Jewish community and civic commune in the high Middle Ages

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I.

The following observations do not aim to provide a comprehensive phenomenology of the Jewish community during the high and late medieval periods. Rather I wish to present the outlines of a model which describes the status of the Jewish community within the medieval town or city, and to ask how the concepts of 'inclusion' and 'exclusion' can serve to describe that status. Using a number of selected examples, almost exclusively drawn from the western regions of the medieval German empire, I will concentrate, first, on a comparison between Jewish communities and other corporate bodies ('universitates') during the high medieval period, and, secondly, on the means by which Jews and Jewish communities were included in the urban civic corporations of the later Middle Ages.

To begin with, I should point out that the study of the medieval Jewish community and its various historical settings cannot draw on an overly rich tradition in German historical research. The 'general' historiography of towns and cities that originated in the nineteenth century accorded only sporadic attention to the Jews. Still, as early as 1866 the legal historian Otto Stobbe had paid attention to the relationship between the Jewish

community and the urban civic corporation, reaching conclusions that were at times remarkably far-sighted.\(^2\) Conditions of the Jews in the German lands were further discussed in the years after 1945, using approaches deriving from legal history. We can single out the important works by Guido Kisch, who after his return from exile in the United States had resumed teaching and research in Basle (1962).\(^3\) From this perspective, the relationships between Jews and kings or other rulers were of particular significance. It is certainly one of the consequences of the Shoah that a second complex of questions now received a great deal of attention, concerning the historical phenomenology of anti-Judaism and the modes and processes of exclusion, persecution, and expulsion. The ties that existed between Jews and medieval rulers, epitomised in the concept of »chamber serfdom« (Kammerknechtschaft), now offered one avenue of explanation in that the Jewish presence could be viewed as an alien element intruding, as it were, into the medieval town, which in turn was graced with almost continuous aspirations to autonomy.\(^4\) At the same time, the vocabulary of social sciences added the concept of the »marginal group« (Randgruppe). By focusing their perspective on the image of the medieval Jew as an object of negative discrimination and victim of brutal persecution (which indeed Jews were to an appalling degree), historians in the past have neglected the analysis of medieval Jewish self-government and of the options available to Jewish communities. Significant source material available for historical enquiry is by no means confined to the Hebrew tradition.

The question we are largely concerned with is one of constitutional history. It was dealt with at length as early as 1931 by Herbert Fischer, a


German-Jewish historian of Breslau (Wroclaw), who drew on the Latin/vernacular and Hebrew sources available to him. Like other promising approaches developed during the years of the Weimar Republic, by, above all, German historians of a Jewish background, Fischer's findings were soon swept into all but oblivion during the years of National Socialist rule; due to the expulsion and murder of most Jewish scholars they had little impact even in the period after 1945. It was Fischer himself who, during the 1970s, when he lived in Israel and called himself Arye Maimon, encouraged a number of German medievalists to pay closer attention the history of medieval German Jewry. A first German-Israeli research synthesis was reached in *Germania Judaica III*, dealing with the period between 1350 and 1520.

However, research on the Jewish community, on its internal legal relations and functioning, remained the prerogative of scholars in Hebrew Jewish studies, mostly in Israel and the United States. From the perspectives of constitutional and social history, however, Alfred Haverkamp has recently provided us with a new view of the topographical and constitutional inclusion of Jewish settlements and communities within the medieval towns and cities of the »German« empire. He also addressed the implications of his findings in terms of social history and the history of mentalities. In describing »concivilitas« as a »model« of Christian-Jewish

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relations at the community level, Haverkamp is above all concerned with the basic insight that communal and communitarian forms of life constitute a basic category of societal formation and historical agency. This is why he has argued against the predominantly Weberian tradition in historiography and opted for an "open concept of community", which in turn leaves room for a new emphasis on the community’s religious dimension and on the legitimizing functions of religious cult for the formation of pre-modern communities. According to Haverkamp’s definition of Gemeinde, the expressions of the community’s corporate character, of its autonomy and autocephaly are to be taken not as constituent elements [of the concept] but as accessories. In accordance with the comprehensive semantics of [the English term] community, communities [Gemeinden] will be taken as specifically local units of groups of people and, hence, as constituent parts of wider community formations with collective acts and shared attitudes. [...] In particular, (this definition) calls into question a teleological perspective on the communities, a view that is bound to surmise that they generally aimed at emancipation from feudalism. By contrast, it accords description a higher priority.«

The title of the German collection in which the present article first appeared, however, used the term Sondergemeinde (>particular< or >sub-community<). This term implies the existence of a main community – a notion which, in German historical research, appears to be greatly influenced by Max Weber’s ideal type of the occidental city. Following Otto


Gerhard Oexle, and against Haverkamp's position, Ernst Voltmer has recently emphasised the leading role of this »town commune« (Stadtrechtung) and its preponderance over the various »social groups« in the town or city, including the »special group or particular community« (Sondergruppe / Sondergemeinde) of the Jews. According to Voltmer, the special status of the Jews, like that of Christian clerics, was based on »a self-conception primarily defined in religious terms«, which is why the Jews constituted »a privileged group unable to integrate in the town or city«. Nevertheless, they belonged, »like others, to the medieval city in an essential manner [wesentlich]; they form[ed] part of urban society«. 11 We might object that the medieval commune, of course, quite regularly conceived of itself in religious terms 12 (a feature overshadowed by the idea of rationalization in Max Weber's conception of universal history). For the present purpose, however, I would rather take issue with the concept of integration and the idea of a presumed ability to integrate or be integrated, simply because of their limited analytical value.

In colloquial usage, the term integration evokes only positive connotations. The integration of a person is thought of as somehow gradable, but relating to that person as a whole, in all his or her significant relations with the surrounding »society« (cf. the frequent collocations »well integrated« and »poorly integrated«). That society, on the other hand, is implicitly conceptualised as an »integrum«, an unblemished whole. Yet the criteria by which to measure integration on that scale - membership? economic participation? linguistic abilities? - are left for everyone to guess, and strictly speaking, nobody is »able to integrate« or »able to be integrated« in the end.

To avoid such ambiguities, I would propose here to use the binary terminology of »inclusion« and »exclusion«, in a value-neutral and analytical sense. It would seem that this concept can be applied more flexibly in different ways to distinct social systems. Looking at the modes of inclusion and exclusion
avoids having to ask about any presumed degree of integration. Rather, it requires a definition, or at least a precise description, of the relevant functional areas or levels of societal interaction. The basic operation of in-/exclusion takes place on the boundaries of these social systems. It is thus possible to think of individuals or groups as both included and excluded at the same time, according to the various contexts of interaction at hand.

To see a classic example, let us take the status of Jews as burgesses (cives) in medieval urban communities. Jews and sometimes whole Jewish communities were included in the civic corporation in this way. This development had precise legal, military, fiscal, and further social consequences, even though these could differ from those involved in granting burgess status to a Christian – after all, there were a number of other areas of in-/exclusion, such as, for example, ties based on lordships. Obviously, Jews were not permitted to assume public offices in the urban commune. Yet considered from a different perspective (which is often forgotten), they had to abstain from such positions for their own religious reasons – a type of self-exclusion that could be viewed, from the perspective of the Jewish community, as a symbol of coherence or inclusion. And this is not the end of it: receiving Jews into the civic community of towns and cities is mostly documented in the late thirteenth and early fourteenth centuries, a period when the Christian image of the Jew was showing more and more sinister features (serving, in other words, as a generator of exclusion) and when the German empire presented itself to many Jews as a »land of persecution«.

Hence, a summary interpretation of the granting of burgess


status to Jews as evidence of integration is of little value because the frame of reference is too loosely defined. To cite a second example, geographical segregation (sometimes for social and cultic reasons and in accordance with the Jews’ own wishes\textsuperscript{15}) and the institution of Ghettos (of which only few instances such as Frankfurt are known in Germany\textsuperscript{16}) are processes characterised by a combination of inclusion and exclusion.

Any analysis that aims to take account of the complexity of Christian-Jewish relations would further need to consider processes of social closure within the Jewish community, processes which were connected to the rise of forms of institutional authority (Obrigkeit) not only in the Christian city but also in larger Jewish communities, such as Frankfurt am Main.\textsuperscript{17} This way of looking at the issue may reveal the possibility – by no means a purely theoretical one – that processes signifying exclusion to an outside observer (i.e., the Christian majority) may have been welcomed ‘inside’ because they seemed to favour inclusion and stabilize internal autonomy.\textsuperscript{18} By contrast, the Jewish society (or its leading members) would have regarded attempts by individuals to publicly assimilate their manners to that of Christians,\textsuperscript{19} as a threat to internal cohesion.\textsuperscript{20} The gravest problems were always posed

Persecution:\textsuperscript{\textsuperscript{14}} Pogroms against the Jews in the \textit{regnum Teutonicum} from c. 1280 to 1350. In: \textsc{Cluse, Christoph (ed.): The Jews of Europe in the Middle Ages (Tenth to Fifteenth Centuries). Proceedings of the International Symposium Held at Speyer, 20-25 October 2002 (Cultural Encounters in Late Antiquity and the Middle Ages, vol. 4). Tünnhout 2004, pp. 245-260.}

\textsuperscript{15} \textsc{Haverkamp, Jewish Quarters (see fn. 8), p. 23 on the ‘eruv’}. See also \textit{Encyclopaedia Judaica}, vol. 6, Jerusalem 1971, coll. 849-849, and \textsc{Schmandt, Judei, cives et incole (see fn. 13), pp. 48-49.}

\textsuperscript{16} \textsc{Haverkamp, Jewish Quarters (see fn. 8), pp. 25-26.}

\textsuperscript{17} \textsc{Treue, Wolfgang: Frankfurt. Reichsstädtischer Rat und jüdische Selbstverwaltung. Trier 1996 (project report for Germania Judaica IV, typescript).}


\textsuperscript{19} See, for instance, the ordinances against dressing in the manner of Christians, in \textsc{Finkelstein, Louis: Jewish Self-Government in the Middle Ages. New York 1924 (2nd ed. 1964), pp. 225 (Hebrew), 253-254 (English).}

by Jews who obtained individual privileges relating to settlement and taxation, by those who brought internal matters before a Christian court, and by those who obtained offices in the synagogue with the help of non-Jewish agencies.

On closer inspection, all these problems reveal striking similarities between the Jewish community and Christian clerics or religious houses. Moreover, it is useful to take a comparative look at other basic forms of horizontal organisation within the majority Christian society. Rights to self-governance and conflicts concerning their preservation also existed at parish level and in the wide range of guilds, crafts, and confraternities, not to speak of the urban commune of the later Middle Ages. From this perspective, it appears promising to conceptualize the Jewish community of the high and later Middle Ages as just one among many.

21 FINKELSTEIN, Jewish Self-Government (see fn. 19), pp. 226, 228 (Hebrew), pp. 238-239, 243 (English); also ZIMMER, Harmony and Discord (see fn. 7), pp. 48-52.

22 See the influential taqanah initiated by the Northern French sages, R. Samuel b. Meir and his brother, R. Jacob (»Rabbenu Tam«), from the second half of the twelfth century, in FINKELSTEIN, Jewish Self-Government (see fn. 19), pp. 153 (Hebrew), 156 (English): »We have voted, decreed, ordained and declared under the herem, that no man or woman may bring a fellow-Jew before Gentile courts or exert compulsion on him through gentiles, whether by a prince o[r] a common man, a ruler or an inferior official, except by mutual agreement made in the presence of proper witnesses«; similarly, the ordinances by the Rhenish communities, IBID., pp. 227 (Hebrew), 241 (English): »[...] he who endeavors to bring it about that a Gentile should judge a Jew is to be in excommunication, for one should try one's litigation through Jewish judges«.

23 FINKELSTEIN, Jewish Self-Government (see fn. 19), pp. 227 (Hebrew), 241 (English): »Whoever has a Hazzan or one to »roll the Torah«, or any public officer appointed through Gentile influence, is excommunicated and also the hazzan and the one who rolls the Torah [...]« (followed by the passage on gentile courts, cited in the preceding note). Significantly, the wording aims at a core element of the synagogue service. On this problem see GUGGENHEIM, Yacov: A suis paribus et non ab aliis indicentur: jüdische Gerichtsbarkeit, ihre Kontrolle durch die christliche Herrschaft und die obersten rabi gemeiner Judenschaft im heiligen Reich. In: CLUSE / HAVERKAMP / YUVAL, Jüdische Gemeinden (see fn. 1), pp. 405-39, at p. 405.


II.

In the terminology used by the Ashkenazi Jews, at least between the eleventh and fourteenth centuries, only the Jewish »holy community« (»qehillah qedofah«) was a community (Gemeinde) in the full sense of the term. This implies, for one thing, that there were further Jewish settlements which did not have this status. More importantly, the Christian civic community may have been recognized as a corporate body, especially in its manifestations as an external, non-Jewish authority. At the same time, its perception was polemically undermined by what one might term, with Ivan Marcus, »inward acculturation«. For example, Israel J. Yuval has recently pointed out that there were clear parallels between the self-conception of the Christian community of the city of Mainz, epitomized in their seal, which read »AUREA MOGUNTINA ROMANE ECCLESIE SPECIALIS FILIA«, and that of the local Jewish community. The latter was styled, in the accounts of the 1096 persecutions, as »the holy community, valued like gold«, and as an image of Jerusalem. Likewise, Yacov Guggenheim found a polemical reference to the contemporary communal movement in the Bible commentary composed by the Jewish scholar Josef Qara (c. 1100).

26 For a recent discussion of the roots of this self-conception, cf. WOOLF, Jeffrey R.: »Qehillah qedosha«: Sacred Community in Medieval Ashkenazic Law and Culture. In: POORTHUIS, Marcel (ed.): A Holy People. Leiden 2006, pp. 217-235. According to Woolf, the self-conception of the Jewish community as sacred »grew out of indigenous Jewish traditions that the founders of Ashkenazic Jewry brought with them« (p. 218) and as a response to the Christian community's self-image of »corpus christi (mysticum)«, even though the latter may have had an influence on the meanings added to the traditional Jewish idea (pp. 231-232). I am grateful to Professor Eva Haverkamp (Houston) for drawing my attention to this article.


29 GUGGENHEIM, Yacov: Coniuratio oder confrateria? Die Verschwörung der Sichemiten gegen die rechtmäßige Herrschaft im Spiegel der Bibelkommentare um 1100. Unpublished paper, given at the 43rd Assembly of German Historians (Deutscher Historikertag). Aachen, 26 September 2000. According to Guggenheim's unpublished paper, R. Josef Qara explained Judges 9 by reference to contemporary observations: A »confratria« of citizens had enabled the sons of Shechem to rebel against the legitimate rule of the sons of Gideon. R. Josef's (reactionary) criticism went even further than that of his clerical contemporaries, since he could easily identify the idolatry of the Shechemites with the Christian foundations of the commune.
In the Septuagint, the Hebrew biblical terms »qahal« ( помещения) and »'edah« (ensus) were rendered as »ecclesia« (ἐκκλησία) and »synagogē« (συναγωγή). The latter basically denotes a »regular assembly«; in later times and in the New Testament, the term is used for the local congregation in the synagogue. By contrast, הַעֲדָה and ἐκκλησία (»Gemeinde« in Luther's Bible translation) denote the community in a more comprehensive sense, the Greek term being borrowed from that used for an »assembly of the people« (i.e., of full citizens). In the New Testament we can observe that »God’s ἐκκλησία« could be taken to denote both the collectivity of all believers and the particular local community.30 In a similar sense, and considering the fact that Central European Judaism found its supreme mode of organisation in the qahal, Fritz Yitzhaq Baer has described this form of community as the embodiment of the Jewish nation in exile.31 More recent research, while appreciating the long-lasting legal and social implications of the ancient traditions in Torah and Talmud, has also recognized the influence of the Christian surroundings on the self-conception of the Jewish community in the high Middle Ages.32 Historians of Jewish law accord a decisive importance to the period between the tenth and twelfth centuries. The salient reason for the legal changes of the time lay in the rise of significant Jewish communities both in the Mediterransan world and in the »frontier areas« of Northern Europe, and the concomitant decline of authority on the part of the Exilarch and Geonim at the centres of Jewish learning and jurisdiction in Palestine and Babylonia (Iraq).33


32 YUVAL, Heilige Städte (see fn. 28); HAVERKAMP, »Concivilitas« (see fn. 8), pp. 121-124.

In this situation, the Jewish community was unable to find solutions for all its problems in tradition. Just as the Christian commune took root in various types of corporation, different in character and outlook, the Jews found in their tradition a variety of approaches for solving the problems of decision-making (unanimity versus majority vote) and of enforcing a decree once it was passed by the community or by a majority within it.34

A passage from the Tosefta often quoted in medieval times enumerates the areas of self-governance open to the inhabitants of a city, who were conceived of as a corporate body, and it allows for majority votes.35 The Talmud also appeared to allow certain professional groups to pass autonomous rules concerning the market, provided that such decisions were taken unanimously and approved by a »learned man« who had to make sure that such ordinances were neither unfair nor inconsistent with tradition.36

However, this did not solve the problem of how the community could coerce its members in cases of noncompliance. This problem constituted a challenge to nothing less than the community’s right to legitimate rule over its members. The Jewish sages in the newly-developed centres solved it by an almost revolutionary step. They defined the status of the individual local community by drawing on the competences of a fully legitimized court of law. In Mainz, Rabbenu Gershom (»the Light of the Exile«, d. 1028) defined the legislative authority of a community, even in cases not warranted by the tradition of religious law (halakhah), on the principle that a court was authorized to confiscate the property of an individual. According to R. Gershom, this applied »even if the most insignificant person is chosen as a leader of the community«.37 At about the same time

34 On the following, see GUGGENHEIM, Yacov: Jewish Community and Territorial Organisation in Medieval Europe. In: CLUSE, The Jews of Europe (see fn. 14), pp. 71–91, at pp. 75–77.
35 Tosefta Baba Mezia 11:27; cf. MARCUS, Entwicklungen (see fn. 33), pp. 63–64 with fn. 9 on p. 80.
36 KANARFOGEL, Ephraim: Unanimity, Majority, and Communal Government in Ashkenaz during the High Middle Ages: a Reassessment. In: Proceedings of the American Academy for Jewish Research 58 (1992), pp. 76–106, has argued that the drawn-out transition to a practice based on representation and majority votes was no mere adoption of Christian models. For the medieval rabbis the problem turned on the correct exegesis of the most frequently cited talmudic passages relating to the alms cashbox (Baba Batra, fo. 8b and fo. 9a).
37 ELON, Jewish Law, vol. 2 (see fn. 33), p. 687. Rabbeni Tam was conscious of this shift when he distinguished between »hefqer bet din« (the authority of the court) and »hefqer zibbür« (the authority of the community); see KANARFOGEL, Unanimity (see fn. 36), p. 91.
in Northern France, Rabbi Joseph Tov Elem ("Bonfils") ruled that a court of any Jewish community could make decisions according to the exigencies of the times, and that these were binding upon all members of the community and could not be annulled by anyone else.38

R. Judah ha-Kohen, R. Gershom’s most important student who taught in Mainz around the mid-eleventh century, also interpreted the cited passage from the Tosefta in terms of a »full autonomy from outside intervention«. Only the (impending) transgression of a religious commandment or prohibition could justify such intervention.39 Another responsum by R. Joseph Tov Elem, which Frank Hirschmann was able to date to 1015 or shortly thereafter,40 presents the following case: A number of Jews from Rheims had been waylaid and taken captive on their way to the fairs of Troyes. »The charitable Jews of Troyes risked their own lives« for them and negotiated a ransom of 30 pounds with the kidnappers. The sum was to be raised in large part by the captives themselves; for the remainder,

»the community of Troyes levied a tax of one solidus per pound [of property] on themselves, as well as on the neighbouring communities of Sens and Auxerre, and on the two Jews in Chalons. They further ordained that anyone who refuses to pay his share should be placed under the ban together with his children; his bread and his wine should be forbidden, and he was to pay a fine of thirty solidi«.

The Jews of Sens, however, released themselves from the ban.

»The messenger from Troyes indeed found them in great distress, because of a terrible calamity that had befallen them over the destruction of a church41 in their locality. They nevertheless cooperated with the Jews of Troyes and sent them their voluntary contribution. The question is: had the community of Troyes the right to pronounce the above-described ban, and is such ban binding on the people of Sens?«

38 ELON, Jewish Law, vol. 2 (see fn. 33), p. 690. Cf. infra, fn. 41.
39 MARCUS, Entwicklungen (see fn. 33), pp. 63–64; cf. ELON, Jewish Law, vol. 2 (see fn. 33), p. 699, quoting the Spanish scholar R. Solomon ibn Adret ("Rashba«, c. 1235–1310): »Each community as to its own locality has the same status as the geonim had with respect to all Jewry«.
41 The Hebrew term »to‘evah«, meaning »abomination«, was frequently used to denote a Christian sanctuary or object of cult in the Middle Ages. As Hirschmann has shown, it referred to a church building in this case.
In his much-noted answer, the scholar vindicated the Jews of Sens:

»The people of one town [i. e., community] cannot levy any taxes on the inhabitants of another town – they cannot claim such a prerogative because they possess greater learning, or more abundant riches, or because they are more numerous.«

»In secular matters«, Rabbi Bonfils concluded,

»each community is completely independent. The solemn decree of the community of Troyes was, therefore, not binding on the people of Sens, and hence the latter require no release therefrom.«

Menachem Elon has characterized this process as »revolutionary and far-reaching«. Indeed, the consequences were to be felt for centuries. In Franco-Ashkenazic Jewry, for example, the axiom of the autonomous local community posed a severe obstacle to the development of legitimate collective representation at regional and territorial levels. Time and again, the rabbis underlined the importance of local customs and peculiarities. The legitimacy of such customs was questioned only in cases when they seemed incompatible with Jewish religious law.

It would appear that the Jewish communities went through this phase of consolidation around the turn of the millennium, i. e., before that high medieval take-off period when new forms of Christian communities and communes were able to assert themselves on a wider scale. Nevertheless, the appearance and self-conception of the Jewish community did not remain free from Christian influence. In this context it is significant, for example, that around the year 1200, all Jewish communities of any importance, at least in the Rhineland, were to be found in places that also had a more or less developed civic community. This was not the case everywhere: Thus, the
cities of Champagne harboured important Jewish communities, while their Christian civic communities were little developed. Both regions, however, had another *tertium comparationis* in that their cathedral cities were of prime importance for the early history of Jewish settlement and community-building.47 These regions contained *episcopal* communities, rooted in the sacred, whose importance as nuclei for the development of the commune is probably under-estimated.48 The formative influence of these communities on the constitution of the urban Jewries shows up in certain analogous terminology such as the title of »Judenbischof« (bishop of the Jews) given to the »parnas« (or »archisynagogus«) and the »Judenkapitel« (chapter of the Jews) mentioned in non-Jewish sources from the Rhineland.49 It is also apparent in the fact that in the early period, the jurisdiction of the Jewish community reached about as far as the borders of the bishopric.50 The lives of early medieval bishops (fifth to eleventh centuries) frequently speak of the special relationship between the Jews of a given cathedral city and the local bishop. One possible expression of these relations was that Jews would have joined in the mourning ceremo-

49 The title of »Jews’ bishop« in the sense of »community leader« first appeared in Cologne and Worms, later also in Trier and Mainz. On the »Judenkapitel« of Cologne see SCHMANDT, Judei, cives et incole (see fn. 13), at pp. 42–47. In Worms the office of Jews’ bishop was called a »Jewish episcopacy« (»Judenbistom«) in a document from 1312, see BOOS, Heinrich (ed.): Urkundenbuch der Stadt Worms. Vol. 2. Berlin 1890, no. 74, pp. 45–47.
nies for a deceased Christian prelate, whether publicly or in their synagogue.\textsuperscript{51} Other Christian as well as Jewish tales from the time before c. 1200 speak of the relationships between the Jewish community or its leading members and the bishop (Hebr., »hegmôn«) or his court.\textsuperscript{52}

Generally speaking, we may assume for the early period of Jewish settlement that the definition of the Jewish community in the context of the various Christian communities (lay or ecclesiastical) was still an open matter. In other words, the more hierarchical (and complementary) arrangement of civic commune and Jewish community, observable in later periods, was not the dominant model yet. Rather, both sides still had similar competencies of self-rule. This analogous arrangement could, for example, find expression in judicial proceedings, where the personality principle held force, as when pleas of Christians against Jews were to be adjudicated before a Jewish court and before Jewish judges.\textsuperscript{53}


\textsuperscript{53} »Deinde sicut tribunus urbis inter cives, ita archisynagogus suus omnem iudicet querimoniam, que contigerit inter eos vel adversus eos:« Hilgard, Alfred (ed.): Urkunden zur Geschichte der Stadt Speyer. Straßburg 1885, no. 11, pp. 11–12 (13 September 1084).
III.

The terms used to designate a Jewish community (in Hebrew, »qahal«, »q’hillah«) are similar to those used for both the Christian civic community and for guilds. In Latin, we find »communitas«, »universitas«, in German, »gemeinde«, »gemeinschaft« or »gemein (der juden)«, »gemain judischeit«, »die gemeinen juden« or, less specifically, »die juden gemeinlich«, »judischeit« or »judenschaft«,54 and next to these, above all in the Southeast, »(juden)zeche«, and sometimes »synagoga«. Analogies between the Jewish community and the guild deserve closer scrutiny, considering not only that the former was sometimes called »zeche«55 and more generally, »universitas«, but also the fact that the guild has recently been defined by Otto Gerhard Oexle as a »particular community« (»Sondergemeinde«).56 In this context we will eventually have to return to our question concerning the relationships between the »Jewish guild« and the civic commune.

Very generally, we can follow Gerhard Dilcher, who pointed out that communities have a co-operative group structure (»genossenschaftliche Struktur«). Using this principle, Dilcher has developed a number of ideal types which may be used, with qualifications depending on the historical period and area, to describe the Jewish community. To varying extents, the latter was at the same time (1) a co-operative group defined by shared status and real estate (»Genossenschaft des Standes und des Bodenbesitzes«); (2) a collective beneficiary based on legal privilege (»privilegrechtliche Nutzungsgenossenschaft«); (3) a confraternity (»Bruderschaft«), and (4) a co-operative circle based on lordship and service (»genossenschaftlicher Kreis um Herrschaft und Dienst«).57

54 These terms were less specific and could also denote a Jewish settlement without full community status, sometimes called a »havurah« (fellowship) in the Hebrew sources of the later Middle Ages; cf. BREUER / GUGGENHEIM, Gemeinde (see fn. 7), p. 2090.

55 As in Vienna and in Wiener Neustadt from the second half of the fourteenth century. The Jewish community of Passau, too, had a »zechschrein« (a community or alms cashbox), around 1478: Germania Judaica, vol. III, part 2 (see fn. 6), p. 1090, fn. 30; while the Jewish community of Znojmo (Znaim) was represented by a »zechmeister« (I owe this information to my colleague, Thomas Peter M. A., who is preparing a doctoral thesis on the Jews of Znojmo in the later medieval period); see also HAVERKAMP, Jüdische Gemeinden (see fn. 1), p. 6 with fn. 21.


57 DILCHER, Gerhard: Die genossenschaftliche Struktur von Gilden und Zünften. In: SCHWINKEPÆR, Berent (ed.): Gilden und Zünfte. Kaufmännische und ge-
The Latin term »sodales« (comrades) appears as early as 1090 in the privilege granted by Emperor Henry IV to the Jews of Speyer (and, in a different usage, in the charter given by Frederick Barbarossa to the Jews of Worms in 1157). Guido Kisch has doubted whether these charters were granted to a community, »because a Jewish community, as a legal entity, did not exist at the time; rather, like the Christian community it was still in the early stages of its development«. From Kisch's perspective of »Jew­ry-Law« this may possibly hold true; from the perspective of Jewish law (halakhah) it is certainly incorrect. To be sure, Henry's charter was addressed to three named individuals »and their fellows« (»cum sodalibus suis«), resembling those privileges granted by Carolingian rulers to individuals or groups of merchants (including Jews). Thus it can be said that the Jewish group formally appears under the aspect of their shared benefits (Dilcher's »privilegienrechtliche Nutzungsgenossenschaft«), just as, in later periods, it was often only visible under the aspect of rule and service (»Herrschaft und Dienst«). However, the legal content of the charter leaves no doubt that it concerned the necessary safeguards for a religious community with a judicial constitution of its own, a community which by the mid-twelfth century was designated as »qahal« with regard to the period around the year 1100.

This example is instructive not least because we may surmise that Christian communities, too, may appear in the documentation only under specific aspects of their co-operative group structure, at the expense of other aspects such as the existence of a local ritual community which may have also played a constituent role. Otto Gerhard Oexle and others have cited various examples from the eleventh and twelfth centuries in their discussion of »conjuratio«, guild, and (early) commune. To these, I would like to add the above mentioned events of c. 1015 in Champagne.

First of all, we can note the striking proximity between those developments discussed under the label of »communal movement« and the


59 Haverkamp, Hebräische Berichte (see fn. 51), pp. 492-493. What is said here of the rather recent foundation of Speyer holds true a fortiori for the traditional centres of Mainz, Worms, and Cologne.

»revolutionary« process whereby the Jewish community in Northern Europe was redefined in legal terms. According to Oexle, guilds and communes were specific expressions of »conjuratio«, that is, of a social formation specific for Western culture that includes aspects both of sociation (»Vergesellschaftung«) and communalization (»Vergemeinschaftung«), to use Max Weber’s terms.61 The constituent elements of the guild as a »conjuratio« were the promissory oath and the communal meal.62

The question put before R. Josef Tov-Elem around 1015 does not mention a promissory oath. The obligation that the Jews of Troyes took upon themselves need not have been safeguarded by any oath. While oaths played a role in connection with taxation in later periods – when the sworn declaration implied an obligation towards the collective63 – it is worth pointing out that such an oath was never a basic constituent of the Jewish community, and that this community was no sworn union (»ge­schworene Einung«). The function of the promissory oath as known from Christian communities was sometimes fulfilled by the communal ban (Hebr., »herem«). An example from a later period may illustrate the point: R. Meir of Rothenburg, when asked (c. 1286–1293) about how a community ridden by internal strife could be reconstituted, proposed the following procedure:

»It would appear to me that all tax-paying houseowners (»ba’alè battim«) should be assembled; every one of them takes it upon himself under the threat of the ban to give his opinion only for the sake of heaven and of the common good. Proceed by the majority principle when electing the leaders, when appointing prayer leaders (cantors), when setting up the alms cashbox, when appointing the almoners, when building or tearing down in the synagogue, when extending or remodelling it, when buying a community hall, when extending or remodelling it, when buying a baking house, when extending or remodelling it; in short, all communal needs should be done according to the will of the leaders (elected by

the majority). In case a minority should refuse to partake in what has been decided upon, the majority, or the leaders instituted by the majority, have the power to coerce them until they concede, be it with a Jewish or a gentile court. If expenses are incurred, the minority has to share in them. In case someone should refuse to give his opinion under the threat of the ban, his vote is void and the decision is taken according to the majority of those who agree to take the threat of ban upon them.« 64

The background to this responsum was a particular situation of crisis, and the procedure adopted by no means presents a general rule. This, however, holds true for many of those situations in which, according to Oexle's model, the promissory oath supposedly served as the founding act of a Christian guild or commune by way of a »conjuratio«. 65 While the oath in these cases undoubtedly led to a change in the group's character, it does not follow that the co-operative group to which it related had not existed before.

A different case is the communal meal (»Mahlgemeinschaft«), which also plays a much smaller role in the medieval Jewish community than in the model of »guild as conjuratio«. Exclusion from hospitality, as expressed in the responsum of c. 1015, did not refer to a communal institution but more generally to daily social contacts: »Anyone refusing to pay (his share) was excluded, together with his progeny, from dealings with the community, and they enjoined the members of the community not to share their table or meals with him.« 66

The communal ban played a central role during all of the high and later Middle Ages, 67 and it was the theme of numerous regulations and could be imposed in graded forms, including even ritual malediction. As far as our present argument is concerned, it is interesting to point out that there existed (as in the Church 68) a means of excluding the individual from the

65 Oexle himself admits that all the communes he discussed emerged in situations of crisis; see Oexle, Gilde und Kommune (see fn. 61), p. 81.
66 Supra, fn. 42.
67 Finkelstein, Jewish Self-Government (see fn. 19), index, s. vv. »Excommunication« and »Herem«; also Breuer / Guggenheim, Gemeinde (see fn. 7), pp. 2107–2108.
68 Latin sources often use the term »excommunication« to denote the Jewish communal ban; see, for example, Benner / Reverchon, Juden und Herrschaft (see fn. 47), p. 195, fn. 191: »sub pena excommunicationis in scolis suis a presbitero judeorum prolate« (the »presbyter« probably meant a hazzan or cantor). The important point for the analogy is that excommunication by no means nullified baptism.
religious community, even though medieval Jews conceived of themselves as a >nation< and refused to view the baptised apostate as severed from the community. Apart from belonging to Israel, then, a medieval Jew was also a >member< of the local community.

The decrees passed by the Jews of Troyes are reminiscent of another basic feature of guilds and communes according to the standard model: voluntary election (>Willkür<, in the traditional sense of the German term). Of the medieval ordinances known as >taqanôt< (pl. of >taqanah<), the best known are those ascribed to major authorities – R. Gershom of Mainz, R. Jacob ben Meir (>Rabbenu Tam<) of Troyes – and those that found supra-local recognition for other reasons (as when they were decreed by delegates from several communities). It is likely that every community passed such rules and obliged its members to abide by them.

The scope for such >Willkür< was limited only by the Law, i.e., no taqanah could allow what was forbidden in the Torah, and none could give exemptions from its precepts.

Autonomous jurisdiction, too – at least in internal, civil matters – has already been mentioned. As a constituent factor in the existence and functioning of any Jewish community, it was the theme of numerous privileges. The constant threat that someone might appeal to a gentile court is also the frequent object of taqanôt, most notably of the so-called >taqanot Rabbenu Tam< from the mid-twelfth century. The obligation to


70 Such as the taqanôt passed by the Rhenish communities in the early-thirteenth century, on which see Finkelstein, Jewish Self-Government (see fn. 19). These taqanôt await a new edition in the MGH series by my colleague, Rainer Barzen (Trier).

71 Finkelstein, Jewish Self-Government (see fn. 19), p. viii, referring to local ordinances in Spain and France; on Germany cf. Breuer / Guggenheim, Gemeinde (see fn. 7), pp. 2090–2091. It is possible, but hard to prove, that taqanôt were proclaimed before the congregation at regular intervals, just as civic oaths had to be reenacted in the later medieval commune (cf. Isenmann, Eberhard: Die deutsche Stadt im Spätmittelalter 1250–1500. Stuttgart 1988, pp. 91–92). The early modern practice at Metz is clearer in this respect than its medieval precedents. Schwarzfuchs, Simon: Über das Wesen der Takkonaus, der jüdischen Gemeindeordnungen: Von der Provence bis nach Metz (13.–17. Jahrhundert), in: Cluse / Haverkamp / Yuval, Jüdische Gemeinden (see fn. 1), pp. 465–503, gives some examples.

72 See Guggenheim, A suis paribus (see fn. 23), pp. 407–410.

73 Finkelstein, Jewish Self-Government (see fn. 19), pp. 150–158; cf. Cluse,
appeal to a specific common court can also be found among Christian clerics and religious, as well as among guilds and communes. In the case of the Jews, the exclusive jurisdiction of the qahal was upheld not only against gentile courts but also against the claims of other Jewish communities, as we saw in R. Josef Tov Elem's responsum. For this reason, areas of jurisdiction came to be distinguished. As recent research on the German territories has revealed, these areas or districts were based on Jewish cemeteries or on communities in charge of such a cemetery. For the most part, they were to be found in the old centres of Jewish settlement in cathedral cities. The general rule was that only those Jewries disposing of a cemetery (and hence of a ban of jurisdiction, 'herem bêt-dîn') were properly called communities ('qehillût'). During the later Middle Ages, their districts were used by the rulers when taxing the Jews.74

The structural principles of guild and commune which had a lasting influence in European history also include the election and delegation of authorised deputies. Establishing this principle within the Jewish community was a complex issue.75 In practice, the early communities of the Rhineland were represented by a close-knit élite of families whose members took on leading roles in religious life as well as in the economic and social spheres. This situation changed to some extent after the pogroms of the First Crusade had claimed so many victims among these families in Mainz, Worms, and Cologne.76 Later on, large Jewish councils with twelve members (a number also prevalent among colleges of échevins [jurors] and communal councils) could be found in Cologne and Worms, perhaps also in Augsburg and Regensburg. However, the leading bodies could also be smaller, consisting, for example, of four members.77

During the later medieval period it became quite common for parnassim and (communal) rabbis to be confirmed by the Christian authorities. Problems could arise when the right of approbation was turned into direct election and appointment, as happened in the venerable communities of Worms and Speyer in the early fourteenth century.78 The conflict was


74 BARZEN, Regionalorganisation (see fn. 50).
75 Cf. supra, fn. 36.
76 MARCUS, Entwicklungen (see fn. 33).
77 BREUER / GUGGENHEIM, Gemeinde (see fn. 7), p. 2091.
78 Sources in BOOS, Urkundenbuch (see fn. 49), and HILGARD, Urkunden Speyer (see fn. 53), nos. 421–423, pp. 370–374, cf. HAVERKAMP, »Concivilitas« (see fn. 8), pp. 121–123.
probably exacerbated by the fact that the leaders also acted as judges (in accordance with the old privileges of the community) and that they needed to be qualified accordingly.\(^79\) The compromise solutions reached in Worms and Speyer show that the Jewish community was already fighting a rearguard action. In this situation, it had to ensure that at least the more properly religious affairs were kept free from outside interference – or, to use an ecclesiastical term, from >simony<. For this reason the honorary duty of >rolling the Torah<, the appointment of the cantor, and the communal prayer in the synagogue as a core of Jewish identity building gained additional weight. The close relationship between the judicial and the religious spheres is most clearly apparent in the possibility of interrupting the prayer (>iquv t’fillah<) by a plaintiff whose case had not been considered by the Jewish court. The assembled community could not resume the prayer until a day in court was appointed to deal with the case.\(^80\)

Remembering the dead, a frequent aim of guilds on their confraternal level, was firmly anchored in the synagogue from the twelfth century. Thus the term >memorbook<, used to designate the lists employed in this context, goes back to the Latin term >memoria< or to a Romance intermediary, which is also suggested by the related Yiddish verb, >memern<.\(^81\) The memorbooks recorded the names of the many martyrs who had fallen victim to persecution since 1096, but they also remembered the community’s benefactors of earlier generations and, finally, all the dead of the local synagogue community. The constituent role of remembrance in the


Jewish community is even more clearly apparent in the cemetery. Until the fourteenth century at least, even a large Jewry with its own synagogue was not called a qahal unless it also disposed of a cemetery. 82

The confraternal elements of guild and commune further include the legal and often military protection of its members as well as the care of the poor and sick, and often also hospitality for strangers. The Jewish community, too, organised the religious duty of poor-relief ('zedaqah') by means of an alms box and, if it had the means, by the institution of a hospital ('heqdeš'). The conflict between, on the one hand, the universal claims expressed in the basic norms of charity ('caritas') and brotherhood ('fraternitas'), 83 and their particular application on the other, could certainly be felt in the Jewish community, too. The responsum of 1015 relates how the initiative to help the captured Jews of Rheims was first taken by individual members of the Troyes community. They brought about a decree in their own community but failed to make it obligatory in the community of Sens, too. In principle, Rabbi Josef upheld the position of Sens, though he by no means questioned the validity of the religious norm that »all Israel are responsible for one another« – in confraternal terminology: the spiritual norm of 'fraterna dilectio'. 84

Finally, it is worth mentioning that the Jews of Rheims who were the object of this act of solidarity were merchants. In some of the early documents, groups of Jews appear as co-operative associations of merchants. Some parallels with the early (Christian) merchant guilds appear in the exemption from the ordeal and its replacement by oath and witnesses (a privilege also enjoyed by the merchants of Tiel) and in legal safeguards for economic monopolies (as in the case of the merchants of Saint-Omer). 85

82 Cf. supra, fn. 74.
84 Oexle, Gilden (see fn. 62), p. 215.
On the whole, then, numerous parallels can be found between the emerging Jewish communities of the high Middle Ages and the contemporary Christian guilds. The limits of comparison are reached, however, when the guild is defined in Oexle's terms as a *conjuratio*: It would appear that the promissory oath was by no means a constituent factor in the development of the Jewish community or guild; moreover, it is questionable whether the latter was *basically oppositional, and even revolutionary in character*, as Oexle claims the *conjunctiones* to have been. Clearly the local Jewish assembly of prayer was the true kernel of the development of an organized *qahal*. The necessity of preserving religious tradition (which at the same time offered the legal framework for the developing communal structure) demanded a certain measure of exclusiveness*(some *opposition*, as it were) but also cautious dealings with the authorities. It is no coincidence that a Jewish observer like R. Josef Qara (c. 1100) regarded the Christian *confratria* of his times as an illegitimate conspiracy, a view which he shared with contemporary Christian clerics.

But the problem can also be viewed from another angle: The question is indeed whether *conjuratio* really played the basic constituent role for the guild which it is accorded in today's research, or whether we have to assume other co-operative structures as points of departure for its development. In other words: did the promissory oath found the community in a *revolutionary* act, or did the community experience a change in quality by being sworn *on* in certain situations of crisis? In this context it is striking how much church parishes have been neglected in research. Just like the Jewish religious communities, the parishes constituted factors of strong centrality and spatial structure, providing points of departure for other groupings (which in the long run could cross the parochial limits).

In sum, we may say that the Jewish community of the high Middle Ages was a co-operative structure that in many respects did not differ from the contemporary guilds.

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86 OEXLE, Gilden (see fn. 62), p. 208.
88 Cf. supra, fn. 29.
89 Cf. HAVERKAMP, Jüdische Gemeinden (see fn. 1), p. 5.
IV.

Just as the rise of the civic commune was bound to affect the functions and relationships of the various social groups in a town, the relationship between the Jewish community and the Christian civic commune had to change from a more analogous state of affairs to a more complementary one. Religious difference, the necessity of maintaining some measure of autonomy in the practice of religion, as well as relations with the authorities were the reasons why the Jewish >guild< did not resign its functions to the civic commune to the same extent that its Christian counterpart(s) did, and why it did not >specialize< in its economic and confraternal aspects to the same extent. In the long run, however, the change from a >Jewish guild< to a >particular community< mainly founded on religious practice and used for fiscal exploitation, was clearly apparent.

Faced with the growing influence of the local civic community during the twelfth and thirteenth centuries, the Jews developed a keen interest in formal, contractual relations with the commune. These relations could find expression in grants of protection, or in the legal inclusion of the Jewish community as a whole in the association of citizens. They could build on the traditional relations of protection, which had been based on social proximity, as well as in common obligations such as the town’s defence.

Thus, the burgess or citizen status of Jews in German towns mostly emerges in the course of the thirteenth and early fourteenth centuries. We need only to recall the charter granted by the town community (>universitas opidi<) of Koblenz to the local Jewish community (>universitas judeorum<) in 1307, whereby the latter was summarily included in >our concivility< (>in nostram concivilitatem<). At about the same time, the detailed provisions for granting burgess status in Worms describe how a Jew was to be admitted (in case he had not been accepted automatically as the son of another Jewish burgess): The applicant for membership in the Jewish community of Worms was first to be admitted by the head and council of that community (the >juden byschoff< and >jueden ratherren<), who would then present him to the bishop of Worms and the delegates of the civic community, before whom he had to take the civic

91 Dilcher, Die genossenschaftliche Struktur (see fn. 57), pp. 108–111.
92 On this and on what follows, see Haverkamp, >Concivilitas< (see fn. 8), pp. 123–135.
93 Fischer, Verfassungsrechtliche Stellung (see fn. 5), pp. 37–83, 98–106.
94 Haverkamp, >Concivilitas< (see fn. 8), pp. 104–107.
oath. Apparently no provisions were made for refusing a candidate once he was accepted by the Jewish community.\(^95\) The procedure preserved the rights of the Jews, who continued to exert the traditional ban of settlement (»herem ha-Yišuv«) against unwelcome new settlers.\(^96\) Internal Jewish documents from early modern Metz, recently uncovered by Simon Schwarzfuchs, accordingly draw a clear distinction between the municipal right of abode or citizenship (»ironout«) and the membership or right of settlement in the Jewish community (»hessqat ha-Yišuv«).\(^97\)

After the severe persecutions of the mid-fourteenth century, however, the influence of the towns on the acceptance of new Jewish citizens gained further weight. Thus, the letters of citizenship and Jewish counter-documents from Rothenburg ob der Tauber were only valid for a number of years, and show no trace of the Jewish community’s consent. (Incidentally, they also offer the wording of the citizens’ oath, largely identical with that for Christian applicants.\(^98\)) In Nördlingen, too, the municipal authorities concluded individual contracts with Jewish citizens. These »Paktbürger« charters were similar to the »condotte« known from Northern Italy,\(^99\) in that they recorded details of the legal relations between the council, the Jews, and the rest of the urban populace, down to the minutiae of the credit business. Apparently, membership was now granted by the municipal council independently of any vote on the part of the local Jews.


\(^96\) On the »herem ha-Yišuv« see RABINOWITZ, Louis: The Herem Hayyishub. A Contribution to the Medieval Economic History of the Jews. London 1945, which offers important Hebrew sources in translation. However, Rabinowitz considers the settlement ban exclusively in its economic functions and claims that it was a Jewish version of the merchants’ guild, a view which rests on a simplistic conception of the medieval guild.

\(^97\) SCHWARZFUCHS, Takkonaus (see fn. 71), pp. 465-503.


\(^99\) On Nördlingen see Barbara TÜRKE (=DOHM): Anmerkungen zum Bürgerbe­
griiff im Mittelalter. Das Beispiel christlicher und jüdischer Bürger der Reichs­
Despite the continuing and frequently revived bonds between the Jews and the king or territorial rulers, most towns or cities were able to tighten the grip on their Jews during the later medieval period. Thus, the Jewish community might lose autonomy in legal matters. The traditional personality principle was replaced by the >ius de non evocando<, a privilege now enjoyed by both Christian and Jewish citizens. The ban against appealing to gentile courts was replaced by the civic obligation not to summon anyone before an outside court. It would be far too simplistic to view the inclusion of Jews in the civic sphere as a grant of legal equality and therefore a good thing. Apart from the fact that full equality was never implied in the act, it always served the fiscal interest of the town, too, and in the long run the loss of autonomy could weaken cohesion within the Jewish community.

Let us sum up:

1. The Jewish community of the high Middle Ages in Western Central Europe can be described in analogy to the guilds of the surrounding Christian society. This, however, poses the question whether the latter can be aptly defined as a sworn union (>conjuratio<). The more obviously the religious community appears in its role as the core of co-operative and communal formations among Jews, the more astonishing is the lack of attention it has received in recent research on the origins of the Christian commune.

2. The relationship between the the qehillah and the Christian communities was an analogous one in the early period. Not until the thirteenth century did it turn into a complementary and hierarchical one, due to the more or less pronounced inclusion of the minority community in the civic association of the town. This inclusion implied a loss of autonomy.

3. The term >particular community< or >sub-community< (>Sondergemeinde<) may be justified for the period from the thirteenth century onwards. Its constituent elements were complementary ways of granting membership, a subsidiary setup of the judicial system, and a more or less intact autonomy in the religious sphere. Even such a specific use of the term, however, would make sense only if the relations between Jews and Christians – and, more generally, between »Sondergemeinde< and »Stadtgemeinde< – are not measured on a simple scale of integration, but seen as a complex layering of functional areas, with the most diverse processes of inclusion and exclusion going on at the borders of every one of them.

Strangers and Poor People
Changing Patterns of Inclusion and Exclusion in Europe and the Mediterranean World from Classical Antiquity to the Present Day

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