Padua, *Responsa*, no. 19; and R. Shelomoh Luria, *Yam shel Shelomoh*, *Yevamot* 2:11.

⁶⁴See I. Marcus, "Hasidei Ashkenaz Private Penitentials," *Studies in Jewish Mysticism*, ed. J. Dan and F. Talmage (Cambridge: Association for Jewish Studies, 1982), 57–83; *idem*, "Hibburei ha-Teshuvah shel Hasidei Ashkenaz," *Mehkarim be-Kabbalah, be-Filosofyah Yehudit, u-ve-Sifrut ha-Musar ve-he-Hagut (Mukdashim li-Yeshayah Tishby)* (Jerusalem: Magnes, 1986), 369–84; *idem*, *Piety and Society*, 42–52, 79. In addition to the so-called sage-penitentials and private penitentials, Marcus has noted the existence of "responsa" authored by R. Yehudah *he-Hasid* to queries about which penances should be prescribed for particular sins. Even if these texts were inspired by actual questions, and were not merely a literary device, there is no evidence to suggest that the questions came from outside the small circle of the German Pietists.

⁶⁵See H. Soloveitchik, "Three Themes in the *Sefer Hasidim*," *AJS Review* 1 (1976): 311–57.

source requires caution.⁶⁶ In any event, the penances themselves were meant to be utilized by wayward individuals and represented, quite obviously, the antithesis of accommodation.⁶⁷

⁶⁶The prominent place given to sexual transgressions in the penitentials, and the frequency with which they were mentioned, probably meant that the German Pietists believed there was cause for serious concern in Ashkenaz. The Pietists were not merely attempting to cover different theoretical possibilities, as was perhaps the case regarding penances for *yein nesekh*; see H. Soloveitchik, above n. 62. Still, the issue requires further study. Shaving with a razor, which became a problem in a number of European communities during the modern period [see, e.g., *Teshuvot R. Akiva Eiger*, vol. 1, no. 96; R. Samson Morpurgo, *Shemesh Tzedakah* no. 61; and R. Ovadyah Yosef, *Yehaveh Daat*, vol. 2, no. 16], does not appear to have been prevalent in medieval Ashkenaz. See, e.g., *Sefer Rabiah (Teshuvot)*, ed. D. Deblitzky (Bnei Brak, 1989), sec. 947 (123–25), and *Shibbolei ha-Leket*, ed. Y. Hasidah, vol. 2 (Jerusalem, 1989), 140. Yet, this prohibition leads off a category of penances in R. Eleazar Roqeah's *Hilkhot Teshuvah* [see I. Marcus, "Private Penitentials," above, n. 64], and its practitioners were censured by R. Eleazar in his *Sodei Razayya*. See Nathan Nata Spira, *Megalleh Ammukot* (Lemberg, 1882), fol. 39b [Leviticus 19:2]. See also *Sefer Hasidim*, ed. Wistinetski, sec. 1664. [Note that the exempla sections, which constitute a significant part of *Sefer Hasidim*, refer only sparingly to manifestations of sexual promiscuity. See H. Soloveitchik (above note), 330–35; I. Marcus, *Piety and Society*, 59–65; and Y. Baer, "Ha-Megammah ha-Datit ha-Hevratit shel Sefer Hasidim," *Zion* 3 (1937): 42 n. 56.] In consonance with their disdain for many aspects of the intellectual and communal leadership in Ashkenaz, the German Pietists may have taken a harsher view toward (potential) nonobservance in Ashkenaz than did normative (non-Pietist) halakhists. Cf. ms. Vatican Ebr. 183, fol. 173v, and below, n. 84. We have seen the strong position taken by Spanish Kabbalists against sinners in their realm. See above, nn. 20–21, 54.

⁶⁷Note that both R. Moshe mi-Coucy and R. Yonah Gerondi, the two major *Rishonim* who actually functioned as public *mokhihim*, had affinities for *Hasidut Ashkenaz*. [See I. Ta-Shema, "Hasidut Ashkenaz bi-Sefarad: Rabbenu Yonah Gerondi—ha-Ish u-Fo'alo," *Galut Ahar Golah (Mehkarim*

GAMBLING

A final area of religious malfeasance that we shall note was the proliferation of gambling. Gambling was permitted, based on a cogent reading of the relevant talmudic sources, provided that it was not the gambler's sole source of livelihood and that the money being wagered was clearly acknowledged by all participants. It is therefore unlikely that the many *Rishonim* who ruled that gambling was permissible did so because of external considerations per se. Those who ruled that even casual gambling was improper could have reached this conclusion on the basis of an alternative analysis of the underlying Talmudic sources.⁶⁸ Sometimes, however, a

Muggashim li-Prof. Hayyim Beinart), ed. A. Mirsky et al. (Jerusalem, 1988), 165–73, and the literature cited in nn. 19–20; my *Jewish Education and Society in the High Middle Ages* (Detroit: Wayne State University Press, 1992), 74–79; and cf. C. Horowitz, *The Jewish Sermon in the 14th Century*, 25–26.) It is therefore not surprising that both were against *pilagshut* in Spain (above, nn. 45, 51), and that R. Moses was not prepared to justify the neglect of *mitzvot aseh* in Ashkenaz as other Tosafists were (above, n. 16).

S. Z. Havlin (above, n. 50), 205–13, has demonstrated that Jewish communal policy in Christian Spain was conducted in accordance with the *Takkanat Rabbenu Gershom* prohibiting polygamy, of which Spanish Jewry was aware, although the force of this policy was independent custom rather than the *takkanah* itself. A less formal policy in this matter could undoubtedly have facilitated the allowance of *pilagshut*. Cf. Y. T. Assis, "Herem de-Rabbenu Gershom ve-Nisu'ei Kefel bi-Sefarad," *Zion* 46 (1981): 251–77. It should be noted, however, that Ashkenazic halakhists made no attempt to *bypass* the *takkanah*. Moreover, they did not consider permitting *pilagshut* even for unmarried men. Cf. *Yam shel Shelomoh* (above, n. 63).

⁶⁸See *Sefer Mordekhai le-Massekhet Sanhedrin*, sec. 689–91; *Mishneh Torah*, *Hilkhot Edut* 10:4, and *Haggahot Maimuniyyot*, ad loc. (sec. 5); *Perush R. Asher b. Yehiel le-Massekhet Sanhedrin* 3:3; *Tosafot*, *Eruvin* 82a, s.v. *amar R. Yehudah*.

Rishon does intimate in the course of a ruling or responsum that his negative ruling was occasioned by the fact that gambling had gotten out of hand or had become a potentially dangerous activity.⁶⁹

The excessive gambling that appeared throughout the Jewish communities of Christian Europe spawned different types of reactions. Several Ashkenazic communities, including the joint *Kehillot Shum*, enacted legislation or passed restrictions designed either to curtail gambling by limiting it to certain holidays and nonmonetary forms, or to stop their members from gambling entirely.⁷⁰ In Spain, where the domestic and economic stresses that excessive gambling created were described in a number of responsa, the gamblers were excluded from participation in communal affairs and even given lashes.⁷¹

For their part, individuals who were trapped by this vice often took oaths promising that they would stop gambling. But the gambler frequently could not keep his oath and asked for a rabbinic release from it. A passage in the Talmud Yerushalmi proscribed release from an oath in circumstances where the one who had taken the oath could then continue to do something that was prohibited according to rabbinic law.⁷² The applicability of this principle to gamblers' oaths was initially a matter of Talmudic interpretation. Ultimately, however, the possibility of temporal concerns playing a

⁶⁹See, e.g., the responsum of R. Yosef Tob Elem in *Haggahot Mordekhai le-Massekhet Sanhedrin*, 722–23.

⁷⁰See L. Finkelstein, *Jewish Self Government in the Middle Ages* (reprinted New York: Jewish Theological Seminary, 1964), 60, 228, 242; *Sefer Mordekhai le-Massekhet Sanhedrin*, sec. 695, and cf. *Sefer Raban*, ed. S. Z. Ehrenreich, fol. 224b. See also *Tosafot*, *Eruvin* 104a, s.v. *hakhi garis*, and *Sefer Mitzvot Gadol*, *lo taaseh* 65 (fol. 22a).

⁷¹See Rashba, *Responsa* 2:35, 286; 7:244, 270, 445, 501; Rosh, *Responsa* 11:10; 72:1; 82:2.

⁷²*Yerushalmi Nedarim* 5:4. Cf. *Tosafot*, *Gittin* 35b, s.v. *kasavar*.

role in a *Rishon's* ruling becomes more likely.⁷³ Some of the halakhists who concluded that the vow could be nullified were inclined to do so because it was very difficult for people to control their urge to gamble. Indeed, even Ashkenazic halakhists were prepared to accommodate the inveterate gamblers by allowing them to be released from their ill-fated vows. The Tosafist R. Tuvyah of Vienne ruled: "Now, in this era, the vow of [abstention from] gambling should be nullified, for it is almost an involuntary act, since they cannot control themselves."⁷⁴ R. Samuel of Evreux wrote that "if it is certain that [the gambler] will not be able to restrain himself and will violate his oath, it is better to release him from it."⁷⁵

⁷³See Rashba, *Responsa* 1:755, 3:305; 7:4, 537; *Meyuhasot la-Ramban*, nos. 252, 286; Rosh, *Responsa* 12:5–6; *Zikhron Yehudah*, no. 71; Ran, *Responsa*, no. 51.

⁷⁴*Sefer Mordekhai le-Massekhet Shavuot*, sec. 787. Cf. *She'elot u-Teshuvot ha-Rama*, ed. A. Siev (Jerusalem: Hemed, 1971), 440, no. 103.

⁷⁵See *Sefer Orhot Hayyim le-R. Aharon ha-Kohen mi-Lunel*, ed. M. Schlesinger, vol. 3 (Berlin, 1899), 495; *Mordekhai Shavuot*, 787; and L. Landman, "Jewish Attitudes Toward Gambling: The Professional and Compulsive Gambler," *Jewish Quarterly Review* 57 (1967): 302. The *Mordekhai* text reports that some boors (*rekim*) would wager their own bodies and then have to be redeemed. R. Meir of Rothenburg was prepared to nullify all vows taken by nonprofessional gamblers. See R. Meir b. Barukh me-Rothenburg, *Teshuvot, Pesakim, u-Minhagim*, ed. I. Z. Kahana, vol. 2 (Jerusalem: Mossad ha-Rav Kook 1960), 247–48, sec. 178–79. Nonprofessional gambling, however, was technically not included in the proscribed category of *mesahek be-kuvya*. Maharam's responsa also reveal the practice of some gamblers to vow that if they continued to gamble, they would give sums of money to charity. See Cremona, nos. 299–300; Lemberg, nos. 211–12; Prague, nos. 493, 500. [Note the harsh stance of *Sefer Hasidim* toward those who gambled (ed. Wistinetski, sec. 853, 1236).] For the deteriorating situation in late medieval Ashkenaz, see S. Eidelberg (above, n. 63), 83–84, and B. Rosensweig (above, n. 61), 34. Cf. *Teshuvot ha-Rama* (above note), 439–41.

COMMUNITY, HALAKHIC PROCESS, AND DECISOR

When evaluating the data that has been gathered in order to ascertain rabbinic attitudes toward nonobservance, we ought not succumb to temptation and conclude simply that medieval Ashkenazic society was more observant than Hispano-Jewish society. It is true that Spanish society alone had a courtier class, whose life-style was especially conducive to religious malfeasance,⁷⁶ and that the scholarly class in Spain was smaller and more detached from the rest of the population compared to its Ashkenazic counterpart.⁷⁷ In addition, the role that the study of philosophy played in undermining religious observance must also be considered.⁷⁸ At the same time, Ashkenazic society was far from utopian. The heinous crimes of murder, informing, and adultery were not unknown there.⁷⁹ Many Ashkenazic Jews who under difficult circumstances were challenged to accept Christianity did not choose martyrdom.⁸⁰ Contrary to a popular misconception, many Ashkenazic Jews were not scholars⁸¹ and, as we have seen, many had difficulty in fulfilling

⁷⁶See C. Horowitz, *The Jewish Sermon in 14th Century Spain*, 41–49.

⁷⁷See I. Ta-Shema, "Shipput Ivri u-Mishpat Ivri ba-Me'ot ha-Yod Alef/Yod Bet bi-Sefarad," *Shenaton ha-Mishpat ha-Ivri* 1 (1974): 353–72, and Horowitz, 49–54.

⁷⁸See, e.g., B. Septimus, "Narboni and Shem Tov on Martyrdom," in *Studies in Medieval Jewish History and Literature*, ed. I. Twersky, vol. 2 (Cambridge, MA: Harvard University Press, 1984), 447 n. 1.

⁷⁹See above nn. 9, 61, 63.

⁸⁰See H. Soloveitchik, "Religious Law and Change" (above, n. 43), 214–16.

⁸¹See, e.g., A. Grossman, *Hakhmei Ashkenaz ha-Rishonim* (Jerusalem, 1981), 21–23, and "Avaryanim va-Allamim ba-Hevrah ha-Yehudit be-Ashkenaz ha-Kedumah ve-Hashpaatah al Sidrei ha-Din," *Shenaton ha-Mishpat ha-Ivri* 8 (1981): 135–52; E. E. Urbach, *Baalei ha-Tosafot* 2:529; I. Ta-Shema, "Mitzvat Talmud Torah ki-Ve'ayah Hevratit/Datit be-Sefer Hasidim," *Sefer Bar Ilan* 14–15 (1977): 98–113.

some of the most basic religious precepts. Clearly, a more nuanced interpretation of the data is called for.

Medieval Ashkenazic society, due to its relatively insular nature, had a high level of what Jacob Katz has termed *kefifah la-samkhut*. Laymen in Ashkenaz were likely to follow what was prescribed by rabbinic decisors. As a result, Tosafists felt free to apply their dialectical methodology to categories such as *goy shel Shabbat*, and develop patterns of leniency that were often beneficial to Ashkenazic society.⁸² When an unacceptable overextension or misguided malfeasance on the part of laymen did occur, however, the rabbinic response was swift and harsh. Such was the reaction in the *hilkhot Shabbat* cases that we have presented.

Ritva cites an Ashkenazic formulation, which perhaps captured the essence of this approach:

A venerable Ashkenazic rabbi pointed out in the name of his French teachers, including Ri and R. Meir of Rothenburg,⁸³ that these words (*mutav she-yihyu shogegin*) were said only for their generation [of the talmudic period]. But in this generation, when they are lenient in a number of things, it is appropriate to make a *seyag la-Torah*, even in [matters that are] *de-rabbanan*, and to protest and to fine people so that they will not transgress, neither accidentally, nor willfully.⁸⁴

To be sure, *mutav she-yihyu shogegin* was employed by Tosafists, and

⁸²See J. Katz, *Goy shel Shabbat*, 55–56, 180–81.

⁸³Maharam studied in northern France and is considered a student of the French Tosafists. See H. Soloveitchik, “Three Themes in the *Sefer Hasidim*,” in *AJS Review* 1 (1976): 349; *idem*, “Can Halakhic Texts Talk History?” in *AJS Review* 3 (1979): 195.

⁸⁴*Shittah Mekubbetzet, Asifat Zekenim le-Massekhet Betzah* (reprinted, New York, 1967), 30b, s.v. *ve-hiksheh* (fol. 23b). Ritva himself noted that in a situation where an attempt at rebuke would surely go unheeded, *mutav she-yihyu shogegin* would have to be retained. This confirms that the French formulation presumed a degree of *kefifah la-samkhut*.

the conditions of its use were discussed and refined.⁸⁵ Nonetheless, this statement may represent the belief of Ashkenazic halakhists that in order to provide the leniencies which were necessary in their era, it was necessary to inhibit any deviation from these guidelines, even those that occurred *be-shogeg*. The only vice-related act that was tolerated in Ashkenaz was the ubiquitous gambling oath.⁸⁶

Professor Katz further maintained that because of the well-honed “ritual instinct” of even the common folk in Ashkenaz, halakhists were inclined to justify long-standing religious customs and practices that did not appear, at first blush, to be in accordance with Talmudic law.⁸⁷ It appears that the “ritual instinct” of Ashkenazic Jewry also allowed the malfeasance or nonfeasance regarding *tefillin*, *tallit* (and to a lesser extent *mezuzah*) to be explained away if not justified, by Tosafists. These precepts could not have been brazenly dismissed by members of a group that never strayed far from the directives of its rabbinic leadership. There must be a way to explain why some members behaved as they did. Indeed, it may have been the complexity of the *halakhah* itself which caused them to become confused or misguided. In any event, the response of Ashkenazic rabbinic leadership to common forms of nonobservance was linked

⁸⁵See *Tosafot*, *Shabbat* 55a, s.v. *ve-af al gav* and parallels; *Sefer Mordekhai ha-Shalem al Massekhet Betzah* (Jerusalem: Makhon Yerushalayim, 1983), 103 (to *Betzah* 30a); *Sefer Raban*, *Massekhet Niddah*, ed. S. Z. Ehrenreich, sec. 336, fol. 141a; *Tosafot*, *Eruvin* (above, n. 68); and Y. Henkin (above, n. 8). The use of this principle does increase in the late thirteenth century and beyond. Maharam himself invoked it, followed by others, as a measure of rabbinic control over the religious life of the community was lost. See E. E. Urbach, *Baalei ha-Tosafot* 2:549–50; I. A. Agus, *Teshuvot Baalei ha-Tosafot* (New York: Yeshiva University, 1954), 175–76; and Y. Dinari, *Hakhmei Ashkenaz be-Shilhei Yemei ha-Benayim*, 61–63, 72.

⁸⁶Cf. *Tosafot*, *Hagigah* 16a, s.v. *ve-yaaseh*; *Kiddushin* 40a, s.v. *ve-yaaseh*; so-called Rashi to *Moed Katan* 17a, s.v. *mah*; *Sefer Hasidim*, ed. J. Wistnietzki, sec. 62; *Otzar ha-Geonim*, *Moed Katan*, ed. B. M. Levin, 20, 68; R. Naftali Zevi Yehudah Berlin, *She'elot u-Teshuvot Meshiv Davar*, no. 44; and Y. Dinari, *Hakhmei Ashkenaz*, 52–53.

⁸⁷I. Katz, *Goy Shel Shabbat*, 176–79.

to their policy of using dialectic as a means of justifying existing societal practices as well as of fostering halakhic creativity.⁸⁸

Spanish Jewish society, on the other hand, was clearly less devoted to its halakhic leadership.⁸⁹ Thus, Spanish halakhists, even those who had been trained by Tosafists and schooled in their methods of dialectical resolution, never felt the luxury of being able to expand the *halakhah*. They had to go mostly “by the book.” Moreover, they made little attempt to justify societal practices that appeared to deviate from Talmudic law since the “ritual instinct” of the populace was not considered to be reliable.⁹⁰ In the same vein, they could not effectively explain away ritual malfeasance. Philosophical allegory and skepticism, rather than concern or confusion about proper performance, played a significant role in the neglect of certain *mitzvot maasiyyot*.⁹¹

⁸⁸See J. Katz’s review of E. E. Urbach’s *Baalei ha-Tosafot* in *Kiryat Sefer* 31 (1956): 14.

⁸⁹See M. Breuer, “Le-Heker ha-Tippologiyah shel Yeshivot ha-Maarav Bimei ha-Benayim,” *Perakim be-Toledot ha-Hevrah ha-Yehudit (Mukdashim li-Prof. Y. Katz)*, ed. E. Etkes et al. (Jerusalem: Magnes, 1980), 45–55; I. Ta-Shema, “Shipput Ivri u-Mishpat Ivri” (above, n. 77), and “Al Petur Talmidei Hakhamim me-Missim bi-Yemei ha-Benayim,” *Iyyunim be-Sifrut Hazal, ba-Mikra, u-ve-Toledot Yisrael (Mukdash li-Khvod Prof. E. Z. Melammed)*, ed. Y. D. Gilat et al. (Ramat Gan: Bar Ilan University, 1982), 312–22; and J. Katz, “Rabbinical Authority and Authorization in the Middle Ages,” *Studies in Medieval Jewish History and Literature*, ed. I. Twersky (Cambridge, MA: Harvard University Press, 1979), 48–51.

⁹⁰See above, n. 43. H. Soloveitchik has recently argued (in “Religious Law and Change”) that the difference between Ashkenaz and Spain in these matters had less to do with actual practices or reality and more to do with the self-perception or self-image that the rabbinic/halakhic leadership in Ashkenaz had developed. Cf. I. Ta-Shema, “Halakhah, Minhag u-Massoret be-Yahadut Ashkenaz ba-Me’ot ha-Yod Alef/Yod Bet,” *Sidra* 3 (1987): 104–09, 138–47, 159–60. Ta-Shema stresses the role that *minhag* as an independent value played.

⁹¹For other *mitzvot aseh* that were neglected in Spain, see above, n. 21, and H. J. Zimmels, *Ashkenazim and Sephardim*, 256.

The gulf that separated laymen from the halakhic process in Spain necessitated that religious malfeasance be handled more delicately. As the material concerning sexual misconduct indicates, the issue of whether enforced restrictions would improve the situation always had to be considered. For this reason as well, Spanish halakhists could not possibly have prescribed lashes for violations of *issurei Shabbat de-rabbanan*.⁹²

I am suggesting, in short, that rabbinic attitudes toward nonobservance in the Middle Ages were conditioned by the religious nature of the communities as well as by the fealty that the communities demonstrated toward the halakhic process and its decisors. Full validation of this thesis can be achieved only after a

⁹²Another detail that accords with our interpretation of the differences between the Spanish and Ashkenazic communities, but requires further corroboration, should be noted. Members of the Ashkenazic communities themselves were involved in imposing restrictions on gambling (see above, n. 70) and in censuring those who violated *issurei Shabbat* (above, n. 38). Rashba, on the other hand, chastised a Spanish community in which a group of its members wished to repeal gambling restrictions already in force. See Rashba, *Responsa* 7:244, 270. Cf. 2:279, and *Teshuvot ha-Rashba ha-Meyuhasot la-Ramban*, no. 244. Moreover, Spanish communities, beginning with the mid-thirteenth century, appointed official *berurei averot* to monitor religious problems and enforce observances. The members of *Kehillot Ashkenaz* were apparently able to police themselves more informally. See Rashba, *Responsa* 3:304, 318; 4:311; *Meyuhasot*, no. 279; and Y. Baer, *A History of the Jews in Christian Spain* 1:231–25.

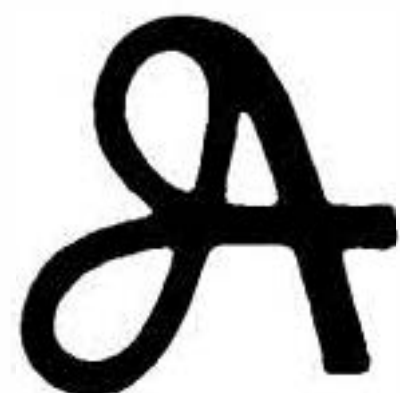
Professor Katz has noted, regarding Sabbath violations in eastern Europe during the sixteenth and seventeenth centuries, that as the *kefifah la-samkhut* decreased, rabbinic leadership curtailed its attempts to justify communal practices. The leaders appointed or acted themselves as *anshei tamid* or *memunim* (= *berurei averot*), to make sure that extant statutes were not being violated. See his *Goy shel Shabbat*, 70–83, 180–81, and H. H. Ben-Sasson, “Takkanot Issurei Shabbat Shel Polin u-Mashma’utan ha-Hevratit ve-ha-Kalkalit,” *Zion* 21 (1956): 185–87.

comprehensive survey and analysis of all manifestations of religious nonobservance in the medieval period. Indeed, the fact that the results obtained thus far can be readily understood in light of established rabbinic and societal conventions and postures strongly suggests the value of undertaking the larger investigation.

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