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MOSES COHEN BELINFANTE: A LEADER OF DUTCH-JEWISH ENLIGHTENMENT*

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THE nexus between Jewish emancipation and assimilation to the surrounding cultures has long been recognized. The struggle for emancipation was intimately tied up with attempts at Reform and Enlightenment within the Jewish community which were to prepare it for the amalgamation with national majorities. One of the preliminaries of such rapprochement consisted in a variety of educational reforms and, especially, in greater Jewish familiarity with the respective vernacular languages. That is why publicist appeals for educational reforms and attempts at propagandizing them among the masses are a most pronounced feature of "enlightened" literature. Reforms in synagogue ritual, on the other hand, long appeared of secondary importance, since religion was supposed to be safeguarded from state interference. The protagonists of the new movement, principally interested in secular enlightenment, tried to adjust synagogue services only to the extent of supplementing the Hebrew ritual by sermons in the native languages. If they also emphasized translations of Bible and prayerbook, their primary purpose was to displace Yiddish and Ladino, rather than Hebrew.

These leaders, for the most part, were men of mediocre talent, while their superior contemporaries either continued to adhere to old-time orthodoxy, or else found their way into the

* This article is largely based on the author's essay on this subject, written as a contribution to the *Bernhard Wachstein Memorial Volume* in Yiddish and published in *Yivo Bleter*, XIII (1939), 429-59. It is here made available in English with numerous corrections and additions on the basis of more recent publications and fresh archival data. Moreover, the late Mr. Sigmund Seeligmann of Amsterdam, an outstanding expert in Dutch-Jewish history and bibliography, had the kindness, after perusal of the original manuscript, to make a number of relevant suggestions which have, in part, been incorporated in the present study.

2112

camp of extreme assimilationism. Nevertheless, these mediocre representatives of the petty Jewish middle class were more closely in touch with the desires and wishes of the Jewish population and, therefore, were able to play a much greater part in the new achievements of the period than was warranted by their native endowment. One of the protagonists of that type of Enlightenment and educational reform was the Dutch Jew, Moses Cohen Belinfante, whose life and tireless activity, as illustrated especially by his petition of 1811 to Napoleon, are quite typical of the early period of Haskalah.

To be sure, even before the French Revolution, Dutch Jewry had behind it a two-centuries-old tradition of "enlightened" trends.[1] Politically and socially much superior to its coreligionists in eastern and central Europe, the Jewry of Holland, particularly its Sephardic sector, had always maintained much closer relations to European culture. None the less, the manifold disabilities affecting it — the Jews were forbidden to engage even in retail trade — its official non-participation in political affairs of state and city and its powerful, nearly autocratic self-government helped maintain a considerable measure of intellectual and social, if not fully of territorial segregation. The Sephardic Jews spoke primarily Portuguese; the Ashkenazim spoke Yiddish. But few had more than a rudimentary knowledge of Dutch. Even after the proclamation of Jewish equality of rights in 1796 Hirsch Marcus (Ilfeld), a native of Fürth, was prompted to publish the new decrees in Hebrew translation, not only for the benefit of foreign Jews, but particularly also for "those Jewish inhabitants of the Batavian Republic who cannot read them in the original." [2]

[1] For the evolution of a particular "Dutch Haskalah" long before Mendelssohn, cf. S. W. Baron, *A Social and Religious History of the Jews* (N. Y., 1937), II, 205 ff.; III, 212 ff.

[2] Hartog (Hirsch) Marcus Ilfeld, *Dibre negidim* (Amsterdam, 1799), fol. 2b. Similarly, the newly formed society *Felix Libertate* desirous of spreading the knowledge of the "Rights of Man" among the Ashkenazim published a Yiddish translation thereof; cf. J. S. da Silva Rosa, *Geschiedenis der Portugeesche Joden te Amsterdam*, 1593-1925 (Amsterdam, 1925), pp. 129 f. When the communal organs refused to order public readings of the text in the synagogue, the society appealed directly to the Jewish public in a Dutch and Yiddish pamphlet; cf. Da Silva Rosa, "Bibliographie der Literatur über die Emanzipation der Juden in Holland," *Zeitschr. für hebr. Bibliographie*, XV (1911), 113 nos. 25, 28, 29. The opposition of the conservative leaders came clearly to the fore when the Amsterdam rabbis long refused to take the oath required of all public functionaries "not to do anything, either orally or in writing, which might be prejudicial to the Rights of Man or the future Batavian constitution." They finally yielded only when the city threatened to enforce their dismissal. The reasons for this reluctance become doubly clear when one reads the report on this affair submitted to the Paris government on Aug. 13, 1796 by the French minister in the Hague, Noël, the main protagonist of the Dutch constitutional reform. Noël expects from the ultimate sur-

It was the sudden upheaval of the revolutionary and Napoleonic periods which opened new opportunities for reformers of the type of Belinfante.

Moses Cohen Belinfante descended from an old, reputable family. One of his ancestors, Joseph Cohen Belinfante, had left Portugal after the establishment of the Inquisition at the beginning of the sixteenth century and settled in the Balkans. After Belgrade's occupation by the Austrians in 1688, Meir Hayyim Cohen Belinfante came to Amsterdam, where he died in 1721. A later generation included two prominent cousins, Isaac Cohen Belinfante, a distinguished Hebrew poet and bibliophile and Zaddik Cohen Belinfante (1732-86), for many years Portuguese Chief Rabbi of the Hague. Among the latter's sons was Moses Cohen Belinfante, born in the Dutch capital on September 24, 1761.[3]

render of the rabbis a clear demonstration to the Jewish masses that the Rights of Man do not contradict the principles of Judaism and anticipates great advantages from its effects "en renversant une de cent barrières qui séparent cette nation du reste de l'espèce humaine, en mettant sur la même ligne politique ses ministres et ceux des autres sectes, enfin en ajoutant beaucoup de l'influence que commence à obtenir le partie éclairée et patriote de cette nation;" H. T. Colenbrander, *Gedenkstukken der Allgemeene Gesschiedenis van Nederland van 1795 tot* 1840, II (The Hague, 1906). pp. 65 f. no. 64. Cf. also the comments of the Amsterdam consistory written as late as 1810-11 *infra,* n. 17 and in the Appendix. Louis Napoléon's decree and the impression it made among the Jews are recorded in the interesting contemporary chronicle, excerpts from which have been published in *Isr. Letterbode,* I-V; see especially, IV (1878-79), 108 f.

[3] Most of the facts and family traditions here recorded are taken from E. Carmoly's article, "La famille Belinfante," *Revue orientale,* III (1843-44), 134-38; cf. also the genealogical tree based on this essay in *Jewish Encyclopedia,* II, 660. Although Carmoly derived much of his information from a family ms. (possibly written by Moses Belinfante or his brother Jacob, the last to be mentioned therein) the study contains a number of obvious inaccuracies. The statement, for instance, that both Isaac and Zaddik Belinfante had studied under the well-known London rabbi David Nieto is chronologically impossible. Nieto died in 1728, while Zaddik was born in 1732 and Isaac, whose father had been born in 1699, could not have seen the light of day much before 1720. Nor is there any evidence that either of them was sent to London to study under Isaac Nieto, David's son and successor in the Spanish-Portuguese chief rabbinate, or that their teacher was an Amsterdam scholar by the same name. Cf. Israel Solomons. "David Nieto and Some of his Contemporaries," *Transactions of the Jewish Hist. Soc. of England,* XII (1931), 78 ff.; Herbert I. Bloom, *The Economic Activities of the Jews in Amsterdam in the Seventeenth and Eighteenth Centuries* (Williamsport, Pa., 1937), Index *s.v.* Netto. Nevertheless, Carmoly's article, reprinted in English translation by Rabbi D. A. de Sola (without full acknowledgement) in the *American Hebrew* of February 25, 1881, VI, Pt. II, (pp. 16-17), is still useful. It is well supplemented by the two biographical sketches written by Moses Belinfante's personal friend, Dr. H. Sommerhausen, "Moses Cohen Belinfante and Moses Lemans," *Israelitische Annalen,* II (1840), 129-30, 139-40; and "Sur quelques Israélites hollandais," *Archives Israélites,* VII (1846), 339-47, 398-406 (on Moses and Jacob Belinfante). A number of new interesting details have also been derived from Belinfante's own writings and particularly from his autobiographical *Mémoire,* cf. *Yivo Bleter,* XIII (1939), 442 ff.; cf. also M. Henriquez Pimentel, *Geschiedskundige Anteekeningen betr. de Portugeesche Israelieten in den Haag* (The Hague, 1876), pp. 67-69. For Isaac Cohen Belinfante, cf. H. G. Enelow, "Isaac Belinfante, an Eighteenth Century Bibliophile," *Studies in Jewish Bibliography in Memory of Abraham Solomon Freidus* (New York, 1929), pp. 5-30.

Moses received at home a comprehensive education in both Hebraic and general fields. His father mapped out for him a medical career, while his well-educated mother had brought along from her native Hamburg broad secular interests. At the age of fourteen he was sent to Copenhagen to a relative Dr. De Meza under whom he was to engage in medical studies. After a year, however, he relinquished them and returned home. There he devoted himself particularly to the study of foreign languages and, according to one of his friends, acquired in time excellent familiarity with Dutch, Spanish, Hebrew, Latin, German, French, English, Danish, in addition to Portuguese. After his father's decease in 1786 he became a teacher at the Portuguese school of his native city, a position previously held by the Chief Rabbi himself. From the outset he introduced certain moderate reforms in the curriculum, designed to eliminate the contrast between Sephardim and Ashkenazim and to spread the knowledge of Dutch among the pupils. He ventured to introduce such innovations as the admission of Ashkenazic children to the Portuguese school and the teaching of Bible in Dutch translation. At the same time he organized a society of fellow-reformers for the purpose of preparation and translation of "enlightened" literature. This society assumed the characteristic name of *Talmide Zaddik* (pupils of Zaddik Belifante).[4] Its members began by attempting to translate the Hebrew prayerbook into Dutch in order to make these prayers accessible to all worshipers, especially women. They followed therein a strong and characteristic trend in Western and Central European Haskalah which produced, about the same time, French, English and German translations of the Jewish ritual.[5] According to Belinfante's contention, it was he who took the initiative, invited his colleagues for consultations at his home and placed his small library at their disposal. Preparations took

[4] Cf. Sommerhausen, *Archives Israélites*, VII, 340 ff.; and Pimentel, *op. cit.*, p. 64, which also includes a membership list.

[5] *Prières journalières* by M. Ventura, 4 vols. (Nice, 1772-73); *Siddur* with English translation by M. Meyers and A. Alexander (London, 1770), with additional translations of the Sephardic and Ashkenazic rituals by A. Alexander; *Gebete der Juden auf das ganze Jahr*, transl. by David Friedländer (*Berlin*, 1786); *Gebete der hochdeutschen und polnischen Juden*, transl. from the Hebrew with notes by J. A. Euchel (Königsberg, 1786; second ed. revised, Berlin, 1799). Cf. Steinschneider, *Cat. Bodl.*, nos. 2374, 2423-24; A. E. Cowley, *A Concise Catalogue of the Hebrew Printed Books in the Bodleian Library* (Oxford, 1929), p. 550; Ben Yaakob, *Osar ha-Sefarim*, pp. 93 no. 45; 665 no. 796; also Benno Gottschalk, "Die Anfänge der deutschen Gebetsübersetzungen," *Festgabe für Claude G. Montefiore* (Berlin, 1928), pp. 58-64.

about six years (1787-93), the translation finally appearing in four volumes in the Hague, 1791-93.[6]

At the same time Belinfante worked on a Dutch textbook for Jewish elementary schools. This booklet, entitled *Geschenk voor de Israelitische Jeugd* (A Gift to Israelitic Youth) and intended for the instruction in both the Dutch language and the basic principles of Judaism, likewise appeared in 1793. Two years later we find its publisher Lion Cohen applying to the Hague city council for introduction of this textbook into schools.[7]

The French occupation of the Netherlands in 1795 brought about great divisions in the Jewish community. The Hague society disbanded, Belinfante himself joining the National Guard. On this account, he later contends, he was discharged from his teaching position by the conservative school administration under the excuse that he had unlawfully admitted Christian pupils. In the following crucial years he participated, both as publicist and organizer, in the struggle for emancipation. In September 1796 he submitted, conjointly with Lion Cohen and M. Ephraim, an "Address of Thanks" in behalf of Hague Jewry to the National Assembly for its decree establishing Jewish equality of rights. On October 4, 1798 he and several other members of the community presented a similar address to the communal administration of the Hague for its proclamation concerning the execution of the new egalitarian laws. In 1797 he organized in that city a society "Door Vlijt en Eensgezindheid" (Through Industry and Unity) which was to propagandize orally and in writing for the admission of the Jews to the various crafts in accordance with the new Republican decree of September 2, 1796. It was also to foster the vocational and Dutch training of Jewish youth in both the Jewish and the municipal schools, the adoption of family names by the children and the productive retraining of "the lazy

[6] Its Dutch title was *Gebeeden der Portugeesche Joden.* According to Carmoly, *op. cit.*, T. Saruco was the main translator. The better informed Sommerhausen, however, mentions the following division of labor: Emanuel Saruco [Abendana] translated the prayerbook, while Belinfante submitted a translation of the biblical passages following "as closely as possible Mendelssohn's translation;" cf. *Israelitische Annalen,* II, 139; and *Archives Israélites,* VII, 343 f.

[7] The application is reprinted in D.S. van Zuiden, *De Hoogduitsche Joden in s'Gravenhage* (The Hague, 1913), Appendix IX. Its wording clearly indicates that the textbook was merely "printed," not written by Cohen as van Zuiden assumes *ibid.*, p. 93, and that it refers to Belinfante's textbook. Cf. also *infra,* n. 19.

good-for-nothing" among them.[8] About the same time he submitted to the government a petition signed by a number of other Hague Jews intended to forestall discrimination against Jewish youth. Indications of such discrimination were quite apparent in several publications of the influential Dutch Society "Tot Nut van't Algemeen" (For the Common Weal).[9]

Soon thereafter, a similar society "Voor Arbeiden en Vlijt" (For Work and Industry) was founded in Amsterdam. It was, of course, far more influential and achieved a great deal more in the field of cultural and vocational training.[10] The Hague society, however, seems not to have survived the British landing in Holland in 1799.

In 1804 Moses Belinfante founded, together with his brother, Jacob, nineteen years his junior, a printing and publishing house under the firm Belinfante & Co. The main responsibility soon rested with him, since his brother was called, before long, to the office of the *Koninglijke Courant*, the official Dutch gazette, then under the editorship of Jonas Daniel Meyer. He subsequently rose in the ranks to the position of chief editor.[11] Immediately before the convocation of the Assembly of Notables in Paris

[8] Van Zuiden, *ibid.*, pp. 89, 90 (where, undoubtedly, 1789 is a typographical error), 94. The statutes of the new organization, presented on March 20, 1797, are signed by Is. Jos. Polak, as President and the very young Jacob Belinfante as Secretary. In the membership list of Oct. 1797 (*ibid.*, Appendix X), alphabetically arranged, Moses Belinfante appears at the head. It probably is not mere boastfulness, however, when, in his *Mémoire*, he describes himself as the founder of the society.

[9] Cf. also H. J. Koenen, *Geschiedenis der Joden in Nederland* (Utrecht, 1843), pp. 388 f.; Da Silva Rosa, *Geschiedenis*, p. 135; and H. Sommerhausen (under the pseudonym S. de B. or H. SN), "Les Israélites néerlandais," *Archives Israélites*, VI (1845), 719. Several years later the Amsterdam Jewish consistory was still trying in vain to induce the society to eliminate this discriminatory practice; cf. its communication of Nov. 22, 1810 in the Appendix. To what extent this memorial is connected with the previously mentioned "Address of Thanks" of 1798 cannot be ascertained without the text of the latter. From the same circle undoubtedly came also the Dutch translation by the non-Jewish writer, J. C. Hesse, of David Friedrichsfeld's *Republikanische Gesinnungen und Judenmessias*, published in 1796 by Lion Cohen (the publisher of the *Geschenk* and the *Gebeden*). The original German had likewise appeared in Holland (Amsterdam) in 1795; cf. Da Silva Rosa, *ZHB*, XV, 116 no. 40, 121 no. 75; also Belinfante, *Bijdragen*, I (1807), 314 note.

[10] This important society founded in 1798 counted 446 members nine years later. Cf. *ibid.*, pp. 313 f. and Joseph Derenburg, "Carl Asser mit Beziehung auf die holländischen Israeliten in den letzten vierzig Jahren," *Israelit. Annalen*, I (1839), 58. Jost's statement *Geschichte* X, 2 — Berlin, 1847, — pp. 92 ff., 96) that it disbanded in 1808 is contradicted by Belinfante's *Mémoire* referring to its existence in October 1811; cf. also Sommerhausen, *Archives Israélites*, VI, 650.

[11] This firm appears as the publisher of almost all later works by Belinfante, cf. *infra*. Carmoly, *op. cit.*, states that Jacob was the only brother of Moses and that the latter, too, had served for many years on he staff of the government paper. Sommerhausen, on the other hand, mentions such services only for the years 1806-8 and after 1815; cf. *Israelitische Annalen*, II, 130. Our *Mémoire*, however, evidently contradicts the first statement by Carmoly and also passes over in silence Moses's official activity in the years 1806-8.

(1806) the brothers published a translation of Abbé Henri B. Grégoire's *Observations nouvelles sur les Juifs éspeciallement sur ceux d'Allemagne,* issued shortly before in Paris. In the Appendix they also published the Napoleonic Decree of May 30, 1806 which had been promulgated in the meantime. A year later they produced a Dutch translation of another booklet by Grégoire. First issued as a series of articles in the *Révue philosophique, littéraire et politique,* this second pamphlet, under the title *Observations nouvelles sur les Juifs, éspeciallement sur ceux d'Amsterdam et de Frankfort,* had likewise made a great impression.[12]

At about that time the brothers decided also to issue a Jewish periodical for the propagation of the resolutions adopted by the Paris Assembly of Notables. Though not the first journalistic attempt in Holland — as is well known a Yiddish and a Spanish-Jewish periodical appeared in Amsterdam as far back as the seventeenth century — it was the first Jewish journal in Dutch. It appeared weekly, though not quite regularly, from August 11, 1806 to December 31, 1807. It obtained the support of over 300 subscribers throughout Holland, more than half of them in Amsterdam, and was also sold by numerous booksellers in the country. Nevertheless it had to suspend publication at the end of 1807.[13]

[12] Only the second translation, published in 1807 under the title *Nieuwe Bedenkingen over de Joden, en bijzonderlijk over die van Amsterdam en Frankfort* (30 pages), seems to be known to the bibliographers; cf. Da Silva Rosa, *ZHB,* XV, 152, no. 109. The first translation, however, is not only mentioned as a recent publication by the brothers Belinfante in the first number of their periodical issued on August 11, 1806 (cf. *Bijdragen,* I, 1, 316), but Grégoire himself refers in his second pamphlet (pp. 4f.) to Belinfante as one of the translators of his former booklet. Cf. also *Bijdragen,* I, 543, where reference is made, on June 30, 1807 to a forthcoming translation of the second pamphlet and II, 32 where on August 7, 1807 it is mentioned as already published. (The above deductions have since been confirmed to the writer by Mr. Seeligmann whose collection included both publications). It is somewhat strange that Belinfante fails to refer to these translations in his *Mémoire.* He may have considered it impolitic to mention Grégoire to Napoleon. Possibly, though leses likely, Jacob Belinfante alone had prepared the translations. In any case, Moses Belinfante for many years after maintained personal relationships with the former bishop of Blois. He sent him, for instance, the second edition of his *Geschenk,* very likely in 1810. The copy now extant in the Bibliothèque Nationale 12^0 X (20917-18) has the dedication, probably in Belinfante's hand, to "Mr. l'Evèque et Sénateur Grégoire" and also bears the imprint "Legs Grégoire" usually found on books left behind by the prominent reformer. Grégoire, on the other hand, frequently consulted Belinfante, for instance, in writing his books on the Samaritans and the history of religious sects; cf. Sommerhausen, *Archives Israélites,* VII, 399. — Since neither translation is available to the present writer, it cannot be ascertained to what extent they followed closely upon the original or else, as was customary with him, Belinfante freely omitted some passages and inserted new ones. It might be particularly interesting to find out how he translated the pious wish of Grégoire, "J'aime à espérer qu'elle approche cette époque ou seront abolies en Allemagne toutes les communautés juives;" *Observations nouvelles* (1806), pp. 19 f.; also *infra,* n. 21.

[13] This weekly, *Bijdragen betrekkelijk de verbetering van den maatschappelijken staat der Joden* (Contributions to a Reform of the Social Status of the Jews), was principally in-

Even more decisive was the transfer of the capital of the new kingdom to Amsterdam in that year. Not only was his brother Jacob transferred there together with the staff of the official gazette but Moses, too, removed his residence to the new capital. For some years back he had derived his main income from translations from Dutch into Spanish and Portuguese, or vice versa, which he prepared for the government or various foreign embassies, and he now followed his employers to their new place of residence.

The settlement in the much larger Jewish community opened to him new opportunities. With his "foundation mania," generally characteristic of early Jewish Enlightenment, he soon organized in Amsterdam a new society which transcended the bounds still existing between Ashkenazim and Sephardim. He gave it the characteristic name "Chanoch Lannagnar gnal pie Darkoo" (*Hanok la-na'ar 'al pi darko*) taken from *Prov.* 22, 6. This society, whose membership included also Jacob Belinfante, Moses Lemans, H. Sommerhausen and De Sola, had a very ambitious program of publishing textbooks in Hebrew and Dutch, founding new schools, training teachers for them and translating both the Ashkenazic prayerbook and the Bible into Dutch, since all available Bible translations in that language had been made by Christians.

The society began by publishing in 1809 a collection of Hebrew and Dutch excerpts for Jewish elementary instruction[14] as well as several pedagogic writings by Sommerhausen and Bronveld. The Belinfante publishing firm issued in the years 1806-10 also several volumes of the *Hollandsche Almanack,* with special reference to Dutch Jewish problems, data on Jewish historical events, Jewish learned societies, etc.[15] The most important undertaking,

tended for the transmission of reports from the Paris Assembly, the translation of government edicts and the reviewing or translating of foreign publications; cf. the editors' programatic announcement in the first issue. There were but few discussions of conditions in Holland proper.

[14] *Bikkure Hinnuk, Verzameling van Stukken in de hebreeuwsche en nederduitsche talen dienende tot Proeve van opvoedingsgeschriften en schoelboeken ten dienste der israelitische jeugd in het koningrijk Holland,* published by Belinfante & Co., 1809-5569. Moses Belinfante very likely had some share in this undertaking. The booklet consisting of 55 pages of Hebrew and Dutch texts and of a lengthy Dutch and Hebrew introduction (xvi+vii pp.) has two prefaces signed by "U" (Ulmann, according to Seeligmann), and by Jacob Belinfante, as Secretary of the Society, respectively. The latter discusses, especially, the program of the society and makes interesting financial proposals to the members. Cf. also *infra,* n. 19.

[15] This is evident from the announcement in the *Geschenk;* cf. n. 19. The statement of Carmoly, *op. cit.* (repeated by Julius Fürst in his *Biblioteca Judaica,* I, — Leipzig, 1863, —

however, was the projected Bible translation which received a new stimulus by the establishment of the Jewish consistorial system in Holland. The law of September 12, 1808 had already imposed upon all schools obligatory instruction in the Dutch Bible. On July 10, 1809 King Louis Napoleon decreed specifically that the Amsterdam consistory prepare a Jewish translation into Dutch and that as soon as the first volume (Genesis) would appear it be immediately introduced into all schools. Moses Belinfante became a leading member of the group entrusted with this undertaking, despite the fact that the royal order was addressed to the German-Jewish community only.[16] By October 1810 the translation of the Pentateuch, the Haftarot and the five Megillot was completed. The consistory adopted a budget of 12,000 fl. for this purpose. This amount included 650 fl. for the acquisition of additional type for the printing press, and 5,000 fl. for paper. The consistory, however, soon got into financial difficulties. Since the Portuguese community definitely refused to cooperate, it vainly tried to obtain a subvention from the newly instituted French authorities.[17]

p. 99 and by Pimentel, *op. cit.*, p. 69) that Moses Belinfante published 32 little volumes of the *Israelietische Almanack* in the years 1796-1827 and that subsequently Jacob Belinfante continued to edit that annual now appears questionable. To be sure, on the cover of Jacob Belinfante's *Jaarboeken voor de Israeliten in Nederland,* 1835, No. 6, there appears an announcement of an *Israelitische Almanak* for the year 1836, Vol. XL. The Bibliotheca Rosenthaliana in Amsterdam possesses volumes of an *Almanak voor de Israelieten van het Koningrijk der Nederlanden* published in Amsterdam 1818, 1819 and The Hague 1821-25; cf. *Systematische Catalogus van de Judaica der Bibliotheca Rosenthaliana,* published by the Amsterdam University Library, I (1936), 34. The only series of similar content, accessible to the writer, is the collection bearing the Hebrew title: *Luah shel shenat* . . . . published over a period of decades beginning in 1780 (perhaps earlier) by the Amsterdam firm of Proobst. A volume of *Jaarboeken voor de Israeliten binnen het Koningrijk Holland* in large octavo published in 1808 by Belinfante & Co., van Embden, and S. A. Probst in Amsterdam is listed in the *Alphabetische Namenlijst van boeken* 1790-1832 in Noord-Nederland (The Hague, 1835), p. 267, which, however, is not reliable. In any case, it seems unlikely that this yearbook is at all identical with our *Almanack.* In *Bijdragen,* I, 240, 272, 332; II, 184 there are announcements of two volumes of *Hollandsche Almanak of Belangrijk Zaakboekje voor het jaar* 1807 and 1808 as available for sale. This *Almanak* purports to be a continuation of the well-known *Bataafsche Almanak* devoted to a discussion of both general Dutch and specifically Jewish problems. This entire question deserves further investigation.

16 Cf. Da Silva Rosa, *Geschiedenis,* p. 132.

17 According to Sommerhausen, Belinfante enjoyed his and Moses Lemans's collaboration in the preparation of the Bible translation. The royal ordinances (cf. M. Wolff, "De Beteekenis der Regeering van Lodewijk Napoleon voor de Joden van Nederland," *Bijdragen voor vaderlandsche Geschiedenis en Oudheidkunde,* 5th ser., VII, — 1920, — 51-110) and the progress theretofore made in the translation of the Bible are discussed by the Amsterdam consistory in a number of communications to the French authorities hitherto unpublished. We wish to publish here merely the following excerpt from the Letter of the Consistory to Baron d'Alphonse, Intendant of the Interior, dated May 22, 1811 and signed by its President, J. D. Meyer and its Secretary, Abraham Jall referring to the budgetary difficulties which had arisen, among other matters, from the commitments to the commission in charge of the translation (Archives Nationales F^{19} 1788):

In 1809 Belinfante published an appeal to Dutch Jewry to join the Jewish regiment then in process of formation. This government project, inspired by Napoleon's desire to enlist more Jews into his army, proved a complete failure and was given up officially on May 2, 1810. Belinfante's attempt, nevertheless, to prove from Hebrew literature the valor of Jews in ancient and modern times and the compatibility of the new military service with the Jewish religious commandments had a moderate moral success.[18]

Pour vous mettre en état de juger de la nature de cette dette, veuillés Monsieur l'Intendant permettre au Consistoire de reprendre cette affaire de son origine, afin de rendre la langue Hollandaise commune aux Israélites, et faire disparaître le jargon, dont ils se servent entr'eux et qui oppose une barrière tout à leur civilisation entière qu'à leur égalité avec les autres habitans. Sa Majesté le Roi voulut par le Décret du 12 Septembre 1808, que dans les écoles des Israélites la Bible serait enseignée du Hebreu en Hollandais. Il fallait donc une version Hollandaise d'après l'interprétation reçue parmi les Israélites, et même par un autre Décret du 10 Juillet 1809 No 6 Sa Majesté le Roi chargea le Consistoire de faire cette version sous ses yeux et ordonna qu'aussitôt que le premier volume aurait paru, elle serait adoptée dans toutes les écoles.

Cette tâche difficile fut entreprise par quelques savans et le Consistoire nomma une commission chargée de la révision. La version entière est faite, la version avancée, jusqu'à la fin du livre de la Genèse, le prospectus est imprimé, mais les grands événemens qui ont changé la destinée de ces départemens, et qui ont surtout influé sur la necessité de la langue Hollandaise ont fait abandonner la suite de la revision et l'impression.

Cependant les traducteurs avaient fait un contrat avec le Consistoire par lequel ils s'engageaient à tous les soins qu'exigeait la traduction et l'impression à soumettre leur travails à la commission, à faire cette grande entreprise pour leur compte moyennant l'assurance que le Consistoire leur fit d'un débit de f 12000 — ou francs 25500 —, et des avances sur cette somme au fur et mesure de leurs besoins. Sur cette assurance il firent fondre des caractères typographiques, il firent fabriquer du papier, ils firent d'autres menus fraix, enfin ils donnèrent leur peine et leur tems et achevèrent l'ouvrage entier en moins de tems qu'ils n'avaient promis. La somme qu'ils doivent pour caractères typographiques est de f 650—ou de francs 1365—, pour papier environ f 5000 — ou francs 10500 —; sans compter le reste, et il n'ont encore touché que f 1000 — ou francs 2100. Il est vrai que le papier, les caractères et le manuscrit leur restent; mais ces effets n'ayant aucune valeur fixe, on croit pouvoir hardiment évaluer le dédommagement de leur perte, que le Consistoire doit d'après les principes les moins rigoureux à dix mille francs. Cf. also the communication of November 20, 1810, *infra*, Appendix, the characteristic utterance of J. D. Meyer cited by Helena Poppers in *De Joden in Overijsel van hunne vestiging tot* 1814 (Utrecht, 1926), pp. 92f., 95 ff., and the communication of the directors of the *Lomede Torah* Society in Amsterdam to the consistory published in *Israel. Letterbode*, IV, 193 f. There is also little doubt that the translators approved of the programmatic statement inserted by Jacob Belinfante in his preface to *Bikkure Hinnuk*, p. v:

עוד זאת נודיע בזה, כי מטעם המלך יר"ה גמרנו לתרגם את ארבעה ועשרים ספרי הקדש,
ושאר ספרים מועילים, אבל טרם כל חמשת חומשי תורה, ללשון הולאנדי צח ונקי, כפי
דעות המפרשים הקדושים אשר בארץ המה, אשר העתקה כזאת עד היום הזה לא נהיתה,
המסכמת עם כל דברי חז"ל.

18 The decree of July 8, 1809 had ordered the establishment of a Jewish regiment in two battalions of 883 men each. Cf. the "Homily to Heroes" by Rabbi D'Azevedo and the announcements in Hebrew and Yiddish posted in the synagogues in Da Silva Rosa, *ZHB*, XV, 153 nos. 113-14; *Geschiedenis*, pp. 132 ff.; and "Joden in Nederland tot den Krijgedienst toegelassen, Een Joodsch Corps (1809)," *De Vrijdagavond*, II (1925), 115-18; and Poppers, *op. cit.*, pp. 94 ff. Belinfante's pamphlet in 24 pages, issued under the rather obvious initials M. C. B. by his own publishing firm in 1809, appeared under the title *Aanmoediging aan de Hollandsche Israelieten tot het betreden van de voor hun geopende loopban van den Krijgsdienst*. Unfortunately it is not available in New York. Equally unavailable is an older pamphlet of similar content, *Tweede Briev* (Second Letter) by H. L. Bromet (of the society *Felix Libertate*) which appeared in Amsterdam in 1795. Cf. Da Silva Rosa.

Soon therafter he resumed his educational and literary activity. He republished in 1810 his *Gift to Israelitic Youth* in a completely revised edition. According to plan, this book was to consist of four parts, of which the first was to serve as a textbook for the instruction in reading and writing and in the rudiments of the ritual. The second section was to discuss the origin and the subsequent development of the ritual while the third and fourth were to analyze the observance of Jewish holidays and the other commandments, respectively. Only the first two parts appeared in 1810. The third part followed somewhat later, but the fourth section appeared posthumously in 1834 and may altogether have been written by Jacob Belinfante. In the meantime, the early parts had already appeared in a third edition.[19]

In October 1811 Napoleon visited Amsterdam, where he was received by Jews and Gentiles with servile enthusiasm. Belinfante took this occasion to submit to the Emperor his project for reform of Judaism and to offer his services for its exe-

ZHB, XV, 114 no. 31. It cannot, therefore, be ascertained whether or not Belinfante was in any way influenced by Bromet. The consistory, however, is quite outspoken about the reasons for the failure of this governmental undertaking, cf. its communication of 1810 in the Appendix. That this failure was not due to lack of Jewish patriotism is emphasized by J. D. Meyer himself shortly thereafter (April 13, 1811) in his communication to the French Intendant, d'Alphonse. Describing the measures taken by the consistory in connection with riots which had broken out in the Jewish street he proudly asserts: "C'est en conséquence de ces ordres et du zèle infatigable des syndics que j'ai la satisfaction de vous annoncer que tous les conscrits israélites de cette ville, sans en excepter un seul, se sont rendus à leur destination . . . " He repeats a similar assertion, on the same date, to Lebrun who forwarded it immediately to Napoleon with the following comments: "Voilà une lettre qui assurera V. M. du zèle que mettent les Israélites éclairés à exécuter vos lois et vos décrets. Beaucoup d'autres travaillent dans le même sens, et avec le même succès." Colenbrander, *op. cit.*, Pt. VI, vol. 1 (The Hague, 1911), p. 145 no. 223; VI, vol. 2 (The Hague, 1912), pp. 1124 ff. no. 1478.

19 In the "second, revised and much enlarged edition" of the *Geschenk* issued by Belinfante & Co. in Amsterdam in 5570-1810 the author signed his name as "co-founder and member of the society Chanoch lannagnar gnal pie darkoo." In the third edition of the second and third parts, however, as well as in the first edition of the fourth part which are accessible to the writer, this biblical proverb appears merely as a motto on the title page. As the publisher of the second part appears M. C. Belinfante, 5384-1823, of the third and fourth parts, J. Belinfante. 1834. The latter is evidently an initial for Jacob who continued the firm after Moses's decease.

Of special interest are also the announcements of publications issued by the society (I, pp. vii ff., possibly not available in all copies; it is missing in that of the Library of the Jewish Theological Seminary in New York while it is extant in that of the Bibliothèque Nationale): 1) A prospectus of a new edition of the Bible, Hebrew and Dutch (gratis); 2) *Yesodot ha-mikra*, a Hebrew textbook for beginners by H. Sommerhausen in two parts (5½ stuivers each); 3) *Hebreuwsche letterlijst met de klankteekens, en de Hollandsche uitspraak* (2 stuivers); 4) *Bikkure hinnuk*, a Hebrew-Dutch collection of pedagogic writings for Jewish youth (14 stuivers); 5) *Leket tob* by Abraham Yagel with a Dutch translation by L. H. I. Bronveld (1 fl. 5; the well-known systematic description of the principles of Judaism which on account of its age was quite popular among the "enlightened" educators); 6) *Hollandsche Almanak*.

cution. His interesting "ideas," supplemented by his covering letter and the enclosed biographic *Mémoire,* reflect rather faithfully the type of enlightened thinking which permeated all his writings. Wishing to captivate the Emperor's benevolence and undoubtedly familiar with Napoleon's first question to L. Davids, the spokesman of the Jewish chief consistory, as to whether the Jews have accepted the decision of "my sanhedrin," Belinfante offered specifically to help propagate the resolutions of the Paris Sanhedrin.[19a] Because of Holland's large Jewish population, he contended, Amsterdam alone counting some 34,000 Jews,[20] the decisions of the Sanhedrin had remained largely unknown to the Jewish masses. Better to acquaint the public with them, therefore, he suggested that the new decrees be read from synagogue pulpits in Dutch and Yiddish or Portuguese, and that they be posted on synagogue doors in French and Dutch. Rabbis and teachers should receive copies in all four languages. For a period of at least two years all rabbis should be enjoined to cite in their sermons such biblical and talmudic passages as would support the Sanhedrial resolutions. Dutch sermons, moreover, would also promote the disappearance of the two "jargons," attract youth to the synagogue and help better to train candidates of theology. All rabbis, teachers, elders and communal employees of both sexes, including teachers of non-Jewish subjects, should now as well as in the future vow to serve loyally in the spirit of the Sanhedrin. Simultaneously much ought to be undertaken to promote agriculture and industry among the Jews. A few hundred children ought to be settled in rural districts at the expense of their wealthy coreligionists. Other children should be employed as apprentices by the municipal and state master artisans since experience had shown that private masters were not generally willing to admit Jews.[21] Parents should be constantly exhorted to give

[19a] Cf. D. S. van Zuiden, "Napoleon gedmende zijn verblijf in Amsterdam en de Joden," *Jaarboek van het Genootschap Amstelodamum,* XX (1923), 35-37. It is noteworthy that Belinfante, though cognizant of Napoleon's aversion to Jewish usury in Alsace, which found expression also in his conversation with Davids, did not demean himself to emphasize, as did H. de Lemon in behalf of the Consistory that Dutch Jewry "ne connoissent les vices dont on impultent ceux de l'Alsace et Lorraine" (*ibid., p.* 35).

[20] In Nov. 1810 the consistory estimated Amsterdam's Jewish population at 30,000 German and 2,500 Portuguese Jews, cf. Appendix.

[21] Such complaints were ever more frequently voiced in the early Emancipation era. Belinfante himself had translated the following passage in Grégoire's *Observations nouvelles,* 1807, p. 9: "Amsterdam and The Hague have witnessed the formation of philanthropic societies with the specific aim of facilitating the apprenticing of Jewish children in various arts and

their children some vocational training. In case of failure for two or three years, the mayors of the Dutch cities should be given the right to substitute for them in the choice of the children's vocation. The necessary funds would be made available by the resultant manifold savings in public charities, as well as by the discontinuation of the theretofore customary collections for the payment of substitutes for Jews called to military service.[22] In conclusion Belinfante suggested thoroughgoing educational and synagogue reforms so as to make the synagogue services more decorous and to inspire more reverence for both the Jewish religion and the state. For that purpose the government should not only reorganize the existing rabbinical schools and force them to adopt the Dutch language of instruction, but also found new training institutes for Jewish teachers. It also should subsidize the publication of a special periodical for the propagation of these reforms. In this connection Belinfante requested an immediate imperial subvention for his society *Chanoch Lannagnar* and for the publication of his progressive journal. Having received no reply from the Emperor for over a year he sent a copy of his petition to the French Minister of Cults on December 21, 1812.[23] But this step, too, seems to have borne no fruit.

The restoration of Dutch independence under King William I did not result in a complete restoration of the pre-revolutionary status. Jewish equality of rights, in particular, remained totally unimpaired. Their new communal organization, though greatly at variance with both the pre-revolutionary and revolutionary forms, gave the Jews new opportunities for extensive self-government, while the authorities continued to promote the spread of modern Dutch culture among them by persuasion rather than

crafts. It seems incredible that but a few Amsterdam Christians have consented to admit them to their workshops, while nearly all have been refused in the Hague. Is it surprising then that in the latter city counting some 300 Jewish families only 4 or 5 individuals make a living as artisans? An Amsterdam Jew, supporting a septuagenarian mother, has experienced many chicaneries before he secured the license of a locksmith." The emphasis upon the conditions in the Hague suggests that Grégoire may have obtained these data from Belinfante.

22 Such collections had evidently become superfluous ever since the decree of March 9, 1807 had forbidden Jews to send substitutes to the army.

23 Cf. the text in *Yivo Bleter*, XIII, 441 ff. In his petition to the minister Belinfante reiterates his requests: "Il prie Votre Excellence, de vouloir bien agréer ses sentimens, anoncés dans ces pièces au sujet d'un écrit périodique ou autre sur la régéneration des Israélites; par là il sera mis dans le cas d'éclairer ces coréligionnaires sur leur conduite, et les attacher ainsi de plus à l'Etat, et leur faire reconnaître la grattitude qu'ils doivent à l'auguste Souverain, leur régénerateur." Cf. also Sommerhausen, *Archives Israélites*, VI. 373 f.

force.[24] Belinfante could, as we have seen, continue his work on the *Gift*. Unexpectedly he now turned his attention to instruction in the Portuguese language. He published simultaneously a little textbook for the study of the *Elements of Portuguese Orthography* and the first parts of a *Portuguese Reader*. Both books were expressly intended for use in the new school established in Amsterdam on May 1, 1814 by Abraham Teixeira de Mattos for the poor children of the Spanish-Portuguese community.[25] Belinfante rationalized this compromise with his previous insistence upon Dutch by explaining that, after the restoration of peace, the resumption of trade with Portugal, the West Indies, etc. made familiarity with the Portuguese language extremely advantageous. Although several hundred Amsterdam Jewish families, which had originally come from Portugal still spoke that language daily, the absence of theoretical instruction for about two centuries had despoiled its purity by both ungrammatical usage and the admixture of foreign or otherwise inadequate constructions. "Prompted by the consideration that everyone in society is obliged to contribute his mite to the common good" he decided to communicate his knowledge of the beautiful Portuguese language to his fellow men. We learn that he obtained much support in this undertaking from the directors of the school.

In his *Reader* he not only offers technical exercises in one and two-syllable words and a series of "five moral alphabets" containing a collection of ethical epigrams, alphabetically arranged, but also compiles numerous excerpts from literature which well characterize his general point of view. From the Bible he selects the Decalogue and a number of Psalms (1, 15, 19, 23, 33, 67, 117, 148 and 150). He follows thereby, "with some modifications" of an orthographic, linguistic and dogmatic nature, the Portuguese Bible issued in Holland in 1748, replacing, for example, the Tetragrammaton by *o Eterno*. This section is followed by a "Catalogue of Virtues" by Isaac Aboab, first published in Amsterdam in 1687, but now rewritten to meet the requirements of the

24 The inner developments in the Dutch Jewish community of that period, are treated by Jacob Zwarts in his *Hoofdstukken uit de Geschiedenis der Joden in Nederland* (Zutphen, 1929), pp. 259-78.

25 On the foundation of this important school and its curriculum, cf. Da Silva Rosa, *Geschiedenis*, pp. 136 f.; *Archives Israélites*, VI (1845), 279.

new orthography. This is, in fact, an almost literal reprint of Isaac b. Mattathiah Aboab's *Doutrina particular,* since reprinted in Lisbon in 1925 by Moses B. Amzalak with a bio-bibliographical sketch of the author. Belinfante adds an excerpt from the *Escola popular* published in Coimbra, 1796, which he entitles "Catechism of the Way of Life," and concludes with a long series of historical anecdotes under the title "Moral and Curious Histories" taken from the *Historia de Portugal* published in 1802. Therewith, he emphasizes, the reader will "combine the religious with the moral and the historical." It is noteworthy that, with the exception of Aboab, he excerpted exclusively Christian authors. In the absence of a Jewish-Portuguese translation, even the biblical excerpts were taken from the Protestant version of the Old Testament by J. Ferreria A. d'Almeida after it had been compared with the Hebrew original by J. M. Mohr and L. A. Behmer. This work *De Velho Testamento,* first published in two volumes in "Batavia" 1748-53, had since been frequently reprinted.[26]

In 1816 Belinfante prepared also the Dutch translation of Shalom Jacob Cohen's *Shoreshe Emunah* which, published a year before in England in Hebrew and in an English translation by Dr. Josua van Oven, was soon to find its way also to the American publishing market. Belinfante did not restrict himself to a translation but added so much new material that, despite certain deletions, the book became more than twice its original size. Among the alterations the following are most characteristic of both his personal outlook and that of the Dutch-Jewish public. Belinfante began by omitting the extensive Introduction, undoubtedly because its main import was the emphasis upon combatting the influence of Christian missionaries by popularizing the principles of Judaism among the less staunchly orthodox. As is well known the London Society for the Promoting of Christianity amongst the Jews which, ever since its foundation in 1809, enjoyed the active coöperation of leading Anglican clergymen and laymen, had made its influence strongly felt in the Anglo-Jewish

[26] The two booklets appeared under both a Portuguese and a Dutch title in Amsterdam, 1816 (Abraham Belinfante, publisher; both prefaces are dated April 1816). The respective titles are: *Elementos de soletrar da lingua portugueza para uso da escola dos pobres dos Israelitas Portugueses em Amsterdam; Gronden der Portugeesche Spelkunst,* etc. (24 pp. in 16^0); *Liçoes de leitura portugueza para uso etc.; Portugeesch Leesboekje* etc. Pt. 1 (48 pp.). We have here summarized their contents somewhat more fully because they seem to have escaped entirely the attention of Belinfante's bibliographers.

communities. No such menace threatened the survival of Dutch Jewry. It was this anti-missionary point of view which induced the Chief Rabbi of the Great Synagogue Solomon Hirschell to read the book in manuscript and to issue his public approbation, together with that of his colleague of the Spanish-Portuguese congregation, Raphael de Meldola. Although an East-European immigrant Yom Tob Benett speedily published a counter-pamphlet and followed it up by an attack on the Chief Rabbi, Jewish public opinion in London seems to have more readily appreciated the intentions of the author and his patron. Hirschell felt induced, however, to decline responsibility for the introduction which had been written after his approbation. This controversy may have been coresponsible for Belinfante's decision to omit the Introduction.[27] On the other hand, stimulated by the example of the London rabbinate, the two Amsterdam Chief Rabbis Daniel Cohen d'Azevedo and S. Berenstein appended their approbation dated August 8, 1816 (14th Menahem 5576) to Belinfante's translation and heartily recommended it for the use of Jewish youth.

Belinfante's additions consist in part of such technical supplements as the citations from the Talmud in the original "since not everybody possesses a Talmud" and of substantive insertions in particular chapters. In part, however, we find here a number of novel discussions which increased the original 21 chapters to

27 Shalom Jacob Cohen's *Shoreshe Emunah* (about the author cf. B. Wachstein, *Die hebräische Publizistik in Wien*, — Vienna, 1930, — I, Index *s.v.* Cohen) appeared soon thereafter in another English translation by H. Cohen in Richmond, Va., 5577-1817. Yom Tob (Solomon) Benett issued a counter-pamphlet under the title *Tene Bikkurim, A Collection of Rabbinical Discussions and Criticisms* (London, 1815). Shalom Cohen and Chief Rabbi Hirschell were soon defended by Meir Cohen Rintel (the London shohet and probably unofficial spokesman of the Chief Rabbi). The latter's *Minhat Kenaot* appeared in London, 1817. Rintel, however, specifically repudiated some views expressed by Cohen in his Introduction (p. ii). In fact, Cohen's Introduction had been signed on December 19, 1814 some five weeks after Hirschell's approbation (dated Kislev 1, 5575 = November 14, 1814). The latter evidently could not be held responsible for later accretions. Benett replied to Rintel with a still sharper attack upon the Chief Rabbi in an English pamphlet entitled *The Present Reign of the Synagogue of Duke's Place Displayed in a Series of Critical, Theological and Rabbinical Discussions on a Hebrew Pamphlet* (London, 1818). Independently, a Hamburg teacher Meir Hahn took up the cudgels in behalf of Shalom Cohen and published a collection of Hebrew letters on the subject, under the title *Shut lashon* (Hamburg, 1818). This controversy, of considerable interest to the history of English Haskalah, has thus far been treated briefly by C. Duschinsky in *The Rabbinate of the Great Synagogue, London*, 1756-1842 (London, 1921), pp. 143 ff. and by E. N. Adler in his *London* (Phila., 1930), pp. 164 f. Cf. also William Zeitlin, *Bibliotheca Hebraica post-Mendelssohniana* (Leipzig, 1891-95), pp. 26, 60, 132, 306; Cecil Roth, "Hebrew Printing in London," (Hebrew), *Kirjath Sepher*, XIV (1937-38), 382, 387. — Incidentally, Shalom Jacob Cohen was not unknown at that time to the Dutch public. In 1814 the firm Embden in Amsterdam had published his small political tractate *Hulde an Holland* in Hebrew, with a Dutch translation. To what, if any, extent Moses Belinfante participated in this undertaking cannot be ascertained.

28. These supplementary chapters are devoted to the following subjects. XIX: general remarks on the Ten Commandments, being a summary of the preceding detailed analysis of each commandment; XXI: on Oral Law; XXII: on Apocrypha; XXIV: on the coming of the Messiah; XXV: on resurrection; XXVII: on prayer; XXVIII: on free will. The volume is concluded not only with the pious wish of *Ecclesiastes* (12,13) but also with a poem by Belinfante, in both Hebrew and Dutch which, perhaps better than any other passage, describes the objectives of the book

לא עוד ירפו ידיך
אם כה בדרכי תלך
תחכם תצדק אשריך
תירא אל חי ומלך [28]

The subsequent activities of Belinfante have not been sufficiently recorded. After the restoration of the capital to the Hague he and his brother returned to their native city, where they continued their reformatory work.[29] Before long all of Moses's earlier textbooks were "introduced into all Jewish schools of the Kingdom." [30] He added to them in 1817 a Dutch translation of Moses Philippsohn's *Moda li-bene binah* or *Kinderfreund und Lehrer: Ein Lehr-und Lesebuch für die Jugend jüdischer Nation und für jeden Liebhaber der hebräischen Sprache,* the two parts of which had appeared in Leipzig and Dessau in 1808 and 1810, respectively.[31] He concluded his literary activity by a compilation of various *Parables from the Talmud,* published in two volumes in

28 Cf. *Prov.* 24, 21. Cf. also Ezekiel Landau's sermon on this proverb directed *against* Enlightenment in his *Derushe ha-selah* (Warsaw, 1899), no. 39. Belinfante's Dutch translation entitled *Of Gronden des Geloofs en Zedelijke Pligten voor de Israeliten* was issued by Abraham Belinfante in Amsterdam, 5576-1816 "at the cost of the translator." It is impossible to say whether the return of the brothers Belinfante to the Hague was responsible for their failure to issue that book themselves. Nor do we know what family relations, if any, existed between them and Abraham Belinfante. Despite the radical alterations by the translator, Shalom Cohen, we are told, expressed himself as perfectly satisfied with the translation; cf. Sommerhausen, *Archives Israélites,* VII, 401. Cf. also the brief remarks by I. Maarsen in his essay "De Responsa als Bron voor de Geschiedenis der Joden in Nederland," *Bijdragen en Mededeelingen van het Genootschap voor de Joodsche Wetenschap in Nederland,* V (1933), 136, 146 n. 33.

29 This becomes evident from the location of their publishing firm in the subsequent years; cf. *supra,* nn. 19, 26, 28.

30 Cf. his Preface to the third edition of Part II of the *Geschenk,* dated 1823.

31 The German original appeared subsequently in a second, considerably enlarged edition (Leipzig, 1823). The Dutch translation under the title *Moda' li-bene binah Zijede een nieuw hebreuwsch spel- en leesbockje voor de Israelitische Jeugd,* was not accessible to the writer. Since the title page clearly indicates "Ongewerkt en vermeerderd," one may readily assume that Belinfante gave free rein to his editorial proclivities and, as elsewhere, practically wrote a new book.

the Hague, 1822-34,[32] and by a collection of memoirs and historical writings.[33] According to the report of his biographer-friend he tried also to revive his periodical in 1822-23.

All his life he lived in somewhat strained circumstances since his positions on both the staff of the state gazette and the various schools were highly insecure and the subject of many petty intrigues.[34] He died on June 29, 1827 at the age of 68 without leaving any children. The Amsterdam Jewish literary society "Tot Nut en Beschawing" (For Welfare and Civilization), to which he belonged since 1807, arranged for a special memorial service at which Moses Lemans delivered the eulogy. Jacob Belinfante, however, long continued to serve the common ideals and in 1835-37 published the important periodical *Jaarboeken voor de Israeliten in Nederland*. Moses's nephews and pupils, too, continued for decades thereafter to carry on in the spirit of his Jewish cultural activities.[35]

APPENDIX[36]

A Son Altesse Sérénissime, Le Prince Archi-Trésorier de L'Empire, Duc de Plaisance, Lieutenant Général de Sa Majesté L'Empereur et Roi en Holland.

Monseigneur!

Il a plu à Votre Altesse Sérénissime par un arrêté du 7 courant enjoindre au consistoire Israélite de Lui faire un rapport sur la manière d'être de ce corps, ce qu'il a fait et ce qu'il se propose de faire, et c'est avec joie que le consistoire saisit cette occasion pour donner à Votre Altesse Sérénissime une idée

32 This compilation entitled *Parabelen: Zedelijke Verhalen en Zedelessen getrokken uit den Talmud* is likewise inaccessible to the writer. According to Sommerhausen, *Archives Israélites*, VII, 401, these parables appeared in several editions before 1845 and were translated into foreign languages under varying titles.

33 Nothing definite could be ascertained concerning the work *Mengelingen* likewise referred to by Sommerhausen, *ibid.* The British Museum lists a work *Mozaisch Leerstelsel* . . . vertaald door M. C. Belinfante, 1823, 8^0 (4043 e. 22). But no further identification is given except for the reference to a *Mahzor* of the Portuguese ritual in Hebrew and Dutch. It would appear that it concerns some translation of holiday prayers.

34 Sommerhausen, *ibid.*, and *Israelitische Annalen.*

35 For the tombstone inscription on his grave, cf. Pimentel, *op. cit.*, p. 69. This author, in his preface dated 1876, expresses thanks to one J. J. Belinfante "who possesses a very wide knowledge of Jewish history."

36 The document here published was taken from fascicle F^{19} 1788 in the Archives Nationales. On the petition to Napoleon with its enclosure see *supra*, n. 23. Since all important details, insofar as they refer to Belinfante, have been treated in our presentation and can easily be located by the reader, there was no further need for the usual annotation of the document. The spelling of the original ms. has been retained except for minor changes in punctuation, a few corrections of evident errors and the addition of some accents omitted by the writers.

des innovations introduites dans les règlemens des Israélites Hollandais, ainsi que de ses vues sur l'avenir, comme cette matière est de la plus grande importance, tant pour le consistoire dont les mesures vont être jugées de Votre Altesse Sérénissime, que pour les Israélites Hollandais sur le sort des quels ce jugement peut influer d'une manière si marquée.

Le Consistoire reprendra sa narration d'un peu plus haut que Votre Altesse Sérénissime n'a semblé le demander, pour répandre plus de lumière sur le tableau qu'il va donner et supplie Votre Altesse Sérénissime de vouloir bien lui pardonner la longueur du présent rapport.

Avant que la révolution de 1795 et les armes victorieuses des Français eussent porté dans la Hollande l'esprit d'Egalité des cultes bien différent que celui de tolérance les Israélites vivaient dans un état bien désagréable en Hollande. Tolérés dans toute la force du terme, ils avaient non seulement comme les Catholiques le libre exercice de leur Culte; mais ils avaient sur eux l'avantage de la publicité de ce culte et la permission de bâtir des Synagogues. Comme eux ils étaient exclus de tous emplois et daignités; mais par une disposition spéciale les Israélites seuls entre tous les cultes établis en Hollande étaient encore exclus des maîtrises, et par là de l'exercise de tout art ou mêtier. Le commerce, à l'exception d'un petit nombre de médecins et d'avoués aux Tribunaux inférieurs, était leur seule ressource, et dans les momens où celui de la Hollande fleurissait, il suffisait à leur entretien. Mais inconnus et négligés par le Gouvernement, ils étaient sous la Direction de leurs syndics, qui à la faveur de quelques règlemens absurdes et iniques, sanctionnés par les villes, jouissaient de toute protection, lorsqu'il s'aggissait d'opprimer leurs coréligionnaires, pourvu qu'ils missent empêchement qu'aucun Israélite ne se mêlât de ce qui ne le concernait point et ne sortît du cercle étroit auquel il était borné.

Pour donner à Votre Altesse Sérénissime quelque idée de l'absurdité, on dirait du ridicule, si la matière n'était pas trop sérieuse, de quelquesuns de ces règlements le consistoire choisit au hazard quelques articles du Règlement d'Amsterdam. La Communauté avait établi une boucherie; la loi du 30 Janvier 1730, et du 23 février 1739 défendit aux Israélites de prendre ailleurs de la viande, sous peine d'une prison correctionelle pour la première fois et du feut en cas de récidive. La loi du 1er Octobre 1752 statuait des peines contre celui qui épouserait la fille qu'il aurait séduite, tandis que la séduction même restait impunie.

La révolution de 1795 introduisit avec des principes plus éclairés dans le Gouvernement un Génie innovateur. Avant même que la Convention nationale eut décreté au 2 Septembre 1796 l'égalité de droits entre les Chrétiens et les Israélites il s'était formé un schisme entre les Israélites Allemands de cette ville, schisme unique jusqu'ici dans l'histoire ecclésiastique parcequ'il ne procédait d'aucune différence dans les dogmes, parceque les membres des deux communautés n'ont cessé de se regarder comme de la même croyance, et de fréquenter leurs Eglises réciproques; mais qui procédait des vues politiques opposées entre les deux parties: ces disputes étant terminées le consistoire ne prendra pas sur soi, de décider sur leur contenu.

Des plaintes à ce sujet ainsi qu'une infinité d'autres qui l'importunaient journellement inspirèrent à Sa Majesté Le Roi le désir de terminer les disputes et d'établir le bonheur des Israélites de son Royaume sur des bases plus solides. Mais avant de rien ordonner, Le Roi chargea, peu après son arrivée dans sa nouvelle capitale, Monsieur le Bourguemaître Van de Poll, de choisir une commission composée de deux membres de l'ancienne communauté et un de la nouvelle qui ne seraient pas membres de la Direction pour Lui faire un rapport sur l'état de ces disputes et sur ce qu'il y aurait a faire. Messieurs Meyer et Lemans membres actuels du consistoire et Monsieur Littwak actuellement Sécretaire Interprète du Consistoire furent nommés.

Le 18 Mai 1808 cette commission fit son rapport au Roi en présence de leurs Excellences Monsieurs Roell alors Ministre des relations extérieures, Monsieur Van Maanen alors Ministre de Justice et de Police et Monsieur le Bourguemaître Van de Poll. Après s'être fait amplement expliquer toute la question ainsi que ce qu'on croyait pouvoir faire pour améliorer l'état des Israélites, Sa Majesté Le Roi ordonna à cette commission de rétablir le calme dans la communauté d'Amsterdam, de faire cesser le schisme, en réunissant les deux communautés sous de nouveaux règlemens et de former un consistoire général établi dans la capitale et chargé de la direction générale de tout ce qui concerne les Israélites du Royaume. Ce sont les propres termes de la décision du 18 Mai 1808 No. 8. Pour mieux pouvoir atteindre ce but Sa Majesté Le Roi à la demande de cette commission lui adjoignit six autres membres, dont trois pris dans la Direction de chaque communauté. Ce furent Messieurs Van Laun, de Jonge Meyers, Boas et de Jong actuellement membres du consistoire, Monsieur S. Z. Philips actuellement membre de la Direction de la Communauté et Monsieur C. Asser. Cette décision prouve évidemment, pour faire cette remarque en passant, que les Israélites n'ont pas demandé une police spéciale, mais que Sa Majesté Le Roi, est le premier et seul qui ait créé cette nouvelle institution en vue de l'utilité qu'elle pourrait procurer à ses sujets en général, ce qui lui donne des droits à des secours du Trésor public.

En conséquence de cette décision les membres nommés se réunèrent en committé et présentèrent à Sa Majesté Le Roi au mois de Juillet 1808 des statuts tant pour le Consistoire que pour la communauté d'Amsterdam et des lois transitaires, lesquels furent sanctionnées avec quelques changemens et modifications par décret de Sa Majesté Le Roi du 12 Septembre 1808.

Par ce Décret le consistoire fut chargé de diviser le Royaume en circonscriptions qui seraient administrées en son ordre par des consistoires inférieurs et proposer au Gouvernement des statuts pour toutes les administrations ainsi que pour celles des communautés; de surveiller les Directions et les Rabbins et de les tenir dans les devoirs préscrits par les statuts, et de veiller surtout qu'ils n'étendent leur autorité sur ce qui est fait hors de l'enceinte de l'église; de faire enseigner les véritables devoirs sociaux par les Rabbins, de prévenir les enterremens trop hatifs. Le même décret attribue encore au consistoire la surintendance de tout ce qui regarde l'entretien des pauvres et des hôpitaux, de toutes institutions pieuses, et surtout de l'éducation et instruction publique

et particulière, la connaissance de toutes disputes et la confection d'un tableau statistique du culte Israélite.

Les règlemens particuliers de la communauté d'Amsterdam différèrent essentiellement des statuts antérieurs en ce que le pouvoir de la Direction y est considérablement diminué. Elle est soumise au consistoire et elle a surtout perdu toute autorité hors de l'enceinte de l'Eglise. Une Direction séparée est chargée plus spécialement des pauvres; enfin tous les changemens que les idées qui avaient fait charger le consistoire de ces différens points exigeaient y furent faits dans le même tems.

Ce fut le 4 Janvier 1809 que le consistoire fut installé par son Excellence le Ministre des Cultes Monsieur Mollerus. Ses membres, les mêmes qui le composent actuellement, étaient alors Messieurs

> Meyers, Président; membre de la commission des neuf. — Van Laun . . . Idem. — De Jonge Meyersz . . . Idem. — Keyser . . . cidevant Syndic de l'ancienne communauté. — Salomons . . . Idem. — Lemon . . . Idem de la nouvelle. — Boas . . . membre de la commission des neuf. — de Jong . . . Idem. — Lemans . . . Idem. — Davids . . . de Rotterdam. — Edersheim . . . de la Haye.
>
> Auxquels furent aggrégés au mois d'Août 1809 Messieurs Manus . . . d'Utrecht et Stibbe . . . de Zwolle.

Le premier travail du consistoire fut l'organisation des Directions subordonnés. La division territoriale fut aussitôt commencée; mais quoique le projet en fut remis bientôt au Gouvernement, elle ne reçut la sanction requise que le 1er Septembre 1809. Les projets de règlemens que le consistoire remit au Gouvernement furent moins heureux, et Sa Majesté Le Roi les ayant renvoyés au Conseil d'état, ils y restèrent en délibération jusqu'à sa dissolution. Le consistoire n'avait donné que les projets de statuts pour les grandes communautés de la Haye, d'Utrecht, de Nimègue, de Zwolle, de Meppel, de Leeuwarde, Groningue, et d'Emde; mais les statuts des autres communautés étaient prêts et comme ceux ci n'avaient besoin que de la sanction du consistoire, ils auraient été expédiés aussitôt que ceux des grandes communautés auraient été decrétés, vù que s'il y avait eu des changemens dans les Uns, ils en auroit entrainé nécessairement dans les Autres. Pour donner à Votre Altesse Sérénissime quelque idée du travail qu'il a fallu faire, sur ce seul objet, le Consistoire ne dira autre chose, si non que la Hollande contient environ 100 communautés Israélites, et que sur chaque communauté les statuts présentent 147 Articles sur lesquels il faut faire cadrer leur règlemens antérieurs avec les principes adoptés.

Un second point important qui a occupé le consistoire est l'éducation des Israélites et il a commencé par faire des efforts pour bannir le Jargon mêlé d'allemand, de polonais et de Hébreu dont ils font usage, et d'y substituer la langue Hollandaise. Déjà la commission chargée de composer le règlemens de la communauté d'Amsterdam et du Consistoire avait fait enjoindre à toutes les Directions de tenir leurs correspondences en Hollandais; ces règlemens chargeaient les Ministres des Cultes et de Justice et de Police de faire

une proposition pour statuer qu'à date du premier Janvier 1810 il ne serait pas fait droit au civil sur toute pièce écrite après ce tems dans ce Jargon, et cette loi fut effectivement proposée à Sa Majesté Le Roi; mais elle n'a jamais reçu aucune sanction; quoique le Consistoire sait de science certaine, que jamais l'intention de Sa Majesté Le Roi n'a été de la rejeter. Ce fut encore dans le même tems que le Consistoire implora le secours du Gouvernement pour obtenir l'admission des Israélites aux écoles de la société soi-disant Pour l'Utilité Publique, qui jusqu'ici s'est obstinée à les refuser, sans autre cause que celle de religion; mais malgré les intentions souvent manifestées de Sa Majesté Le Roi le Consistoire n'a pu encore obtenir de disposition favorable.

Le Consistoire ordonna à différentes reprises que toutes pièces qui seraient publieés dans les Synagogues excepté celles qui regardent directement le culte, ou le cérémonial de la religion, devraient être en Hollandais; mais l'opposition de quelques Directions subordonnées, dont quelques unes tentérent d'éluder ou d'enfreindre ouvertement cette ordonnance, les menées de plusieurs personnes qui firent croire la religion attaquée dans un de ses principaux points, le peu d'énergie que le Gouvernement mit à soutenir le Consistoire sont cause que cette ordonnance n'a eu aucun effet si non de faire cesser toutes les publications dans les synagogues.

Il était à cet égard un point bien plus difficile; mais aussi bien plus important. Le règlement du consistoire Art. 32, Litt. *b* porte: que dans les écoles la Bible serait enseignée en Hollandais; or comme toutes les versions Hollandaises de la Bible étaient destinées pour des Chrétiens, et adoptées aux interprétations qu'ils admettent, il fallait, avant de pouvoir mettre cet article en exécution faire traduire la Bible en Hollandais, selon l'interprétation recue des Israélites. Ce fut ce travail dont Sa Majesté Le Roi chargea le Consistoire par Décret du 10 Juillet 1809 en donnant non seulement privilége pour cette traduction; mais enjoignant à tous précepteurs Israélites de s'en servir exclusivement à toute autre dès que le volume de la Genèse auroit paru. Le Consistoire engagea quelques savans à faire cette Traduction et chargea une commission tirée de son sein de la revision. Les engagemens qu'il a fallu contracter avec les traducteurs, les caractères typographiques qu'on a dû faire fondre, le papier qu'on a fait fabriquer sont la cause que les fraix du consistoire se soyent montés bien au de là de ce qu'on attendoit, et comme ces fraix n'ont été causés que par le dit Décret Royal le consistoire se flatte que Votre Altesse Sérénissime voudra bien encore considérer cette raison de faire subvenir par le trésor public au déficit de ces fraix.

Cependant Monseigneur! quoique les changemens survenus dans la situation de ce Pays ayent fait suspendre l'impression, le Pentateuque entier étant traduit, et la revision de la Genèse étant finie, le consistoire attend les ordres de Votre Altesse Sérénissime sur ce qu'il lui reste à faire à cet égard .

En troisième lieu, le consistoire s'occupe de l'état des pauvres. Il fut bien agréablement surpris par une décision de Sa Majesté Re Roi en date du 7 Avril 1808 par laquelle Sa Majesté demandait l'avis du consistoire sur ce qui seroit requis pour faire construire dans cette ville un Hôpital destiné

à procurer du travail à des pauvres Israélites, à leur servir de dépot de mendicité, d'hôpital pour les malades, pour les orphelins et autres intentions également secourables aux pauvres. Le Consistoire se donna toutes les peines imaginables, non seulement pour en dresser un plan, tant en gros que dans tous ses détails; mais pour rendre cette Institution aussi peu coûteuse que possible, sans que jusqu'ici le Consistoire en ait jamais entendu parler. Un petit établissement de ce genre a été formé par les largesses de Sa Majesté La Roi dans cette ville, sous les auspices de la Direction des pauvres; mais il est encore de peu d'étendue. En général aussi les circonstances politiques de l'Europe qui influent si directement sur les fortunes des Hollandais, n'ont guères permis de rien faire de considérable pour les pauvres, trop heureux si jusqu'ici on a pu soutenir les anciennes institutions, sur lesquelles le consistoire doit spécialement implorer la protection de Votre Altesse Sérénissime.

Le consistoire ne fatiguera pas Votre Altesse Sérénissime de toutes les affaires, relatives à l'intérieur de l'organisation du culte Israélite qui ont occupé et occupent encore en ce moment la plus grande partie de son tems; ni même de toutes ses demarches occasionnées par le Décret de Sa Majesté Le Roi, portant création d'un corps de troupes Israélites, qui a été supprimé depuis, quoique ce Décret lui ait donné à lui seul presque autant d'occupation et surtout plus désagrément que toutes les autres occupations réunies, et lui ait fait connaître l'esprit public des Israélites en général, et des Rabbins et Directions communales en particulier, comme assez éloigné de celui que le consistoire auroit désiré; mais il se flatte d'avoir satisfait à la première demande de Votre Altesse Sérénissime, ce que le consistoire a fait.

Le narré succinct que le consistoire vient de faire a Votre Altesse Sérénissime de ce qu'il a fait, Lui aura déjà donné des lumières sur sa manière d' être et la réponse à cette question sera beaucoup plus courte. Le consistoire est chargé en chef de la surveillance sur les Directions des communautés, les Rabbins, les administrations, quelconques; il doit d'un côté maintenir leur autorité; mais veiller de l'autre côté qu'ils ne transgressent les limites de leur pouvoirs pour opprimer ou vexer les particuliers; il a non l'exercice mais la surveillance de la discipline ecclésiastique; il est l'organe des Israélites Allemands envers le Gouvernement, soit pour réclamer contre les injustices qu'on leur ferait éprouver, soit pour faire parvenir leurs demandes au Souverain, soit pour leur inculquer les ordres qui les regardent, soit enfin pour demander les règlemens particuliers que leur état de civilisation moins avancée au d'autres circonstances particulières pourraient exiger.

Il existe une différence essentielle entre les consistoires en France et celui de Hollande. En France le consistoire exerce par soi-même la discipline écclésiastique; c'est un corps mixte moitié doctrinal et moitié politique; il est composé de Rabbins et de Laïques; en Hollande au contraire le Consistoire qui n'est composé que de laïques n'est aucunement une assemblée qui déciderait des points de théologie; mais un corps politique. Cette différence n'a pas été introduite sans raison; et le consistoire supplie Votre Altesse Sérénissime de vouloir bien permettre de déduire cette raison et d'en tirer une conséquence qui pourrait avoir des suites importantes.

Le nombre des Israélites en Hollande, en égard à la population et l'étendue du Pays, est beaucoup plus grand qu'en France; les Communautés y sont plus considérables. Tandis que lors du Grand Sanhedrin en 1807 on ne comptoit dans toute la France et l'Italie que cent mille Israélites; la seule ville d'Amsterdam est censée contenir 30,000 Israélites Allemands et 2500 Portugais; la Hollande entière compte plus de 60,000 Israélites. Il falloit donc en France chercher à composer les Directions du petit nombre de personnes qu'offroit une communauté; il falloit combiner les autorités théologiques et politiques, pour ménager le nombre de personnes. Mais une autre raison exigeoit en Hollande la création d'un corps politique, préposé aux Israélites, si on vouloit s'attendre à quelque amélioration. Réunis en grandes masses, s'isolant entr'eux, n'ayant que peu de points de contact avec les autres, les Israélites d'une grande communauté sont moins cultivés encore que ceux qui ne vivant qu'en petite société sont obligés de converser journellement avec des personnes d'une autre religion, perdent leur rudesse et leur âpreté, pour se conformer aux coutumes de ceux-ci. Les Israélites d'Amsterdam surtout sont en général sous le rapport seul de la langue Hollandaise, bien audessous de ceux qui demeurent dans de petites villes; leur isolément des chrétiens est tel, que les coutumes et les usages sur les points les moins liés à la religion diffèrent plus de celles du reste de la ville, que celles-ci d'avec les usages de Paris ou de Londres.

Un autre effet de cette grande masse est l'influence bien plus considérable des Rabbins. Si on eut créé un consistoire à l'instar de celui de France il n'y auroit eu aucun pouvoir en état de balancer le Rabbin, qui à son influence sur le public auroit joint celle que sa voix lui donne dans le Consistoire, et on ne pouvoit assez compter sur l'influence directe du Gouvernement, pour pouvoir répondre des suites d'une pareille institution. Le contraire a lieu en France, où des petites communautés dispersées et comme perdues dans la population immense, quoique Israélites par leur religion, sont néanmoins françoises par leur langue et leur usages, où les Rabbins ne peuvent guères avoir d'autorité que celle qui leur est donnée par le Gouvernement et où ce Gouvernement même est toujours actif, pour prévenir les suites désavantageuses qu'une Institution quelconque pourroit avoir.

Si les raisons qu'on a eues en Hollande pour faire du consistoire un corps purement politique pouvoient mériter l'assentiment de Votre Altesse Sérénissime le Consistoire se hazarderoit à Lui proposer de concilier l'avantage de cette Institution avec la nouvelle organisation qui doit être introduite entièrement sur le pied françois, en nommant une commission spéciale composée de trois ou cinq membres qui pendant quelques années sous l'autorité de Son Excellence le Ministre de l'Intérieur seroit chargée de toutes les fonctions actuelles du Consistoire, en tant qu'elles ne sont pas directement relatives au Culte, et seroient par conséquent du ressort du nouveau Consistoire, sous les ordres du Consistoire central à Paris et en dernier ressort de Son Excellence le Ministre des Cultes. Une telle commission sous la dépendance immédiate du Gouvernement et dont les membres seroient attachés à leur poste par un salaire modique de la part du Gouvernement, n'exigeroit, les fraix de bureau y compris, qu'une

somme de trente à quarante mille francs, et seroit d'une utilité générale pour l'Introduction de toutes les innovations, dans leur état civil, que le bonheur surtout des Israélites pourroit demander.

Il ne reste au consistoire qu'à satisfaire à la dernière demande de Votre Altesse Sérénissime ce qu'il se propose de faire; et la réponse à cette question dépend entièrement de Votre Altesse Sérénissime. Le consistoire composé de sujets fidèles à leur Prince et soumis au loi, se fera un plaisir d'obéir aux ordres du Souverain, et s'empressera même d'aller au devant de ceux qu'il pourra prévoir; mais il doit observer à Votre Altesse Sérénissime, que son organisation ne le met pas à même d'introduire les règlemens françois dans toute leur étendue.

Il prendra la liberté de détailler à Votre Altesse Sérénissime ce qu'il croit convenable; mais Votre Altesse Sérénissime voudra bien admettre cette excuse si le consistoire ne se charge de l'Introduction de tous ces points qu'autant que Sa Majesté L'Empereur et Roi ou Votre Altesse Sérénissime ne déclare Son intention expresse sur ce sujet.

D'après les lois Françoises les principaux points qui doivent être reglés sont les suivans:

1.° Tous les Rabbins doivent souscrire aux décisions du Grand Sanhédrin, et prêcher les devoirs des Israélites pour la défénse de leur patrie.

2.° Tous les Israélites doivent avoir des noms de famille. Ceux qui n'en ont pas, doivent en prendre qui ne soient ni tirés de l'ancien Testament, ni noms de Lieux.

3.° Il faut que dans chaque Arrondissement d'un consistoire, comme d'après les lois françoises il y auroit au moins six en Hollande, il y ait un Rabbin; tandis qu'à présent il n'y a que quatre en fonction.

4.° Il faut que dans chaque Arrondissement il soit fait une nomination, non seulement des membres du consistoire, mais encore des notables, qui pour l'avenir sont chargés de faire les nominations.

Voilà Monseigneur! ce qui est à faire outre les règlemens nécessaires de limites et autre pareils accessoires d'une nouvelle organisation. Le consistoire ne peut, comme il a dit, s'en charger, sans l'ordre exprès de Sa Majesté Impériale et Royale ou de Votre Altesse Sérénissime, d'autant moins que cette organisation, pour être conforme à celle de France, doit être commune aux Israélites Allemands et Portugais, sur lesquels cependant le consistoire n'a aucune autorité.

Ayant ainsi répondu aux questions que Votre Altesse Sérénissime a daigné proposer au Consistoire il a l'honneur de supplier Votre Altesse Sérénissime, de vouloir lui accorder Sa puissante protection, et de se nommer, avec la plus profonde vénération,

Monseigneur de Votre Altesse Sérénissime les très obéissans et devoués serviteurs.

Les membres du Consistoire Israélite, et en leur nom J. D. Meyer,[37] Président, par ordre; Abraham Jall, Secrétaire, Pour copie conforme, Le Secrétaire du dit Consistoire Abraham Jall.
Amsterdam ce 20 November 1810.

37 The personality of Jonas Daniel Meyer, long known in Jewish historical literature, appears in a somewhat new light in the comments of various Dutch and French officials published in the Colenbrander collection. The following observations are particularly interesting; Holtrop in his communication to Devilliers of February 1, 1811 writes: "J. D. Meyer membre de l'Institut, directeur du *Courrier d'Amsterdam*, juif, mais jeune homme estimable, très instruit et savant, approfondi dans 11 à 12 langues; assez disposé pour le système français. Si ses forces physiques peuvent soutenir ses travaux il est pour la tâche à laquelle il se donne un homme trés-précieux. Il est un peu prévenu de soi-même et son extérieur n'est pas favorable." Two years later on April 24 and November 22, 1813, De Celles describes Meyer on two different occasions as follows: "*J. D. Meyer.* Membre de l'Institut, membre du consistoire israélite à Amsterdam âgé de 33 ans, marié, il a un enfant. Homme d'infiniment d'esprit, parlant et écrivant très bien le latin, l'allemand, l'hollandais et le français, versé dans plusieurs sciences, dévoué à la France." "*J. D. Meyer*, le juif allemand le plus instruit et plus influent, juge d'instruction à Amsterdam, membre de l'Institut, rédacteur de la gazette; on peut assurer que c'est lui qui dirigea en grande partie les affaires; il a 40[!] ans à peu près. C'est un homme devoué à l'Angleterre [la France?], très souple, très adroit, plein de moyens, et servant tour à tour tous les partis." Cf. Colebrander, *op. cit.*, Pt. VI, vol. 1 (The Hague, 1911), pp. 491 no. 692, 458 no. 638, 531 no. 734.

MAGDEBURG JURY COURT DECISIONS AS SOURCES OF JEWRY-LAW

A Study in Source History*

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I

MAGDEBURG LAW AND THE OBERHOF OF MAGDEBURG[1]

VERY few cities in mediaeval Germany developed a town law of their own as an "*Urrecht,*" representing an original and independent system of law. In the twelfth and thirteenth centuries most of the then rising towns obtained their constitution and statutory laws by way of "*Bewidmung*", that is, by transmission of an older system of town law which had originally grown up in one of Germany's ancient cities. These became through the act

* Paper read at the meeting of the Fellows of the American Academy for Jewish Research, on April 27, 1941, here expanded and annotated.

[1] There is no comprehensive monograph of recent date on the history and dissemination of Magdeburg law in general and the significance of the Magdeburg *Oberhof* in particular, as can be seen from the bibliography up to 1932 in Richard Schröder and Eberh. Freih. von Künssberg, *Lehrbuch der deutschen Rechtsgeschichte,* seventh ed. (Berlin-Leipzig, 1932), pp. 741-744 and 1063 f. The only general survey, though outdated in many respects, is found in Ferdinand von Martitz, *Das eheliche Güterrecht des Sachsenspiegels und der verwandten Rechtsquellen* (Leipzig, 1867), pp. 1-79; cf. also Otto Stobbe, *Geschichte der deutschen Rechtsquellen,* I (Braunschweig, 1860), pp. 267 ff.; II (1864), pp. 63 ff., Adolph Stölzel, *Der Brandenburger Schöppenstuhl* (Berlin, 1901), pp. 233 ff., 246 ff., 248 ff. The sketchy essays by Walter Möllenberg, *Eike von Repgow und seine Zeit* (Burg b.M., 1934), pp. 80-86, 126 f., and by Fritz Markmann, "Zur Geschichte des Magdeburger Rechtes", in *Magdeburg in der Politik der deutschen Kaiser,* ed. by the City of Magdeburg (Heidelberg-Berlin, 1936), pp. 81-128, are based on secondary sources only and offer no original research. Such research on various problems involved here, is however embodied in the following works: Albert Brackmann, *Magdeburg als Hauptstadt des deutschen Ostens im frühen Mittelalter* (Leipzig, 1937), pp. 67-73. — Guido Kisch, "Das Recht am Zeitzer Mühlgraben", in *Jahrbuch "Sachsen und Anhalt",* V (Magdeburg, 1929), pp. 302 ff. — Walter Becker, *Magdeburger Recht in der Lausitz,* in *Deutschrechtliche Forschungen,* ed. by G. Kisch, III (Stuttgart, 1931); the reviews of this book by R. Jecht, *Neues Lausitzisches Magazin,* CVII (1931), p. 207, and by R. Lehmann, *ZRG.,* LII (1932), 461 ff., are written from a one-sided viewpoint of local history, while its achievements for legal history are rightly valued by P. Rehme, *Deutsche Literaturzeitung,* 1933, 424 f., and E. Wohlhaupter, *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft,* XXVI (1933), 159 ff. — Helmut Hillmann, *Das Gericht als Ausdruck deutscher Kulturentwicklung im Mittelalter, Deutschrechtliche Forschungen,* II (1930); on criticism, see G. Kisch, *Speculum,* XIV (1939), p. 39 note 1. — Heinrich Felix Schmid, "Das deutsche Recht in Polen", in *Deutschland und Polen, Beiträge zu ihren geschichtlichen Beziehungen,* ed. by Albert Brackmann (Munich-Berlin, 1933), pp. 64-80; H. F. Schmid, *ZRG.,* L., kanon. Abt. XIX (1930), p. 359 n. 2. — Wilhelm Weizsäcker, "Die Ausbreitung

of conferring their law and constitution upon younger municipal foundations "mother" towns of these "daughter" towns. The latter derived their "daughter" law from the "mother" law of their models. It was therefore only in the natural course of legal development that, in difficult or doubtful law cases, court authorities or litigating parties applied for legal advice or instruction in law to the jurors or the court of their mother city, on whose laws their own statutes were founded. Such "recourse to the superior court" or *"Zug an den Oberhof"* developed in the early centuries of mediaeval city life and soon became a widespread, common and regular legal practice all over Germany.

As early as the twelfth century Magdeburg town law, *Magdeburger Recht,* was the legal system predominant in Central Germany. The law of this old city, whose origin reaches back to the tenth century, owed its popularity and rapid expansion to its progressive and commerce-favoring character. In the era of the spontaneous rise and the systematic founding of towns, franchises and privileges according to Magdeburg law were striven after by most of the new municipal settlements in the East. "Magdeburg law" then won its universal importance for the dissemination of law and civilization. It was first adopted by Halle, Stendal, and Leipzig. It conquered almost all larger cities in the March of Brandenburg and in the Lausitz. In the course of the thirteenth century it came to Silesia, Pomerania, and to the domain of the Teutonic Order. Subsequently it spread over Bohemia, Moravia, Hungary, over the whole Polish Realm, Lithuania, Galicia, Volhynia, Podolia, and in the beginning of the sixteenth century became the dominant system of law even in numerous cities of Russia.

This tremendous expansion of Magdeburg law east, north and south of the province of its origin effected a very lively legal intercourse of the younger settlements with their common mother city. Recourse to the *Schöffenstuhl* or Superior Court of Magdeburg was by no means obligatory or in any way prescribed in

des deutschen Rechtes in Osteuropa," in *Staat und Volkstum,* ed. by Carl von Loesch, II (Berlin, 1926), pp. 549-567; Weizsäcker, "Eindringen und Verbreitung der deutschen Stadtrechte in Böhmen und Mähren", in *Deutsches Archiv für Landes- und Volksforschung,* I (1937), pp. 95-109. A map showing the dissemination of Magdeburg law over Europe, "Die Verbreitung des deutschen Stadtrechts nach dem Osten", is appended to the work *Magdeburg in der Politik der deutschen Kaiser.*

the customary charters which endowed individual towns with Magdeburg law. Rather was it the great respect for the mother city's model institutions of law and the almost unbounded esteem accorded to the Magdeburg Jury Court decisions for their juridical value, which raised this *Oberhof* of Saxon provincial law and jurisdiction to the level of a supreme tribunal of European authority. At the height of its fame it was being consulted by more than four hundred local courts and provincial *Oberhöfe*. Such secondary superior courts which, in the course of time, became to a certain extent competitors of the *Schöffenstuhl* of Magdeburg and, after its decline, its successors, rose in Halle, Leipzig, Dresden, Naumburg, Leitmeritz, Breslau, Goerlitz, Lemberg, Cracow, Thorn, Culm, and other capitals of diverse provinces. All of them maintained, expounded, and at times developed more fully the original principles of Magdeburg law.

II

MAGDEBURG JURY COURT DECISIONS AS A SOURCE OF JEWRY-LAW[2]

After this — though only very sketchy — description of the historical development and legal significance of Magdeburg law and the *Oberhof* of Magdeburg there is no need to stress the particular importance and priceless value for legal-historical research of the decisions which emanated from that mediaeval "Supreme Court" or its younger offspring. They comprised instructions in law of a general character called *Weistümer*, or decisions in individual law-suits, *Schöffensprüche*. Both groups have long been recognized as mines of information on the legal and social past in general.

Their paramount importance as sources for the legal history of mediaeval German Jewry, however, has hitherto hardly been

[2] The problem posed in this heading has not been treated previously, in spite of the fact that Otto Stobbe already pointed out in his *Die Juden in Deutschland während des Mittelalters*, p. VI: "Gerade die Urkunden und *Schöffensprüche* sind die unzweideutigsten Quellen" [sc. for the legal status of the Jews in the Middle Ages]; similarly also Robert Hoeniger, in Geiger's *ZGJD.*, I (1887), p. 66. Both authors themselves, however, made only scant use of these sources. — As to the *Schöffensprüche* as a source of legal history in general, see Guido Kisch, *Schöffenspruchsammlungen als Quelle der Rechtsgeschichte*, Christian Friedrich Kees memorial lecture delivered at the University of Leipzig on February 2, 1918 (unpublished, manuscript in the writer's possession); G. Kisch, "Schöffenspruchsammlungen", *ZRG.*, XXXIX (1918), pp. 346-365.

noticed. The range of Magdeburg jurisdiction extended over numerous cities and provinces inhabited by Jews, and Jews therefore took a place, even if only a modest one, as subjects of Magdeburg Jury Court activity. This fact alone puts Magdeburg decisions, from the point of view of Jewish history, on a level shared only by the *Sheelot u-Teshubot*, the rabbinic decisions of individual cases according to Jewish law, which are universally recognized as source material of the first rank.

It is well known that Jews were among the first settlers of Magdeburg and together with non-Jewish traders formed the early free community established there on the bank of the Elbe.[3] Members of the Magdeburg courts thus had at an early date an opportunity to come into contact with Jews and Jewish affairs of secular character. From their general acquaintance with the *Sachsenspiegel* and other law-books, on which many of their *Weistümer* and decisions were based, the conclusion may be drawn that the Jewry-law of the Saxon law-book did not escape the attention of the Magdeburg jurors. Indeed there are many references to its basic principles in the regulations of Magdeburg law. It is a matter of fact that law-suits of Jews against non-Jewish litigants and *vice versa* were brought before the *Schöppen* of Magdeburg and decided by their *Oberhof*.[4]

This meant much more than merely an application of the principles of the *Sachsenspiegel* Jewry-law in cases involving Jewish litigants. It involved, indeed, an authentic and authoritative interpretation of these principles and their logical expansion and unfolding, with the ultimate tendency toward developing a unified Magdeburg Jewry-law. This evolution is to be regarded as a reflection of the general trend in the development of Magdeburg law: to remodel and adjust with a unifying tendency the principles of territorial law to the requirements of municipal law. In the case under consideration such legal practice exercised its influence upon a special sphere of law, the mediaeval Jewry-law. The Jewry regulations in the *Sachsenspiegel* were peculiarly suited for adoption and logical development by Magdeburg town

[3] Aronius, Regesten, no. 129, 133, 140; Siegfried Rietschel, *Markt und Stadt in ihrem rechtlichen Verhältnis* (Leipzig, 1897), pp. 53, 55, 58; Moritz Güdemann, *Zur Geschichte der Juden in Magdeburg* (Breslau, 1866), p. 7 f.

[4] For more about the jurisdiction of the Magdeburg Jury Court over Jews, see the work announced at the end of this essay.

law: in contradistinction to law matter of territorial or feudal character, the *Sachsenspiegel* Jewry-law itself refers to municipal conditions, mediaeval Jews being predominantly city dwellers. The unifying tendency in the evolution of a specific Magdeburg Jewry-law was twofold. First, the jurors as a rule, would be inclined to adhere to their established practice. Second, the decisions handed down from Magdeburg were not only respected by the provincial courts but regarded as precedents for future cases of the same or a similar nature, so to be decided even by subsequent generations of jurors.[5]

But it is not the tendency towards unification alone which, in the mediaeval German Realm, makes the Magdeburg Jewry-law stand out from the unparalleled provincial and local diversity of laws, including the laws for the Jews. Even more remarkable may be considered the high standard of ethics in law as generally applied by the *Schöppen* of Magdeburg in their judicial practice, with respect to Jews no less than to non-Jews.

Thus, the "fact" value to the historian of the Magdeburg Jury Court decisions, which exhibit the actual application of the rules of law to human life and relations, is only too evident. But it is not surprising that so important and promising a source of legal history as the Magdeburg Jury Court decisions has not yet been systematically explored, collected, and expounded for the history of mediaeval Jewry. True, the collections of Magdeburg Jury Court decisions already published form a considerable literature scattered through diverse books and historical journals of a more local nature.[6] Many more of these collections, however, are still unpublished.[7] A tremendous bulk of source material, amounting to thousands of individual decisions

[5] This tendency was one of the main causes why, as early as the Middle Ages, the Magdeburg *Schöffensprüche* were compiled by local court authorities, with the aim put so well in Ms. Breslau, J 5, fol. 1: "zu nutcze und stewre der hernoch komenden herren und schepphin, das sie ire houpte nicht dorffen mwhen und denn der gleich snelle mogen hirynne finden beschrieben;" "for the benefit and guidance of later gentlemen and jurors so that they need not fatigue their heads and may here quickly find similar [decisions] written down;" cf. Hugo Böhlau, "Aus der Praxis des Magdeburger Schöffenstuhls während des 14. und 15. Jahrhunderts", *ZRG.*, O.S., IX (1870), p. 1.

[6] For bibliography, see Kisch, *ZRG.*, XXXIX (1918), p. 346 f.; Hillmann, *Das Gericht als Ausdruck deutscher Kulturentwicklung im Mittelalter*, pp. IX ff.; Becker, *Magdeburger Recht in der Lausitz*, pp. IX ff.

[7] Only a few are listed in Carl Gustav Homeyer, *Die deutschen Rechtsbücher des Mittelalters und ihre Handschriften*, third ed. (Weimar, 1931-34), where emphasis is laid mainly on the law-books based on Magdeburg law; cf. Kisch, *ZRG.*, LII (1932), p. 381 f.; Paul Gülland, *ZRG.*, LX (1940), pp. 278 ff.

and hundreds of volumes of whole collections, is still resting in numerous archives all over Germany, Czechoslovakia, Austria, Hungary, Poland, the Baltic States, and Russia. It has as yet not even been opened to general research in legal history. Only those among the published collections of Magdeburg law, which were current and widely used as law-books among mediaeval lawyers, such as the *Magdeburg-Breslauer Schöffenrecht* and the *Magdeburger Fragen,* have received treatment by legal historians.[8] The causes for such neglect are obvious. This is the type of source material which, through its peculiar character offers the greatest difficulties to proper handling by scholars: the number of individual documents as well as of complete collections is immense; they are widely scattered through many countries; moreover, the writing in these manuscripts is very hard to deal with even for well-trained paleographers. Hence the bulk of this manuscript material has remained unknown, and even the known collections have not been satisfactorily utilized for research. Several attempts to solve the problem were doomed to failure.[9]

For two full decades, from early 1915 until the end of 1934, the present writer endeavored to bring together for a legal-historical analysis and systematic survey all *collections* of Magdeburg Jury Court decisions still in existence,[10] whereas previous efforts had chiefly concentrated on collecting individual decisions only.[11] In spite of the considerable number and the great variety of types of these collections, this seemed to be the sole method of approach holding out a promise of success. Hundreds of manuscripts were

[8] Paul Laband, *Das Magdeburg-Breslauer systematische Schöffenrecht aus der Mitte des 14. Jahrhunderts* (Berlin, 1863). — Jacob Friedrich Behrend, *Die Magdeburger Fragen* (Berlin, 1865); Ferdinand von Martitz, "Die Magdeburger Fragen," *Zeitschrift für Rechtsgeschichte,* XI, O.S., 1873), pp. 401-431; Emil Kaluzniacki, *Die polnische Rezension der Magdeburger Urteile und die einschlägigen deutschen, lateinischen und czechischen Sammlungen,* in *Sitzungsberichte der Wiener Akademie der Wissenschaften,* phil-hist. Kl., CXI (1886), pp. 113-330.

[9] Cf. Karl von Amira, *ZRG.,* XXIII (1902), pp. 281 ff.; Hubert Ermisch, *Neues Archiv für Sächsische Geschichte und Altertumskunde,* XL (1919), p. 426. In the early eighteen-seventies the late Geheimrat Professor Ferdinand von Martitz of Berlin University also prepared a collection of Magdeburg *Schöffensprüche* not referred to either by von Amira or Ermisch. It was, however, neither completed nor published. The considerable material consisting of transcripts and notes from manuscripts — some of these lost in the meantime — are now in the possession of this writer, to whom they had been presented by Professor von Martitz shortly before he died.

[10] Cf. G. Kisch, "Schöffenspruchsammlungen," *ZRG.,* XXXIX (1918), p. 348; G. Kisch, *Leipziger Schöffenspruchsammlung* (Leipzig, 1919).

[11] Cf. Erich Liesegang, "Bericht über eine zur Herstellung eines Verzeichnisses der Magdeburger Schöffensprüche im Auftrage der königl. bayrischen Akademie der Wissenschaften im Jahre 1889 unternommenen Reise", *ZRG., XVI* (1895), pp. 281-300; Victor Friese and Erich Liesegang, *Magdeburger Schöffensprüche,* I (Berlin, 1901).

studied, many of them carefully analyzed, either on the spot or in the writer's respective residences, Leipzig, Prague, Halle, having been sent there by courtesy of the then owners. This work, already near its completion, was however abruptly halted shortly after the National-Socialist regime had firmly established itself in Germany. In the course of the subsequent political events all this writer's property was seized by the Nazi authorities. The results of years of painstaking labor could not escape this tragic fate. The writer's monograph on the *Oberhof* of Magdeburg, which had been announced for publication, will probably never appear in print.

All the more fortunate indeed is the rescue of Magdeburg material pertaining to the legal history of the Jews. In the course of his general studies, this writer had always noted down and collected the jury court decisions referring to Jews or Jewish affairs. They amount to a respectable number of items, if one takes into consideration the strict regulations of Jewish law prohibiting Jews from bringing their law-suits before non-Jewish courts. Picking out the decisions bearing on Jews from printed material required the reading of hundreds or rather thousands of cases, for there are no adequate indexes. Even greater labor was demanded, for the same purpose, in scrutinizing the manuscript material of the thirteenth to the fifteenth centuries, with its special paleographical difficulties, particularly if only photostats were available.

Not only in number but also as far as the variety of their law content is concerned, these *Schöffensprüche* represent a welcome supplement, as interesting as it is important, to the universally known and used sources of the mediaeval history of the Jews. The material at hand is of great importance with respect to the legal status and general culture of mediaeval Jewry, and particularly its relationship to non-Jewish authorities and Christian neighbors. These documents disclose to a gratifying extent how the German in his personal thoughts and feelings regarded himself in relation to the Jew, and how the mediaeval court brought the administration of law concerning Jews into agreement with the leading ideas of the ruling legal philosophy of the time. The Magdeburg decisions further reveal hitherto unknown data concerning the settlement and economic activities of the

Jews, their social standing and, above all, their legal status, in public as well as private law, their actual treatment in matters of law, and their general place in German legal history.

The fact that some collections were inaccessible to this author[12] and other material was deliberately withheld by the Nazi authorities,[13] cannot materially impair the accuracy of the legal-historical picture to be derived from these sources. This may, however, some day be supplemented, clarified or even completed through further research after a victorious peace will have restored the possibility of unrestricted access to European archives. The material at hand will be published and expounded from the point of view of the history of the Jews in the present writer's forthcoming volume, *Jewry-Law in Mediaeval Germany in the Light of Law-Books and Court Decisions.*

[12] 1. Manuscript from the beginning of the fourteenth century in the Municipal Archives of Brünn, Moravia; Homeyer, no. 213; a copy of the contents of the *Schöffensprüche* in this volume, fol. 18-19: "Hie hebt sich an von klagen und von urteile," written many years ago by Otto Stobbe and now in the present writer's possession, shows the following headings: 15. Ob ein man auf den andern claget, das er erlanget habe in den juden mit allen rechten hundert schock grossen und mer; 21. Das ein jude claget gegen einen cristen umbe hauptgut. 2. Manuscript collection of Magdeburg Jury Court decisions sent to Merseburg (1424-1452), in the *Stadtbibliothek* of Merseburg, Germany; Homeyer, no. 788.

[13] 1. Collection of jury court decisions, probably of the fifteenth century, discovered in the *Altertumsmuseum* of Torgau, Germany, after a long search by this writer; Homeyer no. 1111a; an inadequate description of this codex was published by Martin Granzin in ZRG., LIV (1934), p. 244 ff. — 2. In 1875, a manuscript collection of jury court decisions of Magdeburg, Leipzig, and Halle for various Thuringian towns (composed in 1474), was discovered by the late Librarian of the *Reichsgerichtsbibliothek* in Leipzig, Professor Karl Schulz, in Poessneck, Thuringia. Not in Homeyer; completely unknown and unpublished. In 1915, because of his advanced age, Professor Schulz abandoned his plan of publishing this manuscript, which was then deposited in the *Forschungsinstitut für Rechtsgeschichte*, located in the University Library of Leipzig. — For many years this writer prepared editions of both these manuscripts under the auspices of the aforementioned *Forschungsinstitut für Rechtsgeschichte.* In April 1933, due to Hitler's access to power, he was barred from further using these codices whereby his work was bound to be frustrated. A complete transcript of the Poessneck manuscript remained with the original codex in possession of the Leipzig *Forschungsinstitut.*

THE DISTINCTIVE DRESS OF NON-MUSLIMS IN ISLAMIC COUNTRIES*

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In his essay, "The Yellow Badge in History,"[1] Professor Guido Kisch remarked that the institution of distinctive dress for the Jews was not an invention of thirteenth-century Europe, but probably reaches back to Byzantium and the Islamic countries, where caliph ʿUmar b. al-Khaṭṭâb was said to have promulgated laws, as early as 634 A.D., ordering non-Muslims to wear garments different from Muslim attire. The aim of the present article is to examine further the problem thus posed by Professor Kisch.[2]

It would be misleading to approach this problem from an exclusively Jewish angle, for it arose out of the relationship prevailing generally between Muslims and all non-Muslims, whether Christian, Jewish, or of any other non-Muslim faith. Therefore, if one would see it in its proper light, one must first survey the position of non-Muslims, Jews and Christians alike, in Islamic society during the early history of the Islamic empire.

I

MUHAMMED AND THE JEWS OF MEDÎNAH

When Muhammed, the Prophet and founder of Islâm, began to preach his newly revealed religion to the Arabs, he was convinced that his revelatory visions were but an Arabic version of a divine book the prototype (*umm al-kitâb*) of which was kept

* The author wishes to thank Professor Guido Kisch for his suggestion to study this problem. The essence of this essay was presented as a paper at the Annual Meeting of the American Academy for Jewish Research, on December 27, 1942, in New York.

1 *Historia Judaica*, IV (1942), p. 104 f.; separate edition (New York, 1942), p. 14 f.

2 *Ibidem*, p. 138, note 14 [sep. ed., p. 48, n. 14].

in heaven. Other prophets before him had received the same revelation from Allâh and transmitted the divine Scripture to their peoples.[3] Hence, at an early time in his career, Muhammed spoke of the *ahl al-kitâb,* "the possessors of the Book," as of people who were believers in Allâh and were to be distinguished from the *kâfirûn,* "the Unbelievers," and the *mushrikûn,* "the Polytheists." Muhammed knew of three groups of such *ahl al-kitâb,* the only ones with whom he came in contact in Mekka and Medînah:[4] Jews, Christians, and Zoroastrians or Mandaeans, whom he called *Ṣâbiʿûn.* The book revealed to the Jews was the *taurât* (Torah), that of the Christians the *injîl* (Evangelion), while the "book" which the Ṣâbiʿûn had was not identified.[5]

After striving unsuccessfully for ten years in Mekka to establish his position as a messenger of Allâh and as a divinely inspired leader of his community, Muhammed emigrated to Medînah in 622. There he was called upon to establish peace between the two main groups of inhabitants, the Aus and the Khazraj. It is unnecessary to describe here in detail the manner in which he carried out his task. There were, however, three large Jewish tribes in Medînah, the Banû Naḍîr, the Banû Quraiẓa, and the Banû Qainuqâʿ. The statutes which he drew up to regulate the inner affairs of the community of Medînah under the new concept of the *ummah,* the community of Islâm,[6] also fixed the relationship between these Jewish tribes and the rest of the community.[7] They were to be part of the *ummah,* although they were explicitly permitted to retain their religion;[8] they had to assist the Medinians

[3] He called himself *khâtam al-anbiyâʾ,* "the seal of prophets."

[4] The expression *ahl-al-kitâb* in this form was first used by Muhammed in Medînah, but as early as the third Mekkan period he spoke of "those to whom We (i.e. Allâh) gave the Book," *alladhîna âtainâhumu-l-kitâba,* "or those to whom the Book was given," *alladhîna ûtu-l-kitâba;* cf. Josef Horovitz, *Koranische Untersuchungen* (Berlin-Leipzig, 1926), p. 66.

[5] On Ṣâbiʿûn, cf. Horovitz, *op. cit.,* p. 121. They were counted by Muhammed among the *ahl al-kitâb,* see Qur'ân, Sûra ii, verse 59; v, 73; xxii, 17 (Medinian period).

[6] *Das Leben Muhammed's nach Muhammed Ibn Ishâk, bearbeitet von Abd el-Malik Ibn Hischâm,* ed. by F. Wüstenfeld (Göttingen, 1858), pp. 341 ff. The consensus of scholars is that this document is based on ancient tradition and may be considered as genuine; cf. Julius Wellhausen, *Skizzen und Vorarbeiten,* IV (Berlin, 1889), 65 ff., especially 80; also A. J. Wensinck, *Mohammed en de Joden te Medîna* (Leiden, 1908), pp. 73 ff., esp. pp. 87 ff.; Caetani, *Annali dell' Islam* (Rome, 1905 ff.), I, anno 1, §§ 43-49; A. Sprenger, *Das Leben und die Lehre Mohammeds,* III (Berlin, 1869), 20 ff.

[7] Cf. Wellhausen, *op. cit.,* p. 83: "Sie (die Gemeindeordnung) enthält aber keinen Vertrag mit den Juden, sondern nur eine weniger ihnen als den Anṣar gegebene Bestätigung ihrer alten Verhältnisse, unter gewissen durch die Lage der Dinge notwendig bedingten Beschränkungen."

[8] Ibn Hishâm, p. 342, line 3 fr. bel.: *wa-inna yahûd Banî ʿAuf ummatun maʿa-l-muʾminîn, li-l-yahûd dînuhum wa-li-l-muslimîn dînuhum.*

in combating the common enemy (that is the enemy of the township of Medînah as constituted through this document) and had to contribute to the cost of common wars. They were, on the other hand, to be assisted by the rest of the *ummah,* namely, the *Muhâjirûn* (the emigrants from Mekka with the Prophet) and the non-Jewish inhabitants of Medînah, the so-called *Anṣâr,* "Helpers."

Muhammed came into conflict with the Jews at an early time. His thesis of the substantial identity of the Qur'ân and the *Taurât* and *Injîl* were subjected to attacks by the better-informed Jews, who pointed to the difference between Muhammed's version of the biblical tales and the one contained in their Book. Muhammed, in defending his position took refuge in the accusation that the Jews had falsified their revelation, and maintained that Allâh had punished them for this sin by imposing restrictions upon them, such as the dietary laws.[9] But success emboldened him to adopt a stronger attitude. His victory over the Quraish at Badr in the year 2 of the Hijra and in the battle of the Khandaq (the "Battle of the Ditch") in the year 6 so strengthened his position in Medînah that he felt free thenceforth to act without restraint against dissenting elements in the new community of Islâm. Throughout his career the Prophet's actions were determined by political as well as religious considerations, and both contributed to his attitude toward the Jews. Whereas in the early statutes of Medînah, adopted before the battle of Badr, the Jews were recognized as members of the *ummah,* after his victories Muhammed gradually eliminated them from Medînah, killing some of them outright and expelling others from the *Ḥarâm* (sanctuary) of Medînah. Yet, some Jews remained in the Ḥijâz for a time.

The Jews were the Prophet's foremost adversaries among the *ahl al-kitâb.* But with the expansion of his influence beyond Mekka and Medînah Muhammed had to turn his attention also toward the Christians. He is said to have sent letters to the emperor of Byzantium, to a legendary bishop called Dughâṭir, as well as to other rulers, in order to win them over to Islâm.[10]

[9] E. g., Sûra vi, 91, 147 f., 167-171; cf. Heinrich Speyer, in *Encyclopedia of Islâm, s.v. Yahûd.*

[10] See Wellhausen, *op. cit.,* pp. 98, 106, 119, and 97-135 generally; Caetani, *Annali,* I,

These letters are, undoubtedly, spurious and the story of these missions legendary. We know, on the other hand, that the Christian Arabic tribe of Taghlib made a treaty with the Prophet enabling them to remain Christians.[11]

It was only after Muhammed's death when the Muslim warriors conquered vast territories outside Arabia that the followers of the new religion came into contact with large numbers of believers in another faith. In Persia, Zoroastrianism and Manichaeism were the prevailing religions; in Byzantium their adversaries were Christians. Both of these groups belonged to what Muhammed had called the *ahl al-kitâb,* who, because of their monotheism and their possession of the "Book," enjoyed a position of religious equality with the Muslims. The problem of how to deal with these conquered peoples had, therefore, to be attacked from the political rather than the religious angle. The principle upon which Muhammed himself acted and which his successors, following his example, pursued was that the *ahl al-kitâb* were free to keep their religion if they so desired.[12] But they were required to pay the so-called *jizyah,* the poll-tax imposed only on those of the *ahl al-kitâb* who refused to profess Islâm. The payment of this tax entitled them to the protection of the Islamic ruler.[13] Thus the *ahl al-kitâb* became the *ahl al-dhimma* or *dhimmiyûn,* "the people who enjoyed the protection (of the Muslims)." The *dhimmî* had the right to live within Muslim territory in safety and go about his business unrestricted, but he was inferior socially and politically to the Muslim. He was a subject of the Muslim state although not a member of the Muslim religious community.[14] The tax paid by the *dhimmîs* became

anno 6, §§ 45 ff.; Jacob Sperber, *Die Schreiben Muhammeds an die Stämme Arabiens* (Berlin, 1916), pp. 45 ff. (a letter to a Jewish tribe); Ibn Sa'd, *Ṭabaqât,* ed. E. Sachau, (Leiden, 1905 ff.), vol. I, 2, ed. Mittwoch, pp. 15 ff.

11 Ibn Sa'ad, *op. cit.,* I, 2, p. 55; Wellhausen, *Sk. u. Vorarb.,* IV, p. 156; Sir Thomas W. Arnold, *The Preaching of Islam,* third ed. (London, 1935), pp. 49 ff.; their persecution began under caliph 'Abd al-Malik.

12 This principle is frequently expressed, e.g., Sûra ix, 29; xcviii; cf. the letters by the Prophet to various Jewish groups, Wellhausen, 119, 121, and the letters to the bishops of Najrân and to the Banû al-Ḥârith b. Ka'b, *ibid.,* 106. This letter was later disregarded by 'Umar I.

13 The wording of such letters granting safety to Jewish tribes is preserved in Ibn Sa'd, I, 2, p. 29, line 22 ff., of which an example follows here: "In the name of Allâh, the All-Merciful. This is a letter from Muhammed to the B. Ghâdiyah. They are granted protection and they have to pay the *jizyah;* but they shall not be attacked nor expelled (from their territory). Every night extends and strengthens this treaty. This letter was written by Khâlid b. Sa'îd. The Banû Ghâdiyah are Jews."

14 The legal position of the aliens in the Islamic state was treated by Willy Heffening,

an important source of income for the Muslim state, so much so that a financial problem arose when large numbers of non-Muslims were converted to Islâm and ceased to pay the *jizyah*.[15]

II

THE COVENANT OF ʿUMAR

The next step in the development is embodied in the treaty which ʿUmar b. al-Khaṭṭâb, the second Orthodox caliph, is said to have concluded with the inhabitants of Îlîyâ, that is, Jerusalem, after the conquest of Palestine. This caliph, basing his action on an alleged saying of the Prophet that in the Ḥijâz there could not be two religions,[16] had already expelled the few remaining Jews from that area and forbade them to enter the holy cities. He also drove the Christians out of their homes in Najrân and forced them to settle in Syria.[16a] Yet, despite this harsh treatment, the terms of this "treaty of ʿUmar" are really very mild. It is preserved in full in Ṭabarî,[17] and is said to have been concluded between ʿUmar and the Christians of Îlîyâ; the sole reference to the Jews in this document occupies no more than a half sentence. These are the main points of the covenant: The inhabitants of Îlîyâ were granted safety (*Amân*) "for their persons, for their property, for their churches (*kanîsa*), and for their crosses, for their damaged crosses as well as for the undamaged

Das Islamische Fremdenrecht (Hannover, 1925). It is relevant to point out the distinction between the foreigner who sojourns temporarily in Muslim territory under the protection of an *Amân*, "safe-conduct," and the *dhimmî* who resides there permanently. Cf. also C. H. Becker, "Islam und Wirtschaft," in *Islamstudien*, I (Leipzig, 1924), 57: "Nach innen hat (der islamische Staat) das Prinzip der Schichtung seiner Staatsbürger in zwei Klassen: die muhammedanische Herrenschicht, die das Schwert führt, und die Andersgläubigen, die als Bürger zweiter Klasse dem Wirtschaftsleben nachgehen, das Schwert nicht führen dürfen, aber Religionsfreiheit geniessen;" cf. also A. Jeffery, "The Political Importance of Islam." *Journal of Near Eastern Studies*, IV (Chicago, 1942), 383 ff.

15 This problem was solved by converting the head-tax *jizyah* into a tax on the land (*kharâj*) so that the *dhimmî*, even after his conversion to Islâm, still had to pay a tax. This tax remained on the land even if it passed into Muslim hands by sale; cf., e.g., A.J. Butler, *The Arab Conquest of Egypt* (Oxford, 1902), p. 461 (for Egypt).

16 See Ṭabari, *Annales*, ed. De Goje, I (Leiden, 1879-1901), p. 2162, lines 5 ff. On Jews in Wâdi-l-Qurâ, Wellhausen, *Muhammed in Medîna* (Berlin, 1882), p. 292. The fact that Jews remained in that place and in Taimâ is borne out by Geonic *Responsa* and by Benjamin of Tudela's report; cf. I. Friedländer, "Jews of Arabia and the Gaonate," *JQR.*, N. S., I (1910), 251. Professor ALEXANDER MARX drew the author's attention to the discrepancy between the Arabic and the Jewish sources and to Friedländer's essay.

16a See Ṭabarî, I, p. 2162, line 5 ff.

17 *Annales*, I, p. 2405, line 4 ff.; Balâdhurî, *Futûḥ al-Buldân*, p. 138, line 16 ff.; cf. Arnold, *The Preaching of Islam*, p. 56.

ones. These should neither be demolished nor diminished nor should the people be despised because of their religion," nor suffer any harm on account of it. At this point the only reference to Jews occurs: "Nor shall any one of the Jews reside with them in Îlîyâ," *wa-lâ yaskunu bi-Îlîyâ maʿahum aḥadun min al-Yahûdi.* Furthermore, the *jizya* was imposed on them, just as on the non-Muslim people of other cities; they were free to leave Îlîyâ and to emigrate to Byzantium (Rûm), if they so desired. The document ends with these words: "This letter is a treaty of Allâh and a protection (*dhimma*) by the Prophet and a protection by the caliphs (*khulafâʾ*, pl.) and the protection by the Believers, when (*idhâ*) the inhabitants of Îlîyâ pay the *jizyah,* as they are obliged to do."[18] The document is said to have been signed by Khâlid b. al-Walîd, Muhammed's famous general whose nickname was "the Sword of Allâh," ʿAmr b. al-ʿÂṣ, the governor of Egypt, ʿAbd ar-Raḥmân b. ʿAuf, one of the most influential Companions of the Prophet, and Muʿâwiya b. Abî Sufyân who was later to become the first caliph of the Umaiyad dynasty, certainly an imposing array of names.

It is this treaty that Muhammedan writers as well as European scholars regard as the earliest document defining the conditions of continued residence for non-Muslims in the conquered lands. Neither in Ṭabarî, nor in the passage in al-Balâdhurî's *Futûḥ al-Buldân,* where the treaty is referred to, is there any hint that ʿUmar required the non-Muslims to wear distinguishing garments. Yet it is in this treaty that ʿUmar is said to have introduced the distinctive dress.[19] The earliest authority among modern European scholars to ascribe this institution to ʿUmar is G. Weil who refers to it in his *Geschichte der Chalifen.*[20] His assertion has since been repeated in every study of the Jewish Badge and the distinctive dress of the Jews. Its validity has never been questioned or even discussed.[21]

18 This is a formula of conclusion used in such documents.

19 Thus Bar Hebraeus in his *Chronology,* translated by E. A. Wallis Budge, I (Oxford, 1932), p. 108 f., explaining the resentment of the Arabs against the Christians as caused by their setback before Constantinople; in consequence "great hatred sprang up in the heart of Omar and he inflicted them (i.e., the Christians) severely . . . . they were not to put on apparel (which in any way resembled that) of the soldiers, and they were not to use saddles when riding."

20 (Mannheim, 1846-51), I, p. 56; II, p. 162, note 1; p. 354.

21 Valuable contributions to the problem of the *ahl al-dhimma* and their relationship to the Muslim state are: Heffening, *Das Islamische Fremdenrecht* (see *supra,* n. 14); Arnold,

But even Islamic works, published long before these modern books, took it for granted that it was ʿUmar I who laid down the law concerning non-Muslims in this treaty. Ibn ʿAsâkir, a later writer (born in 499 A.H./1302 A.D.) quotes a letter allegedly addressed by Christians to ʿUmar in which they refer to his covenant with the inhabitants of Jerusalem. They speak in detail of their rights and duties, and among the latter they promise "to tie the *zunnâr*[22] round our waists and to cut our hair in front."[23] In the same work[24] there is another letter said to have been written by Christians to Abû ʿUbaida, at that time ʿUmar's chief commander in Syria and Palestine. Here the regulations regarding the dress imposed on the Christians are far more ela-

The Preaching of Islam (n. 11); and A. S. Tritton, *The Caliphs and their Non-Muslim Subjects* (London, 1930). In W. Wilson Cash, *Christendom and Islam, their Contacts and their Cultures down the Centuries* (New York, 1937), written from a Christian point of view, p. 37, the covenant of 'Umar is taken as genuine, without discussion.

22 A list of the Arabic names of garments used in the edicts and passages dealing with distinctive dress for the *dhimmî*, arranged according to the Arabic Alphabet, may here be appended. The explanations are taken, in abridged form, from Lane's *Arabic-English Lexicon* (London, 1863-85): *izâr*: "a wrapper for covering the lower part of the body (from the waist downward concealing the thigh and generally the upper half or more of the shanks) not sewed; . . . also signifies anything with which one is veiled, concealed, or covered." — *dir'*: "a women's garment, either a *qamîs*, shirt, or worn over it, never made of anything but wool; a tunic like that called *durrâ'a*;" cf. Dozy, *Dict. détaillé des vêtements* (Amsterdam, 1854), p. 176 f. — *durrâ'a*, pl. *darârî'*: "a garment . . . slit in the fore part . . . worn by persons in Northern Africa, reaching to, or below the knees . . . also a garment worn in Egypt, particularly by viziers." — *zunnâr*: "the thing (meaning the waist belt) that is upon the waist of a Christian and Magian; the thing which the *dhimmî* (or free non-Muslim subject of a Muslim government who pays a poll tax for his freedom and toleration, i.e. Christian, Jew, Sabian) binds upon his waist;" cf. Dozy, 196-198: in Spain, a rough mantle worn by peasants. — *ṭailasân*, pl. *ṭayâlisa*: "a certain article of apparel worn by the *'adjam* (Persians or other foreigners), of a round form and black; having its woof and warp both of wool;" cf. Dozy, 278-90. — *'aṣb*: "a particular sort of the garments called *burûd* of the fabric of al-Yaman; . . . the yarn of which is put together, then dyed and woven, so that it becomes particoloured." The meaning of "turban" is not given in Lane, but the root *'ṣb* means "to bind, wind around;" *'aṣbatun*, "a mode or manner of binding or winding round one's head (with a turban or the like);" hence turban. Cf. Dozy, *s.v. 'aṣbatun*, *'iṣabatun*, p. 300 ff.: "Il se peut que ce mot désignât anciennement une espèce de turban . . . mais de nos jours cela n'est plus le cas." — *ghiyâr*: "the cognizance, or badge, of the free non-Muslim subjects of a Muslim government, such as the *zunnâr* (or waist-belt) to the Magians and the like; or, as some say, the cognizance or badge of the Jews." According to this explanation, the word *ghiyâr* does not necessarily mean a patch, or badge, but is the general term applied to any of the distinctive pieces of garments. Cf. Sylvestre de Sacy, *Chrestomathie Arabe*, I, second ed. (Paris, 1826), pp. 146, 181. — *qabâ'*: "a kind of tunic resembling the *qaftân*, generally reaching to the middle of the shanks, divided down the front and made to overlap over the chest;" cf. Dozy, 352-362. — *qalansuwa*, pl. *qalânîs*: "a cap, generally high and pointed, but sometimes closefitting, which was worn by the Arabs, sometimes alone, and sometimes beneath the turban; there was also a kind that was round like a melon." Dozy, 365-371. — *mintaqa*, *mintaqa*: "kind of girdle, waist belt, fastened round the waist with a buckle or clasp; worn by men and women; when worn by wealthy women, adorned with jewels. Two plates of silver, or gold, also jewelled, which clasp together;" Dozy, 420: "toujours une ceinture d'or ou d'argent."

23 *Tahdhîb al-Ta'rîkh* I (Damasc, 1329-51 A.H.), 178.

24 *Ibid.*, I, 149. Maqrîzî, *Khiṭaṭ*, I, p. 76, line 5 from the bottom, also attributed this law to 'Umar I.

borate: they agreed "not to resemble the Muslims in wearing the *qalansuwa,* the turban, shoes, nor in the parting of the hair, nor in their way of riding. . . . to cut the hair in front and divide our forelocks, to tie the *zunnâr* round our waist."[25]

A much earlier authority ascribing the special dress of the *dhimmîs* to ʿUmar is the author of the very important and illuminating book on the "land-tax", the *Kitâb al-Kharâj,* Abû Yûsuf Yaʿqûb b. Ibrâhîm al-Anṣârî (113-182 A.H./731-798 A.D.). This work was written especially for the information and instruction of the famous caliph Hârûn ar-Rashîd and covers the whole range of the problems of administration. In the "Chapter on the Dress of the *ahl al-dhimma* and their Appearance"[26] the author offers a detailed description of what was regarded obligatory. The non-Muslims were to distinguish themselves in three ways: "In their dress, in their mount, and in their general outfit. They should wear the *zunnâr* round their waist, resembling a thick thread which every one of them would wear as a belt; their *qalansuwa* should be quilted and they should put on their saddles pommels of wood, as large as pomegranates instead of pommels (made of precious metal). They further should twist the straps of their shoes and (in general) not imitate the way of the Muslims. Their women should be forbidden to use leather saddles in riding. The *ahl al-dhimma* should also be prohibited to build (new) synagogues and churches in the town, (and should have none) except those which were already there at the time when they became *dhimmîs* by treaty; these should serve them as synagogues and churches, and should be left to them and should not be demolished. The same applies to the houses of the fire-worshippers. They should be allowed to remain in the towns and in the market-places of the Muslims, selling and buying there; but they should not sell wine or pork, nor exhibit their crosses in the towns. Their *qalansuwa,* however, should be long and quilted." At the end the author wrote, according to the text as it has come down to us: "This is what ʿUmar b. al-Khaṭṭâb, may Allâh have mercy on him, used to order to his governors, namely that they

[25] The same in *Mustaṭraf,* I, 124. In neither of these letters is the name of the town mentioned.

[26] Abû Yûsuf Yaʿqûb b. Ibrâhîm al-Anṣâri, *Kitâb al-Kharâj,* (Cairo, 1302 A.H.), p. 72-73, transl. by E. Fagnan, *Le Livre des impôts* (Paris, 1921).

should make the *ahl-al-dhimma* abide by this costume, saying that their garb should be (easily) distinguished from that of the Muslims."

Nevertheless, there is considerable reason to doubt the authenticity of this so-called "Covenant of ʿUmar." ʿUmar became caliph in 634, the year of the Arab victory over the Byzantine emperor in Palestine, though the conquest of Jerusalem was not achieved until 638. It seems unlikely that the Muslims, preoccupied as they were with the struggle for supremacy in Syria, should have paused just then to develop such detailed laws. Furthermore, the main reason for which ʿUmar allegedly introduced the dress-regulations was to render non-Muslims easily distinguishable from Muslims in order to prevent inter-marriage and free intercourse between Muhammedans and Unbelievers. At the time of ʿUmar's reign, however, there was hardly any necessity for such outward signs of difference. The conquering Arabs were easily recognized by their Bedouin garb and their soldier's equipment; it was only in much later times, when the conquered masses began to go over to Islâm, that the necessity arose to differentiate those who remained outside the Islamic fold by easily recognizable signs.[27]

Ṭabarî's report of the covenant is based on the authority of Saif b. ʿUmar, a scholar whose statements have frequently been questioned or refuted on historical grounds.[28] The too-imposing signatures must add to our suspicions regarding the authenticity of the document. But not least among these considerations is the fact that in later times ʿUmar b. al-Khaṭṭâb came to be regarded as the outstanding example of Muslim piety and as the inaugurator of many religious, political, and social customs. Late institutions and laws whose origin was not clearly established were thus often attributed to him. We are, therefore, justified in rejecting the evidence of the two letters mentioned above as well as Abû Yûsuf's attribution of these restrictions to ʿUmar. Abû Yûsuf's chapter on the dress of the *ahl al-dhimma* only shows that by Hârûn ar-Rashîd's time, that is at the end of the eighth century

[27] For a discussion of the authenticity of the "Covenant of 'Umar," see Caetani, *Annali*, III, 2, anno 17, §§ 169, 171, 172; cf. Tritton, *The Caliphs*, ch. 1; for bibliography, Steinschneider, *Polemische und apologetische Literatur in arabischer Sprache* (Leipzig, 1877), pp. 165-187.

[28] Cf. Wellhausen, *Prolegomena zur ältesten Geschichte des Islam*, in *Skizzen und Vorarbeiten*, Heft vi (Berlin, 1899), p. 6; Caetani, *Annali*, III, passim.

A.D., these regulations were legally established, although not always strictly observed.[29] These writers simply could not envisage a time in which Unbelievers were allowed to dress as they chose. Dating such regulations back to ʿUmar is clearly an anachronism.

This type of legislation merely confirms and legalizes traditional usage. Jews and Christians subjected to Muslim rule were probably accustomed to dress in a distinctive manner[30] — one need only think of the clerical garb of Christian priests and monks — which they discarded on being converted to Islâm.[31] Those, however, who remained firm in their faith retained the traditional mode of dress, thus underlining their steadfastness by an outward sign.[32] What had been a voluntary expression of loyalty was gradually turned into an enforced sign of inferiority to the ruling class of Believers.[33]

One can discern certain stages in this development. At first free to choose their costume, the *dhimmîs* were ordered, probably at some early time in the reign of the Umaiyad caliphs, to wear certain garments. ʿUmar b. ʿAbd al-ʿAzîz (717-720 A.D.), the first personality to whom one can refer with some degree of certainty in this connection, ordered a stricter enforcement of these laws; the caliph al-Mutawakkil (847-861 A.D.) made them still more stringent.[34] This development was, by no means, accidental. In fact, it reflects faithfully the change from the comparatively unsophisticated Islamic community of the early period to the complex state of later times, torn by political strife and divided by many sects, dissenters, and theological-philosophical systems of thought. Al-Mutawakkil, in particular, is known to

29 Abû Yûsuf, *Kharâj*, p. 73. He also speaks of a letter which 'Umar II, the Umaiyad caliph, addressed to one of his governors, complaining that he had heard that many Jews and Christians had failed to observe the dress regulations. This disobedience was due to the governor's own weakness, and he was ordered to enforce the law strictly.

30 Cf. G. Kisch, "The Yellow Badge," p. 99 f., [9 f.].

31 Cf. Balâdhurî, *Futuḥ al-Buldân*, ed. De Goje, (Leiden, 1866), p. 121: the cities of Rûsas and Iskanderûna surrendered on condition that their Christian inhabitants were allowed to wear Muslim dress; *ibid.*, 161: the Christian Jarâjima made the same stipulation; cf. Arnold, *Preaching of Islam*, p. 47 ff.

32 In the *ḥadîth*, which contains a good deal of anti-Jewish and anti-Christian polemics (cf. George Vajda, "Juifs et Musulmans selon le Hadit', *Journal Asiatique*, 1937, 57 ff.) the question of distinctive dress of the *dhimmî* does not seem to have been broached at all. A. J. Wensinck, *A Handbook of Early Muhammedan Tradition* (Leiden, 1927) fails to list *zunnâr*, *ghiyâr*, nor do the entries under *Dhimma*, Christian, Jew, and others, refer to distinctive dress in the sense of the present discussion.

33 Abrahams, *Jewish Life in the Middle Ages*, pp. 290-306.

34 His edict is found in Ṭabarî, *op. cit.*, III, p. 1389, line 12 ff.; cf. Maqrîzi, *Khiṭaṭ*, II, 194.

have adhered strictly to the traditional religious conceptions of Islâm, known as the *sunnah* (or way of the Prophet), and to have persecuted heretics such as the Shi'ites, the Mu'tazilites, and the Ṣûfîs, in the most cruel manner. It is, therefore, not surprising that he should be most severe with non-Believers in his empire. Once discrimination was inaugurated and more or less firmly installed in the Muslim motherland it inevitably spread to its outposts, too. Thus the dress regulation came to prevail also in Egypt and Spain.

III

DRESS REGULATIONS AND RESTRICTIONS

In spite of the omission of any reference in the "Covenant of 'Umar" to a distinctive dress for non-Muslims, that document, spurious though it has been shown to be, reflects the accurate state of affairs at the time when it was supposedly drawn up and signed. In that early period no outward distinction between Muslims and non-Muslims was necessary. Hence none was imposed on the Unbelievers. When it was felt necessary to segregate the *dhimmîs* from their protectors in order to prevent intermarriage between the two, the first step was to order the former "not to be dressed like the Muslims."[35] The date of this general regulation or of the more specific regulations cannot be ascertained. Nor do the sources reveal clearly the nature of the difference in dress. It may be that the wearing of a belt, called *minṭaq*[36] in the two early sources, Abû Yûsuf and Ibn 'Abd al-Ḥakam, but later almost exclusively referred to as *zunnâr*,[37] was one of the first restrictions to be imposed on the *dhimmî*.

[35] Abû Yûsuf, *Kit. al-Kharâj*, p. 72: "*lâ tatruku aḥadan minhum yatashabbahu bi-l-muslimîna fî libâsihi*," "do not allow any one of them to resemble the Muslims in his dress"; al-Maqrîzî, a native of Cairo (1364-1442 A.D.), *Khiṭaṭ*, I, p. 76, line 3 from bottom: "*wa-lâ tada'uhum yatashabbahûna bi-l-muslimîna fî malbûsihim*," "do not allow them to resemble the Muslims in their dress;" and *ḥattâ yu'rafu zayuhum min zaiyi-l-muslimîna*," "that their garb (i.e., that of the *ahl al-dhimma*) may be distinguished from that of the Muslims," attributed in this passage to 'Umar II; Ṭabarî III, 712: *ya'muruhu bi-akhdhi ahli-l-dhimmati bi-Medînat-al-Salâm bi-mukhâlifati hai'atihim hai'ata-l-muslimîna fî libâsihim wa-rukubihim*," "he (Hârûn ar-Rashîd) ordered him to make the *ahl al-dhimma* in Medînat as-Salâm distinguish themselves in their appearance from that of the Muslims in their dress and in their mounts."

[36] See *supra*, note 22; also for all other *termini technici* of dress still to be mentioned.

[37] According to Tritton, *The Caliphs*, p. 117, this word became so closely connected with the Jews that in North Africa, at present, the love-locks of the Jews are called by that name.

The next step seems to have been the addition of a differentiation in the mount. Abû Yûsuf[38] adds after *libâsihi*: *wa-lâ fî markabihi*, "and not in his mount." ʿUmar II b. ʿAbd al-ʿAzîz, the Umaiyad caliph, who is believed to have enacted laws specifying the kinds of dress forbidden to the *dhimmîs*,[39] stated in the alleged letter to his governor[40] that neither Jew nor Christian, man or woman, should be permitted to use a leather saddle (*sarj*), but only a pack-saddle (*ukâf*). Christians (the text has only *naṣârâ*) were forbidden to wear the *qabâ'*, a garment with wide sleeves, nor were they allowed to wear a silk gown or a turban. The caliph complained that many of the Christians were wearing turbans again[41] and did not wear the belt (*minṭaq*) and no longer cut their hair in the prescribed manner.

This is the first really trustworthy passage (of course, not the anecdote as such, but the evidence it contains) from which a more definite date can be deduced. ʿUmar II reigned at the beginning of the eighth century A.D.; Hârûn ar-Rashîd, the caliph addressed by Abû Yûsuf in his book, flourished at the end of the same century. The information contained in this anecdote, told on the evidence of people who derived it from their own grandfathers, a chain of tradition true to life, appears to be reliable. On the other hand, the story gives ample evidence that these restrictions were far from being kept: if people would dare to disregard the law in the presence of the governor of the province, how much less would they care to observe it at other times.[42]

To sum up the prohibitions and injunctions with regard to the *dhimmîs'* mode of dress in the eighth century A.D.: they were forbidden to wear silk gowns, gowns with long sleeves, or a turban, and had to wear a belt (usually called *zunnâr*, but twice *minṭaq*), looking like a thick thread round their waist. Their head-gear was to be a long quilted *qalansuwa;* and the straps of

38 See *supra*, note 35.

39 See Ibn 'Abd Rabbihi, *al-'Iqd al-Farîd*, V, 2, 239: 'Umar II forbade the wearing of turbans, or resemblance in dress to the Muslims; cf. Bar Hebraeus, 117.

40 See *supra*, note 29.

41 The caliph's complaint is also found in Ibn 'Asâkir, *Tahdhîb*, I, p. 180; he forbade the wearing of the *qabâ'*, *ṭailasân*, trousers of a certain cut (*dhâtu khadama*), sandals with straps and riding saddles, *Mustaṭraf*, I, 124; cf. *Fihrist*, ed. Flügel (Leipzig, 1871-72), p. 320. The phrase in Abû Yûsuf *qad raja'û labsa-l-'amâ'ima* presupposes the fact that the prohibition to wear a turban antedated 'Umar's reign.

42 There is other evidence for this statement: the Christian poet al-Akhtal (d. 95 A.H.) wore silk, was adorned with a golden cross and rode a horse; he appeared before the caliph 'Abd al-Malik so dressed: *Aghânî*, VII, 169, 178.

their shoes were to be twisted. The appearance of their saddle, too, was regulated; the *dhimmî* was not allowed to use a luxurious saddle; only pack-saddles were granted him, and even these had to be distinguished by wooden pommels as large as pomegranates. It was thought essential to prevent the *dhimmî* from displaying any luxury. The saddles of rich Orientals were usually adorned with beautiful ornaments of precious metal. Many are the indications that the anger and jealousy of the Muslims were aroused by the luxury and riches displayed by well-to-do and highly placed non-Muslims, and this vexation gave rise to malicious ordinances and laws designed to annoy the *dhimmî* rather than to put him to shame.[43]

The fact must not be overlooked, however, that the *qalansuwa* was in common use among Muslims. It was only a difference of material that was required to distinguish the two groups. The general impression that non-Muslims, especially the Jews, were marked off from the rest of the population by this tall pointed hat is entirely erroneous.[44]

The leniency in the enforcement of these laws, as reflected in the neglect of officials and *dhimmîs* alike, came to an end with caliph al-Mutawakkil's edict which reiterated the prohibitions and dress regulations. For the first time, it introduced yellow as the distinctive color of the *ahl al-dhimma* and a badge, to be worn, however, by the slaves of a *dhimmî only*. The pertinent section reads:[45]

"In this year (235 A.H.) al Mutawakkil ordered that the Christians and all the other *ahl al-dhimma* should be obliged to wear a honey-colored Persian coat (*ṭailasân*, pl. *ṭayâlisa*) and the *zunnâr* and to use only saddles with wooden stirrups and to fix two balls at the end of their saddles. Those among them who wore the *qalansuwa* were to sew onto it two buttons of a color different from that of the *qalansuwa*, which in itself had to differ in color from those of the Muslims. Further, they were to apply two patches on the outer garment[46] of their slaves differing in color from that garment,

[43] In 271 or 272 A.H. a riot broke out in Baghdâd against the Christians who persisted in riding horses. R. Dozy, *Recherches sur l'histoire . . . de l'Espagne*, I, third ed. (Paris, 1881), 280 ff. and Appendix XXVI, speaks about the influence and riches of the Spanish Jews; a satirical poem against a Jew helped to prepare the way for the Jewish catastrophe in Granada.

[44] The question as to the origin of the *pileus cornutus* raised by G. Kisch, "The Yellow Badge", p. 99, [9], may be solved by the author's suggestion that the "Jewish hat" of the Middle Ages, especially in its older form, may have been derived from the oriental *qalansuwa*.

[45] Ṭabarî, III, 1389 f.; also in Maqrîzî, II, 494.

[46] Literally: on the garment that was visible. According to Christian Canon Law, here-

one of the patches to be on the breast and the other on the back. The size of each of these patches was to be four fingers and their color that of honey. But whoever wore a turban might only wear a honey-colored one. If any one of their women wanted to go out and be seen publicly, she was allowed to do so only if she were dressed in a honey-colored *izâr* (a wide shawl)."

Al-Mutawakkil also ordered their slaves to wear the *zunnâr*, forbidding them to wear a *minṭaq*.[47] At the *dhimmîs'* housedoors wooden effigies of the devil (*shaiṭân*) were to be affixed, to distinguish their houses from those of the Muslims.[48]

Yellow appears here as the only color allowed to the *dhimmî*. The badge, which also appears here for the first time, was the mark of a slave of a non-Muslim only; for it was doubly degrading to be a slave of a member of that socially inferior class. The yellow color was to be used by every *dhimmî;* the word Jew does not occur at all in al-Mutawakkil's edict which is addressed to the *ahl al-dhimma* in general. Bar Hebraeus[49] complains bitterly about the "hater of Christians" who ordered them to wear "*pûkîrê* i.e., bandlets of wool round their heads," and forbade them to be seen "outside the house without a belt or girdle." According to him the *dhimmîs'* slave had to sew "two strips of cloth of different color on his tunic from the front and from behind." Despite the scarcity of references to Jews in the Arabic sources this Christian chronicler emphasizes that they were subjected to the same discriminatory treatment. Ṭabarî adds that the graves of *dhimmîs* had to differ from those of Muslims. But Bar Hebraeus' account of the razing and complete obliteration of the tomb of Ḥusain b. ʿAlî, the Shiʿite martyr, at the behest of al-Mutawakkil, testifies to the fact that the caliph's enmity was directed even more implacably against heretical Muslims.

In 239 A.H. al-Mutawakkil made his order even more severe by bidding the *dhimmîs*[50] to wear two *durrâʿa* of honey-colored material over their *qabâʾ*, and shirt (*darârîʿ*, pl. of *durrâʿa*). The

tics were condemned, as a punishment and for the sake of defamation, to wear a blue dress with a yellow cross on the front and on the back, or to apply such crosses to their own garments. Dressed in this way, they had to stand at the door of the churches on festival days. Cf. Paul Hinschius, *System des katholischen Kirchenrechts,* V (Berlin, 1895), p. 487. Prof. Kisch kindly drew my attention to this parallel.

47 The contrasting use of *zunnâr* and *minṭaq* in this passage is interesting in view of the fact that Abû Yûsuf, *loc. cit.,* and Ibn ʿAbd al-Ḥakam, *loc. cit.,* use the latter word for the belt which was to be worn by the *dhimmîs.*

48 Is this a mockery of the *mezuzah?*

49 *Chronography,* transl. by E. W. Budge, I (Oxford, 1932), 141.

50 Ṭabarî, III, 1419, lines 11 ff.

exact date of this edict is given in Ṭabarî as in Muḥarram of that year; a month later, in Ṣafar, they were ordered to ride on mules and asses only,[51] the use of horses, and even pack-horses being prohibited.

With these edicts the institution of special dress for those people outside the pale of Islâm reached its definite form. The three main features were maintained for centuries, namely, restriction of the kind of attire, prohibition of luxury in dress and mount, and the special color of their garments and distinctive badges. Among the minor modifications introduced later was the distinction in color among the three main groups.[52] It seems that the choice of yellow as the only color allowed the *dhimmî* was not due to any particular malice, and that no special meaning was attached to it. In Egypt, caliph al-Ḥâkim bi-Amr Allâh (996-1020 A.D.) ordered them to wear *black* turbans only, the color of his rivals, the ʿAbbâsids, whom he wanted to spite.[53]

The Muslims in Egypt ruled over great numbers of non-Muslims, Christians Copts and Jews. Their fate oscillated between the extremes of high office in the government, of riches and influence, and utter wretchedness and oppression by the Egyptian Amîr. The Egyptian ruler al-Ḥâkim, in particular, according to the sources described as mad, made the non-Believers' lives miserable. It was in his reign that Jews and Christians were forced to wear badges designed for no other purpose than to make them ridiculous. He required Jews to wear in public blocks of wood weighing five *raṭl*[54] suspended from their necks, while Christians had to display iron crosses a yard in length. Besides, they had to wear wide mantles, and were forbidden to ride on any animal.

51 The use of saddles of asses also in Maqrîzî, I, p. 76, line 5 from bottom ff., but attributed to ʿUmar I.

52 In the month of Shaʿbân 700, the Jews in Egypt wore a yellow turban, the Christians a blue one, and the Samaritans a red one, on which circumstance, Tritton, 122, quotes a satirical poem. In 755, Jewesses in Egypt had to wear yellow garments, while Christians wore blue, and Samaritans red ones; cf. as-Suyûṭî, *apud* Sylvestre de Sacy, *Chrestomathie Arabe*, I, sec. ed., (Paris, 1826), 145, 146. The choice of yellow for the "Yellow Badge" in Christian countries may have been influenced by the fact that in Muhammedan countries yellow was established as the discriminatory color for "non-conformists"; cf. G. Kisch, 116 f. [26 f.].

53 Ibn Taghribirdî, ed. Popper, II (Berkley, Cal., 1909-12) 64, explicitly speaks of Jews: *wa-amara-l-yahûd . . . an yalbasû-l-ʿamâ'ima-s-sûda*, "he ordered the Jews . . . to wear black turbans." cf. De Sacy, *Chrestomathie*, 181.

54 For *raṭl*, see Lane, *s.v.*; other sources say four *raṭl*.

This humiliating regulation remained in force for some time, before it was abolished.[55] According to Bar Hebraeus, the wooden blocks were to be carved in the shape of a calf because the Israelites had adored the golden calf in the wilderness, and neither Jew nor Christian was allowed to wear a ring on his right hand, a prohibition that occurs elsewhere in the form of a law that forbade *dhimmîs* to own rings engraved with their names, again an injunction against luxury.

The Christians parried the insult by wearing crosses of gold and silver and decking their wooden saddles with rich, colored materials. Thereupon, al-Ḥâkim imposed the death penalty upon Christians not wearing a cross of four *raṭl* and upon Jews not wearing the effigy of a chicken's claw of six pounds of weight.[56] Christians were obliged to wear these crosses when they entered the public baths.[57] Bar Hebraeus also mentions little bells that they had to have with them in the bath. According to another Arabic source,[58] (beginning of the fourteenth century) Christian and Jewish women had to wear boots of yellow leather with gaiters of different colors, one red, the other black. Any one who dared present an Unbeliever with a beautiful robe was threatened with Allâh's curse. Whether or not this writer's report is authentic, the intention behind such ordinances is clear: to ridicule and annoy the *dhimmî* and to make his life miserable.

Still another peculiar procedure remains to be mentioned in this connection. When the poll-tax was due, a metal seal was affixed to the neck of non-Muslim tax-payers until all had passed in review and the *jizyah* was fully paid. Only then might the seal be broken again.[59]

55 Ibn Iyâs, *Ta'rîkh Miṣr*, I (Cairo, 1311 A.H.), p. 52, line 2 fr. bottom ff.; Bar Hebraeus, I, 184.

56 Bar Hebraeus, *loc. cit.*

57 Ibn Taghribirdî, *loc. cit.*; cf. R. Gottheil, "An Answer to the *Dhimmîs*," *Journal of the American Oriental Society*, XLI (1921), pp. 428 (transl.), 395 (text).

58 Cf. R. Gottheil, *loc. cit.*; *idem*, "*Dhimmîs* and Muslims in Egypt," *Old Testament and Semitic Studies in Memory of William Rainey Harper*, II (Chicago, *s.a.*), pp. 382-384 (transl.), 406-409 (text).

59 As the word *kasara*, "to break," is used, it cannot be a "rubber stamp", as Steinschneider, *Polemische and apologetische Literatur*, p. 167, maintains. The sealing of the neck is mentioned in Abû Yûsuf, 72, 73; Ibn 'Abd al-Ḥakam, 251; Balâdhurî, *Futuḥ al-Buldân*, p. 272, line 13 f. Tritton, p. 124 f., regards the customs as of Byzantine origin; the passages cited deal with the Sawâd, i.e., with a region formerly in the Byzantine empire. — *Mustaṭraf* (I, 125), in a list summarizing the dress regulations, says explicitly "seals of copper or lead round the neck." Such seals were to be worn also when the *dhimmî* went to a public bath.

IV

THE DRESS REGULATIONS IN RELIGIOUS THEORY

This survey of the sources makes it clear that in the Islamic countries discrimination in dress did not affect the Jews alone. All non-Muslims suffered that humiliation, Christian, Jews, and Magians. In fact, the last group seems to have been hit hardest.[60] The Arabic sources pay more attention to the Christians and relate the prohibitions imposed on them in greater detail. The Jews if mentioned at all are usually referred to in but a few words.

The fact is that the tribulations of the Christians were greater than those of the Jews. In 271 A.H., when anti-Christian riots took place in Egypt, "not a word was said about the Jews; so if a Christian wanted to go out of his home he borrowed a yellow turban from a Jew and wore it to be safe from the mob."[61] Bar Hebraeus reports that in Baghdâd, at about 1295, no Christian dared to be seen in the street; only their women ventured to go out because they could not be distinguished from Muslim women.[62] If by chance, however, their identity was discovered they were beaten and otherwise ill-treated.[63]

How much the *dhimmîs* suffered from this spiteful discrimination and how deeply they resented it, is shown in the fact that in Egypt, in 704 A.H., they offered to pay the sum of 700,000 *dînârs* in addition to the poll-tax, in exchange for the right to wear white turbans with distinguishing badges only. This favor was denied them.[64]

The Fourth Lateran Council was not, therefore, without historic justification in demanding (Canon 68) a distinctive dress for "Jews *and Saracens*." For centuries Christians had suffered

60 Bar Hebraeus, 507 (*ca.* 1295 A.D.): "Now this persecution . . . was twice as fierce, many times over, on the priests who were worshippers of idols." According to E. G. Browne, *A Year amongst the Persians* (Cambridge, 1926), p. 405 (cf. 516), the Zoroastrians were still oppressed in Persia at the time of his visit, in 1887-88: "They are compelled to wear the dull yellow raiment . . . as a distinguishing badge; they are not permitted to wear socks, or to wind their turbans tightly and neatly, or to ride a horse; and if, when riding even a donkey, they should chance to meet a Musulmân, they must dismount while he passes . . ."

61 Tritton, 75; cf. 95, 122. — This testifies to the fact that the differentiation in color for the three main groups of *dhimmîs* was already effective.

62 This statement conflicts with the sources previously cited to the effect that women also had to wear distinctive dress and to carry iron crosses and blocks of wood.

63 Bar Hebraeus, 507.

64 As-Suyûṭî, *Ḥusn al-Muḥâḍara,* (Cairo, 1299 A.H.), p. 212, line 9 from bottom ff.; the vizier who supported the petition was rebuked by the sultân Taqî ad-Dîn Ibn Taimiya for helping the *ahl al-dhimma;* in 734 the dress regulations of Egypt were adopted in Baghdâd, too.

under the humiliating discrimination imposed on them by the "Saracens" and the Lateran decree offered a welcome opportunity to repay the hated Muslims in kind. So far as the Muslims were concerned, however, this enactment remained largely academic.

The history of the Islamic state, on the other hand, provides ample proof that Christians as well as Jews attained outstanding rank in the Muslim hierarchy and held high offices in the Islamic government.[65] The fact that the caliphs had to remind their officials again and again to be stricter in the enforcement of the regulations of the *dhimmîs* under their jurisdiction proves that there were periods in which the non-Muslims were free from this discrimination. In theory, however, these rules existed for centuries and the *dhimmîs* were supposed to abide by them; they were part of the treaty made between the Muslims, the protectors, and the *ahl al-kitâb,* the protected *dhimmiyûn.*

Muslim theologians and legal theorists dealt with the question of the rights and duties of the *dhimmî* and the extent to which the Muslim was obliged to carry out his duties as protector. The four classes of Muslim theologians do not agree on the *dhimmîs'* claim for protection. The *kitâb al-Umm* by al-Shâfiʿî, the founder of one of the four schools of Orthodox theological theories of Islâm, presents a model of a treaty between Muslim and *dhimmî.* Being a pattern, it embodies all the requirements to be included in the actual treaty according to the Shâfiʿite *madhhab.* The part dealing with the dress regulations lists all the restrictions imposed, at one time or another, on the *dhimmî.* They refer to adults only, and deal merely with the *dhimmîs* in general, not even alluding to the Jews as a special group: "You shall wear the *zunnâr* over all your clothes, cloaks, and other garb, so that it is not hidden; you shall use peculiar saddles and manner of riding, and make your *qalansuwa* different from that of the Muslims by a mark you put on them."[66] This is the gist of the laws regarding the *dhimmîs'* distinctive dress, enforced at times, and disregarded at others, but upheld by the religious theorists as the basic requirement for the relationship between Muslims and non-Muslims.

[65] Tritton, ch. 2. On Jewish life in Egypt at that period, cf. Jacob Mann, *The Jews in Egypt and Palestine under the Fâṭimid Caliphs* (London, 1920).

[66] Al-Shâfiʿî, *kitâb al-Umm,* IV, p. 118.

THE HEBREW PASSAGES IN BOORDE'S *FYRST BOKE OF KNOWLEDGE* (1547)

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SOME years ago Professor Joseph Klausner of the Hebrew University at Jerusalem published an interesting article in the Palestine Yearbook on the use of Hebrew as a vernacular in Palestine in the fifteenth century.[1] The article was based on an earlier one in another publication by F. Babinger on the subject of the Hebrew language passages in the Itinerary of the German traveler Arnold von Harff (1471-1505).[2] This Itinerary is the record of a pilgrimage undertaken by the author to Rome and Jerusalem in the years 1496 to 1499, in the course of which a number of other cities and countries were also visited. What makes it of particular interest to students of Hebrew is the inclusion in it of a short glossary of Hebrew words and about a dozen phrases of conversational Hebrew, which, von Harff indicates, were in common use among the Jews of Jerusalem. From this and other evidence of a somewhat earlier date Professor Klausner concludes that the Hebrew language was in effect a spoken tongue in Palestine — and possibly in neighboring countries — as early as the fifteenth century.

The material I wish to present herewith tends to confirm in the main this basic conclusion of Professor Klausner's, though its very nature invites a more critical attitude towards it than do the von Harff passages, and though some of the problems raised by it appear more difficult of solution.

In 1547 there was published in London by William Copland

1 Joseph Klausner, "*Hadibbur haivri b'erets Israel bameah hahamesh esre*" ("Hebrew Speech in Palestine in the Fifteenth Century"), in *Sefer hashanah shel erets Israel* (Tel Aviv, 5683), 114-117.

2 Franz Babinger, "Die Hebräischen Sprachproben bei Ritter Arnold von Harff," *Monatsschrift für Geschichte und Wissenschaft des Judentums*, LXIV (1920), 71-73.

"at the signe of the Rose Garland in Fleet Street" a little book by Andrew Boorde (?1490-1547), physician, erstwhile theologian, naturalist, wit, and traveler, bearing the curious title *The Fyrst Boke of the Introduction of Knowledge.*[3] The work purports to be a handbook for the use of travelers through Europe and the Near East, and among other things, is intended "to teache a man to speake parte of al maner of languages." It consists of a series of chapters on the various countries, all following more or less the same general pattern. Each chapter begins with a bit of doggerel characterizing the inhabitants of the country, proceeds to a longer prose description of the land and its people, and concludes with a short vocabulary of common words in the language of the country and a few phrases of ordinary conversation. Boorde seems to have been somewhat of a linguist, and despite some amazing inaccuracies of fact and serious errors of judgment, he succeeds in assembling material of considerable linguistic interest. Thus, for example, Boorde is said to have been the first to print specimens of Gypsy speech, and among the few to record Greek as it was spoken in Constantinople at the close of the Middle Ages.

The last chapter of the book, the thirty-ninth, is devoted to "the land of Iury" and the Jews. The introductory verse describes the "natural disposicion of the Iues," and is embellished with a crude woodcut of a Jew holding what appears to be a wanderer's staff in his hand. The body of the chapter consists of a description of the Holy Land and its "ryches", followed by a rather perfunctory account of the best way of reaching the country from England — through the Low Countries overland to Venice, and thence by galley to Jaffa. It concludes with a brief description of the "language of the Iues," and some specimen sentences of Hebrew in transliteration, which because of their interest, I proceed to reproduce here.

> The Hebrew the whych the Iues doth speak now, these dayes, doth alter from that trew Hebrew tongue (except the Iues be clerkes), as barbarouse Latin doth alter from trew Latins, as I haue knowen the trueth whan that I dyd dwel amonges them, as it shall appere to them that doth vnderstande the tounge or speche folowynge.

[3] Andrew Boorde, *The Fyrst Boke of the Introduction of Knowledge*, edited by F. J. Furnivall, Early English Text Society, Extra Series, No. X (London, 1870).

God speede, god speed, syr.	*Hosca, hosca, adonai.*[4]
You be welcome, master.	*Baroh haba, rabbi.*

The aforesayde Hebrew is corrupt, and not good Hebrew; but thys Hebrew that foloweth, is perfyt:

You be welcome, syr.	*Eth borachah, adonai.*
(Or else you may say)	*Im boracha, adonai.*
Wenche or gyrle, geue me meate.	*Alma, ten lii schaar.*[?]
Mayde, geue me drinke.	*Bethela, ten lii mashkeh.*
Woman, geue me bread.	*Nekeua, ten lii hallechem.*
Woman, geue me egges.	*Ischa, ten lii baet sim.*
Man, geue me wyne.	*Isch, ten lii iaiiu.*
Master, geue me flesh.	*Rauf, ten lii basar.*
Geue me fyshe.	*Ten lii daga.*
Fare wel, wife.	*Schasom lecha, nekeua.*
Good nyght, Syr.	*Iailah tof, adonai.*
God be with you, master.	*Leschalom, rauf.*

It will be seen at once that the passage is full of misprints and errors in grammar and idiom. The writer spells *iailah* for *lailah, iaiiu* for *iaiin* [*jajin*], *schason* for *schalom,* mistakes easily accounted for by the fact that the type used in the book is the old "black letter," in which the characters *i* and *l,* and likewise *s, u,* and *n,* are easily confused. The errors in grammar are more serious. The writer constantly uses the masculine form of the verb and pronoun instead of the feminine, and falls into other errors of style and idiom. The distinction he makes between the "corrupt Hebrew" which "the Iues doth speak now" and the "perfyt" Hebrew he proceeds to give, is, to say the least, not very helpful. A final sentence, not reproduced above, which closes the chapter and serves as a capstone to the whole work, is a translation into even more doubtful Hebrew of the sentence: "Jesus of Nazareth, king of the Iues, son of God, haue mercy on me, Amen!" By its very nature this sentence is hardly likely to be of Jewish origin.

Another fact, one which seems to call into question Boorde's competence as an observer, is the statement he makes in the body of the chapter that "there doth neuer a Iue dwel in al Iury." This we know to be quite incorrect. Rabbi Obadiah di Bertinoro (?1450-?1500), who settled in Palestine in 1488, found in Jerusalem a small, poverty-stricken Jewish community, which, subsequent sources indicate, increased in size during the following

[4] Possibly for *hazak, hazak, adoni.*

two or three decades, until it amounted to about 1500 persons at the time of Boorde's reputed visit to the country.[5]

Indeed there is even some doubt as to whether Boorde ever actually visited Palestine. His description of the country is sketchy and superficial, and he excuses himself from giving details, because "ther be many that hath wrytten of the Holy Lande, of the stacyons, & of the Iurney or way." The few details he does give are more or less conventional items, such as he could pick up in older compilations, like Mandeville's *Travels* (1357-1371), Higden's *Polychronicon* (written 1327, printed in Trevisa's English version 1482), and the *Eulogium Historiarum sive Temporum Chronicon* (1366).[6]

Nevertheless, the passage is not without interest. There is an authentic ring about the introductory paragraph, and the use of words like *mashkeh, leshalom, nekeva, baruch haba* is quite idiomatic. Another point to observe is that an appreciable number of the Hebrew words which occur in Boorde's sentences appear also in Arnold von Harff's glossary (*lechem, basar, betsim, jajin, ish, lailah tov,* etc). These words are obviously such as a traveler would find useful if he had to spend some time in a Jewish lodging place or inn. It should be noted, however, that von Harff's words suggest an Ashkenazic pronunciation (*emes* 'truth', *balbaes* 'a host', *ta(r)ngoles* 'chicken', *measlaufen* 'hundred thousand'), while Boorde's transliteration is entirely Sephardic.

What then is one to make of this passage and of the chapter in which it occurs? Is it merely a pious sixteenth century fraud designed to entertain the reader, or does it possess elements of more serious import? A careful reading of the book leaves no doubt as to the serious intention of the author, and the chapter on the Jews and the "land of Iury" must therefore be regarded in that light. If, however, as seems possible, Boorde never visited the Holy Land, where could he have picked up the few Hebrew words and phrases which appear in his book, and what is the significance of the whole matter? To the first question two answers are possible. For many years — twenty, according to one

[5] *Jewish Encyclopedia, s. v.* Obadiah di Bertinoro.

[6] For Boorde's possible indebtedness to earlier writers see Ludwig Zinke, *Andrew Boorde und die Quellen zu "The Fyrst Boke of the Introduction of Knowledge"* (Leipzig, 1901), p. 66.

account — Boorde had been a member of the Carthusian order, which he definitely left in 1528 because he could not stand "the rugorositie of that religion." He may therefore have acquired a little knowledge of Hebrew while he was in holy orders, a knowledge which he may have increased by further studies on the continent. Secondly, Boorde is known to have spent a long time in Venice, a city which had a large Jewish community in the latter part of the fifteenth century in close contact with the Jews of Palestine and the Levant. References to the Jews of Venice appear elsewhere in the same book and in other works of Boorde's. It is here that he may have acquired the few phrases of the language which he incorporated into his book.

As to the significance of the passage for the history of Hebrew, there is no good reason to doubt Boorde's positive statement to the effect that he had heard some kind of Hebrew spoken by Jews with whom he came in contact — "as I haue knowen the trueth whan that I dyd dwel amonges them." In this respect, therefore, Boorde offers some corroboration of Professor Klausner's contention that the Hebrew language existed as a possible vernacular in certain communities in the Near East at the end of the fifteenth century.[7]

[7] In a letter from Palestine addressed to his brother in Italy and dated 1488, R. Obadiah di Bertinoro says: "I preach a sermon twice a month in the synagogue here [in Jerusalem] in the Holy Tongue, *for most of them* [i.e. the worshippers] *understand it;*" J. D. Eisenstein, *Ozar Massaoth* (New York, 1926), p. 122b. — The writer is indebted to Mr. Isaac Rivkind of the Jewish Theological Seminary Library for suggesting the inclusion of this reference in the present article.

ASHKENAZ, SEFARAD AND ZAREFAT*

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DURING the past century several noted scholars have dealt with the reasons why mediaeval Jewish authors identified biblical *Ashkenaz* (*Gen.* 10. 31; *Jer.* 51. 27) with Germany, *Sefarad* (*Obadiah* 1.20) with Spain, and *Zarefat* (*Obadiah* 1.20) with France.[1] The latest contributions to this problem were offered by Luitpold Wallach in an essay on *Ashkenaz* [2] and by Julius Brutzkus in an article on *Sefarad* and *Zarefat*.[3] The present writer has no new suggestions to offer toward the solution of this intricate question but merely wishes to call attention to the insufficiency of proofs adduced by the two authors named.

ASHKENAZ

Wallach reverts to David Simonsen's theory. Simonsen noted that Jordanes, the historian of the Goths of the sixth century, mentioned the island Scandza (Scandinavia) as the homeland of the Goths.[4] He believed he had found the reason for the indentification of Germany with *Ashkenaz* in the resemblance of sound between *Scandza* and *Ashkenaz*. Wallach tries to make Simonsen's theory more plausible through arabicizing *Scandza* by adding the Arabic definite article *al*: *Al-Scandza=Asscandza=Ashkenaz*. He further claims that *Scandza* was "the mediaeval denomina-

* Editor's Note: Prior to publication a copy of the manuscript of the present article was sent to Doctor Luitpold Wallach, Florence, Ala. Dr. Wallach, however, did not accept the Editor's invitation to comment on Doctor Rosenthal's present article.

1 L. Zunz, *Zeitschrift für die Wissenschaft des Judentums*, I (1823), 140 ff., 154 ff.; S. L. Rapoport, *Erek Milin*, (Prague, 1852), *s. v. aspamiah;* Samuel Krauss, *Tarbiz*, III (1932), 426 ff., and *Jewish Studies in Memory of George A. Kohut* (N. Y., 1935), 387 ff.; Jacob Mann, Tarbiz, IV (1933), 391 ff.; Paul Rieger, *MGWJ.*, LXXX (1936), 457 ff.; LXXXI (1937), 299 ff.

2 "Ashkenaz=Germany", *Historia Judaica*, III (1941), 102 ff.

3 "Seforad un Zorfas", in *The Jews in France, Studies and Materials*, edited by E. Tcherikower (New York, 1942), I, 9ff.

4 David Simonsen, "Kleinigkeiten" in *Judaica, Festschrift zu Hermann Cohen's* 70. Geburtstag (Berlin, 1912), 301.

tion for the territory north of the Alps, and later, in modern times, for Scandinavia" and that "*Al-Scandza* signified in the Arabic sphere of culture of the tenth century an arabicized geographical denomination for a land in the northern part of Europe."

These assertions seem to the present writer untenable. Jordanes understood by *Scandza* Scandinavia alone. His description of *Scandza* fits only this region, in spite of the fact that he considered *Scandza* an island and not a peninsula.[5] Jordanes' description goes back to Ptolemy (second century C.E.) who thought of Scandinavia as a group of four islands.[6] Wallach offers no proof for his assertion that *Scandza* was known in the Arabic sphere of culture. If the name *Scandza* were popular in Arabic countries, the Arabs surely would have been the first to use it. But the Arabs used other denominations for Germany, not *Scandza.*[7] Moreover, the identification of Ashkenaz with Germany occurs for the first time in Jewish literature several hundred years after Jordanes.[8] Since the term *Scandza* was unknown to the Arabs, from whom else could the Arabic-speaking Jews of the tenth century have acquired it? Direct acquaintance of these Eastern Jews with the writings of Jordanes is very improbable. All told, the theory of Simonsen-Wallach about *Scandza-Ashkenaz* seems unacceptable.

Previous attempts to explain the identification of *Ashkenaz*-Germany through resemblance of sound were equally unsuccessful. Paul Rieger in 1936 based his theory on the fancied similarity of *Ashkenaz* and *Tedeschi.* But in 1937 he changed his opinion and substituted *Saxones*[9] for the latter, which seems somewhat less dubious than the first.

[5] Jordanes, *Romana et Getica,* ed. Theodor Mommsen, *MGH., Auctores,* V, 1, 58: "est in Oceani arctoi salo posita insula magna, nomine Scandza . . . haec a fronte posita est Vistulae fluminis . . . haec ego habet ab oriente vastissimum lacum in orbis terrae gremio . . . ab occidente namque immensu pelago circumdatur".

[6] *Claudi Ptolemaei Geographiae Libri Octo* . . . ed. F. G. Wilberg (Essen, 1833 ff.), II, 10 (11).

[7] For the name of Germany in Arabic, see G. P. Badger's *English Arabic Lexicon* (London, 1881), s.v. German, Germany.

[8] Merchants of ashkenazic origin, *ashkenazim,* are mentioned in a responsum of Gaon Paltoi (842-58). It is not quite certain, however, that Germany is meant by *ashkenaz* there. See *Teshubot Geone Mizrah u-Maarab,* ed. J. Müller (Berlin, 1888), 73a; *Ozar ha-Geonim,* ed. B. Lewin (Jerusalem, 1931), IV (3), 11.

[9] Paul Rieger, *supra,* note 1. The identification of *Ashkenaz* with *Saxones* had been suggested previously by M. Mieses in *Haolam,* XV (1927), 239.

Samuel Krauss accounted for this usage through the historical identification of one people after another by the term *Ashkenaz* until it was finally applied only to the Germans.[10] This solution is too complicated, and is, partly, based on a faulty interpretation of the sources. Krauss identified the *Ashkenazim* mentioned in Genizah fragments with the Khazars, whereas obviously the Crusaders are meant there.[11] However, his assertion that *Ashkenaz* was originally applied to Khazaria and the Slavonic countries is correct.[12] Karaite and Rabbanite scholars applied it in this sense as late as the twelfth century.[13] Ultimately, *Ashkenaz* was applied to the Eastern part of Germany and then to Germany proper, displacing other designations.[14]

How did this development come about? No conclusive answer has been given thus far.

The most logical course would be to look for a solution to this question in talmudic-midrashic sources. The Germans were known to the Jews in ancient times.[15] Many references to Germans and Goths are found in both *Talmudim* and in midrashic literature.[16] The Rabbis sought a reference to the Germans in the table of nations, *Gen.* 10, and variously identified Gomer, Magog or Togarma with Germany, but no such application of *Ashkenaz* is to be found.[17]

Wallach claims further that "Arabic Jews used the etymo-

[10] Krauss, *supra,* note 1.

[11] One of Krauss' proofs is based on a wrong translation of a passage taken from the Lexicon of the Karaite, David ben Abraham al-Fasi. The translation goes back to S. Pinsker, *Likkute Kadmoniyyot* (Vienna, 1860), 208. In the correct text edited by Solomon Skoss the passage reads: "*Ashkenaz* . . . the name of a man and out of him come the tribes of the Khazars, but some say that they are the Franks"; Skoss, *The Hebrew-Arabic Dictionary of the Bible known as Kitab Jami al-Alfaz (Agron) of David ben Abraham Al-Fasi* . . . (New Haven, 1936), I, 159. David ben Abraham gives two explanations: 1. *Ashkenaz* = Khazars. 2. *Ashkenaz* = Franks; but he does not identify the Khazars with the Franks as Krauss claims in *Tarbiz,* III, (1932) 428; cf. Mann, *supra,* note. 1.

[12] Saadiah on *Gen.* X. 3 renders *Ashkenaz* with "Sclavonia." David ben Abraham identifies *Ashkenaz* with Khazars; see note 11.

[13] Joseph ben Abraham al-Basir (also called "Haroe" 11th century), quoted by Poznanski, *ZHB.,* XV (1911), 76; Ali ben Suleiman (11th-12th century), quoted by S. Pinsker, *Likkute, Kadmoniyyot,* 175; "An anonymous Arabic Chronicle of the 12th century", Neubauer, *Mediaeval Jewish Chronicles* (Oxford, 1895), II, 92.

[14] Cf. *Masaot of Benjamin of Tudela,* ed. Adler-Grünhut (Frankfurt a.M., 1904), I, 137.

[15] Cf. Josephus, *Wars of the Jews,* I, 33. 9; II, 16. 4; VIII, 4. 2; *Antiquities* XVII, 8. 4; XIX, 1. 15.

[16] See, *Mishnah, Negaim,* II, 1; *Jer. Talmud, Yoma,* VIII, 5; *Gen. R.* chap. 86. ed. Theodor-Albeck (Berlin, 1927), 1055.

[17] Cf. the detailed table in A. Neubauer *La géographie du Talmud* (Paris, 1868), 422; M. Kasher, *Torah shlemah,* (Jerusalem, 1929), on *Gen.* X. 3.

logy Ashkenaz-Germany from the tenth century on" and that "mediaeval German Jews adopted the identification not before the thirteenth century." To the first assertion it may be added that the Arabic Jews, although the first to use *Ashkenaz* to designate a northern European country, preferred the designation Allemania for Germany, and not *Ashkenaz.*[18] Wallach's second statement is also incorrect. Franco-German Jews identified Germany with *Ashkenaz* from the eleventh century on. Rashi in his commentaries uses *erez ashkenaz* and *leshon ashkenaz* with reference to Germany,[19] as do also the following twelfth-century sources: Eliezer ben Nathan's report on the First Crusade,[20] *Mahzor Vitry,*[21] and *Sepher Ravia.*[22]

SEFARAD

Julius Brutzkus posits a similarity in sound between *Sefarad* and the Gothic word *svard* meaning a black man and referring to Africans and Arabs,[23] as the basis for this usage. According to him the Jews called Spain *Sefarad* because it was invaded by the *svards.* This theory considers the identification of Spain with *Sefarad* to have originated in the eighth century, at the earliest. But Pseudo-Jonathan on *Obadiah* 1.20 already renders *Sefarad* with *Aspamiah,* which undoubtedly refers to Spain.[24] Brutzkus, who regards this rendering as a later interpolation, overlooks the fact that already the Syriac translation of the Bible, the *Peshitto,* of the second century C.E., rendered *Sefarad* with *Espania.*[25] This means, that as early as the second century C.E., i.e. many centuries prior to the invasion of Spain by the Arabs, and long

18 See *Germania Judaica,* (Breslau, 1934), s. v. Alamannien.

19 See *responsum* No. 21 in *Teshubot Hakme Zarfat ve'Lotar,* ed. J. Müller (Vienna, 1881); L. Zunz, *Die Ritus* des synagogalen Gottesdienstes (Berlin, 1859), p. 66 note h; Zunz-S.Bloch, *Toledot Rabbenu Shelomo* (Lemberg, 1840), 2b and note 12. Rashi's *Commentary on Deut.* III, 9 offers different readings. Even when we accept the reading, *"be'erez ashkenaz bi'leshon kenaan",* we have to understand Germany by *Ashkenaz.* Cf. Berliner's *Nachbemerkung* in his ed. of Rashi's Pentateuch Commentary (Frankfurt, a.M., 1905), p. 449; also *Tarbiz,* III, 433 n. 52a.

20 *Kuntras Tatnu,* in Neubauer-Stern, *Hebräische Berichte über die Judenverfolgungen während der Kreuzzüge* (Berlin, 1892), 36.

21 *Mahzor Vitry,* ed. Hurwitz (Berlin, 1893), 345, 392.

22 *Sepher Ravia,* ed. V. Aptovitzer, II, (Jerusalem, 1935), 143.

23 Brutzkus, *op. cit.,* 12.

24 Aspamia in the Talmud refers sometimes to Spain, sometimes to one of the cities under the name Apamea in Syria, Asia Minor and Babylonia ("aspamia" is corrupted from "apamia"). Cf. *B. Jeb.,* 63a; *Ber.,* 62b; *Baba bathra,* 38a. See J. Levy, *Wörterbuch über die Talmudim und Midraschim* (Leipzig, 1876-89), *s.v. ispamia;* Neubauer, op. c. 355; Harkavy, in Berliner's *Magazin für die Wissenschaft des Judenthums,* VI (1879), 119.

25 See *Peshitto, s. l.* Cf. I. N. Epstein, *Tarbiz,* III, 435.

before the Gothic invasion of Western Europe, Spain was identified with *Sefarad*. It is known that the teacher of Jerome, Bar Hanina, rendered *bisfarad* of *Obadiah* 1.20 with Bosporus.[26] Evidently he did not consider the *bet* as a prefix meaning "in", but he read *bosporad*.[27] One cannot rely, however, on Jerome in this respect; and this cannot serve to prove that the identification of Spain with *Sefarad* was not known to the Jews at an early date.[28]

ZAREFAT

Brutzkus also finds a resemblance in sound between the biblical *Zarefat* and the Gothic word *sarvad*, meaning a man in armor. The Franks, the first in Europe to wear armor, were called by the Jews *sarvads*. But there is no proof that they were called *sarvads* by the Goths. Nor was Franconia, the homeland of the Franks, ever called *sarvad* in Hebrew sources.[29] Brutzkus quotes Menahem ben Solomon Meiri of Perpignan (1249-1306) as saying that Meir ben Baruch of Rothenburg (thirteenth century) was the head of the academies of the land of *Zarefat*,[30] to prove that Franconia was called *Zarefat*. But even if we accept the reading in Meiri's text as correct — though it is doubtful — *Zarefat* there does not refer to the residence of Meir ben Baruch, i.e. Rothenburg alone, but to all Northern France and Germany, where he was considered the greatest rabbinic authority.[31]

Brutzkus' explanation of coupling of *Zarefat* with France is therefore also unacceptable. It seems rather that the traditional reason given for that identification is the correct one: since *Zarefat* is mentioned together with *Sefarad* in one sentence and *Sefarad* was identified with Spain, the neighboring country, France, was also identified with *Zarefat*.

[26] Hieronymi *Opera*, Tom. VI, (Venetiis, 1768), 382f.: "Et transmigratio Jerusalem, quae in bosphoro est . . . Ubi nos posuimus bosphorum, in Hebraico habet *Sapharad* . . Nos autem ab Hebraeo qui nos in scripturis sanctis erudivit, didicismus bosphorum sic vocari."

[27] Cf. Wynkoop on *Obadiah* in Abr. Kahana, *Biblia Hebraica* (Kiev, 1906, Hebrew), 112.

[28] The oriental author of *Seder Olam Zuta* (eighth century?) is the first among medieval authors to identify *Sefarad* with Spain; cf. Neubauer, Mediaeval Jewish Chronicles, II, 71.

[29] See, *Germania Judaica*, s.v. Franken.

[30] *Bet Abot*, ed. Bilgoraj (1911), 52. The name of the author of "*Bet ha-Behira*" was not Meir ben Solomon as Brutzkus states (I, 14, n. 11) but Menahem ben Solomon Meiri.

[31] Wellesz, *REJ.*, LIX (1910), 47 ff., proves that *Zarefat* in the passage quoted from Meiri's Commentary on *Abot* is a mistake for *Ashkenaz*; cf. H. J. Zimmels, *Beiträge zur Geschichte der Juden in Deutschland im 13. Jahrhundert* (Vienna, 1926), 112.

REVIEW SECTION

THE BIBLE IN MEDIAEVAL CIVILIZATION: THE SAXON CODE OF LAW IN ILLUSTRATION*

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I**

IT was a worthy decision of the University of Notre Dame to include in its series of *Publications in Mediaeval Studies* this book by Professor Guido Kisch which is his first American book. Within the few years of his residence in the United States, he has won high recognition. As the material of this book discloses, Dr. Kisch had already through years of study and teaching in Europe achieved a wide and accurate learning and a sound scholarship in the field of historical jurisprudence. As the title would seem at first sight to demand, Dr. Kisch has an obligation, according to the canons of the exposition of a text, which can only be satisfied by an adequate discernment and by patient research in the contemporary materials of the code and of forces there which might have contributed to its construction and directed its ideas and form. He does not disappoint us in the least. His vital imagination and discerning mind are rightly employed to detect and evaluate the functions which religion, philosophy, polity, and even art, perform. The keen tools of a critical, but never caviling, scholar make this book a valuable contribution. Here is a work in one hundred ninety-eight pages, set forth necessarily in the form of a scholar's findings and judgments. It is, nevertheless, in the whole of it eloquent and earnest, thoroughly interesting, and charming in its freedom from polemic or bias.

The book has for its main purpose the examination of the biblical and Bible-literature materials which the Codifier ("Spiegler") of the Saxon ter-

* Guido *Kisch, Sachsenspiegel and Bible. Researches in the Source History of the Sachsenspiegel and the Influence of the Bible on Mediaeval German Law.* (*Publications in Mediaeval Studies*, vol. V). The University of Notre Dame. Notre Dame, Ind., 1941., X and 198 pages with 14 plates.

** *EDITOR'S NOTE*: Professor Hatfield's review essay was submitted to the Editor as early as July 30, 1942. Its publication in the present issue of *Historia Judaica* is somewhat belated due to the fact that the space available for the preceding volume was already exhausted at that time.

ritorial law, Eike von Repgowe, about 1220 A.D. made use of in the composition and construction of the great Code. There are a number of mooted points and circles, which have come to be fixed and drawn around the work of Eike: his education and competency, the nature of his knowledge of these materials, the sources of them, their integration and significance at his hand. Dr. Kisch makes this his first line of consideration and gives a marvelously clear introduction to German scholarship, since the days of Gustav Hugo, 1833, which has debated over and over the questions (but always in minor aspects): Do these biblical elements in the Code stand for a significant magnitude? Did Eike have thorough knowledge of the Latin Bible? Did he not rely upon intermediate materials in story form, in pericopes, Rhymed-Bible poetizing, etc.? Where did he derive the materials for elucidation or comment that doubtlessly comes from Jewish tradition, either from of old, or in his own time? Do these elements find a sound and meaningful integration in the Code? Or, are they not extraneous, and really some kind of deferential framework?

Believing that the quality and capacity of Eike's mind and purpose are evident in the Code, and that his is not a pseudo-learning in the biblical field, Dr. Kisch takes up, for the first time in the history of scholarship on the Code, the comprehensive study of the Bible learning of Eike.

One ought, I think, in a review at this time in world history quote Dr. Kisch's eloquent words, which are personal and not rhetorical:

> Preface V (1):
>
> "Eike von Repgow, author of the *Sachsenspiegel* and the *Saxon World Chronicle*, deliberate protagonist of right and justice, great moulder of the German conception of law, puissant creator of the German legal language, adept and devoted interpreter of Holy Writ, the greatest German jurist of the Middle Ages: *In Memoriam.*"

And also, the noble utterance of the author, writing far from the land where he was not long ago an honorable scholar in the field of German Law:

> Preface V (2):
>
> "May the new insight here put forward, published in another hemisphere, form another, but spiritual, monument in memory of him, not altogether unworthy of the unique greatness and enduring significance of his intellectual achievement, not bound up with 'blood and soil.' "

The author believes that the man who was the "greatest German jurist of the Middle Ages" and shows a comprehensive knowledge of positive law as it is in the *Sachsenspiegel*, who coined a German legal language, who expounds legal phenomena and arranges them under great clarifying categories (unaffected by Roman Law), — that this man Eike cannot be summarily

dismissed when he thinks in his Code upon the origin of law in God, and derives from God's Book cases and ideas which he integrates into his Code. Let one read for instruction, clearly given, the first Chapter: The *Sachsenspiegel* and its Author.

If one proceeds only a little way in the reading (and study) of this book, he will see that the phrase, *Influence* of the Bible, is not used carelessly by the author. He does not make it an easy word for any generality or evasion in his writing. Though he uses this word, he realizes, I know, that historical science has not very rapidly corrected its usage, nor given a phraseology to supplant it. And Dr. Kisch at the very beginning of his work stands on well surveyed grounds with regard to 'incorporated' materials. The book is a real contribution to a matter that should grow, and does grow somewhat now, in scholarship: particularly, the Bible in the twelfth and thirteenth centuries. Eike lived in the age of the school of Rashi, in the early aftermath of Abelard and Gilbert of Porrée, of Otto of Freising and John of Salisbury, of Peter Lombard, Peter Comestor, of Ruprecht of Deutz and Gerhoh of Reichersberg, and many another critical scholar.

It would hardly be fair to assume, then, without a trenchant examination of the biblical ideas in the code that Eike would set them there, in the Saxon land and in that time, merely for a deferential framework or for idle sanctions. This kind of examination is the task Dr. Kisch set for himself in the question of the literary relations of biblical materials to the *Sachsenspiegel.*

But what is the *Sachsenspiegel?* This is the first thing, perhaps, we would like to know about. Very well, indeed, does the author bring it to us, especially in Part II, Chapters two and three, pages 58 to 114, where he sets it (in the Old German speech, of course that of Walther von der Vogelweide) in parallel with the biblical materials. Elsewhere, however, there are many illuminating comments. He gives adequate attention to the editions from 1732 (Gärtner) to 1933 (Eckhardt), the versions, and monographs, and provides us with an excellent guide through the labyrinth.

The word, Influence, may serve us well, if we give to it a true force, and it, at least, will serve to suggest that Dr. Kisch does not believe that the Bible in the Code of Law can be detected and measured by quotations, merely, as if they were fine interpolations and sanctions whenever real juridical elements need divine support.

Is it surprising that German scholarship has often overlooked, or neglected, or positively rejected the biblical materials in the Code? Let us first say, not by way of extenuation, but by way of understanding, that many texts of the Middle Ages have not been seen in full, round light. The specifically juridical parts of the Code, speaking by way of brevity, would of course, always have the first attention of students. Although deeper examina-

tions of these parts did sometimes disclose surprising qualities and meanings out of their biblical ideas, the biblical elements, obvious per se, or in whatever way they were used by the Codifier, were regarded as extraneous, or weak, one may say. Dr. Kisch says, p. 32: "If one goes through the abundant literature on the *Sachsenspiegel* one discovers with astonishment how little attention and care has been given to the fundamental question, Eike's relation to the Bible."

In two short chapters, the author justifies his contention and his undertaking, and makes his plan, by analytical review of the studies up to date. He can give only a few notes, but they are keen and careful ones, out of his own vast acquaintance with these studies.

It may be said, here, for help in understanding the controversial positions of scholars over these biblical elements and over the Codifier's scholarship in the field of the Bible, and hence the value of this part, that these doubts and questionings do not arise about the purity of the original text, nor interpolations, (nor over the recognized additions), primarily; nor, over the Bible, per se, nor do they have to do with a matter of Eike's dependence and borrowings. He has not always said, it is true, in his Code what his actual sources are, and very seldom does he do so. But he does profess originality in materials (artist that he is in molding them into a Code), and he always disarms one who might at any point think he is claiming something for himself. In the Rhymed Preface he makes his avowal, clear and precise on this matter. They revolve around the Codifier, and his knowledge in the biblical field, which some disparage even unto the view that he worked here with mediated materials from one source or another, writing out of what others had written; also, with the Bible indirectly and uncertainly, as if not thoroughly understood or digested, and himself lacking in acumen and accuracy; with poetic-Bible verses; with ideas about numerology and genealogy, in such ways as thoroughly to discount his contributions. Yet, the character of the cases, e.g., servitude, *lex talionis,* judgment, which Eike treats in the light of divine wisdom will hardly let the scholars rest in a summary dismissal of these matters.

Dr. Kisch would probably assent to the saying that Gustav Hugo, 1833, was a guiding star in commanding men for a while to look into this atmosphere, when he said on that supreme passage in the Code III, "there is so much divinity in Eike, especially with regard to servitude and its refutation, that Eike seems to have been a cleric rather than a knight." But this star disappeared, and men went on in this field but a little way. The Code is, it hardly needs to be said, in its greater part, secular law. The quest for the sources of this law in customs, *Landfrieden,* and for other models is discussed briefly, but it is not within Dr. Kisch's main purpose here. This is, however, a question about Eike, at this point which some scholars make use of, denying that even for secular laws he had few if any models, and hence,

the more easily do they set aside the biblical elements, used or infused by him. Such an implication or attitude is wholly unjust in the light of any reasonable apprehension of the really fine nature of the Code. Dr. Kisch introduces us in Chapters II and III to a critical problem, indeed, and one that in a short space he makes clear, and with purely objective judgments. He lets the writers speak for themselves often, and this is right. The reviewer would not try to summarize or reproduce. One meets, in essence, on the points of debate or of varying views, the results of Eichhorn, Stobbe, Brunner, Planitz, and Hirsch who find in general adverse judgments as to Eike's competency in handling biblical materials, or such materials of the Code as they think came to him along that stream. One sees Frensdorff and Zeumer in their convictions or suggestions that there might be indeed, a real and significant body of biblical materials that call for candid recognition and evaluation. He gives considerable space to Voltelini who seems to have come up again with more negative arguments.

And the total result, as to secular and biblical sources (it is convenient here to speak of the two main lines) is given in the sentence of Eckhardt, the latest editor of the Code, 1933: "The determination of the sources of the *Sachsenspiegel* remains, as heretofore, one of the most important tasks of research." And the author concurs heartily with Hans Fehr: "More history of ideas in the history of law."

As to the materials and models Eike might have drawn upon for secular law, that is a problem indeed that entices one who considers his age. And some of the great historical events and institutions in the time of Frederick II and Innocent III may yet be seen in a dual effect upon the making of the Code. The separation, or definition of these in the field of ideas and of legal forms will hardly be an easy one. But Dr. Kisch goes on with his quest, knowing full well that the Bible, as witness to Hebrew economy and as to what Eike felt in this for his Code, cannot always in the hands of scholars be cleaved apart clean in the *Sachsenspiegel,* and that from it Eike drew more than just convenient passages.

But a hasty or anxious writer or reader might ask, why does the author spend any time on these early chapters when he seemingly might have started afresh with Chapter Four (Part II Chapter 1), and might have entitled it, 'The Literary History of the Biblical Sources in the *Sachsenspiegel*'? Under the conviction that his position has to be indubitably established, or at least made thoroughly clear, i.e. that the Bible elements show, as to sources, as to the integration, knowledge, high sense and pertinent use by the Code maker, a real and not fictitious function, and that the Code itself, when truly and impartially studied, witnesses against doubts and disparagements at the hand of the several critics, the author proceeds in this chapter, in

a quite thorough method of disputation and yet with generous spirit in his critique upon some later writings.

Voltelini, Möllenberg and Hübner write with adverse judgments on these biblical elements in Eike, from the several lines of criticism perhaps already sufficiently indicated in this brief review. But Zeumer and Ballschmiede point the way to a favorable and appreciative opinion of Eike's learning and competency, in this wise: "The intimate knowledge and the use of the Vulgate in the *Sachsenspiegel* are conspicuous, and the *Chronicle* (Eike's other main work) has also taken much from the Bible."

In one of his important chapters further on, Dr. Kisch writes seemingly in answer to Voltelini's words, "Eike's knowledge is not, in the Bible, profound; he works with stories, pericopes, etc."

The main point, then, so far is about the Latin Bible, which of course we have to see in the mirror of the Low German (into which Eike translated his first Code, which was written in Latin, but which is lost to us). The task of helping us feel the Vulgate and of the identification of the biblical passages in the Code, is carried out by the author in the chapter, "The Bible as a Source of the *Sachsenspiegel*," which is a careful study of textual evidence; but this task far outruns what would be a relatively simple task of locations for parallel presentation. For the Code (and Preface) has other 'biblical' elements than those that were evidently drawn directly from the Latin text. The dependence upon these seems to some students to prove inadequate knowledge of the Bible, and the introduction of them seems, in their thought, to have vitiated Eike's work in idea and in literary art. These borrowings come mainly from Peter Comestor's *Historia Scholastica* (about the time of Eike's birth); some from Poetic-Bibles, (Werner ?, and one might think of Peter of Riga's *Aurora, circa* 1160, this being the reviewer's suggestion); and then comes up for really large consideration the source of the exegesis of biblical passages, which have to do with some of the cases of law and social principles, and which are outstanding features in Eike's mind. As to these, there appears a distinctive question: Did Eike have mediate or immediate Jewish help? If so, from what sources or persons? It seems to be most apparent that he did have what is distinctly the help of Jewish interpretation, and so Dr. Kisch has to take up at the end of his book this important historical matter.

II

The predicated view that the Bible came into Eike's composition of the Code seems to be involved in all this first examination by the intricate questions, What Bible? A good Jerome Version? Or this, with portions in Low German? Or, through other literatures, as mentioned? Or, indeed, the Hebrew Scriptures? Thus, the task of the author is not that given by

a Bible text (as if our time) and an already expounded code? All through the book, we learn much about both as various points of illuminating knowledge need to be introduced. If Dr. Kisch has any critic in his mind whom above others he might seem to wish to answer, or one who gives him his text, that is Voltelini, whose words ring in his ears: "But Eike's knowledge of the Bible is not profound." The three Chapters, pp. 58-154: "The Bible as a Source," "Eike's Profound Knowledge," and "Biblical Spirit in the Sachsenspiegel," are excellent in apprehension of the nature of the use and integration of the Bible in the Code, in showing a keen understanding of the two fields of materials and the intellectual unity of them in the Code, and in the fundamental method of looking at particulars and at the general nature of law in the concept of origins, *as Eike himself sets the materials of thought,* these are so very well handled that the reviewer must urge this: read, if you would want to know how well it is done at Dr. Kisch's hand.

The work is done from the ground up, not descriptively. All the portions of the Code and Rhymed Preface, as sources or as involved in the biblical-elements problem, are given textually (in Low German which we must presume Eike had once set there in his Latin Code, now here translated); the Bible text materials are located and placed in parallel, as are the Comestor *Historia,* also, and one interesting Takkanah (from the time of R. Tam, 1150-1170) is placed in parallel with *Sachsenspiegel,* III 7, 4, I, in the interesting matter of pledge of church vessels, vestments, etc. by Christians for loans made by Jews. Interlinear notes and footnotes are valuable here, and these include guidance to the comments of various German scholars at appropriate places. This critical examination results in finding, by count, fifty-two passages, hitherto unregarded, of biblical elements which apparently were in Eike's mind.

In the course of procedure that seeks this evidence, Dr. Kisch demolishes the writings of critics who would say, the amount is indifferent; the passages have no rational use, as placed; they have the effect of exhortation, and not prescriptions; they are drawn from sources that *intermediated* the materials in ways that either did not compel Eike, nor apprise him, nor direct him to the prime materials (though they might have been present in his environment). Whatever strength of argument may at any point appear here (and there may be some as ever in writing) to argue adversely against Eike, and to call these "an indubitable sign" of lack of *close* knowledge, the critics have not, *cum acu tangere,* come to see wherein Eike may really be correctly estimated. He is a legalist, he is for his land a *juris consultus.* In the cases he treats, he shows notable acumen. These are subjects for an immediate examination, as we shall see; but there are, I think, intimations of larger human-political "cases" all the time in Eike: echoes of the great questions — the privilegia granted to the Church, then the privilegia granted

(or wrested, or demanded) by the Princes; of the Papacy and the Inquisition, carried out then by Conrad of Marburg in Saxony; of the "Two States"; of German immigration within the ducal territories, and of some situations of the Jews. Thus Eike's ideas on the origin of law in God, on man who is created in the image of God, on Justice (*justitia* not as *emolumentum*, to refer to the famous phrase of the day) — one might say all these are witnesses to his philosophy and his ethic. It is an error and an injustice to overlook them in the Code. As to this, one feels that Dr. Kisch has his finger on the pulse of these essential realities in the Code; both as to the general and to the particular, says he, "everything points to an intellectual mastery of all source material drawn on."

But, to return to the cases as most clearly taken up in the chapter, "Biblical Spirit in the *Sachsenspiegel*," pp. 117-154. Nothing better than these cases helps us to see the document in its time, its age (with realities and echoes of many intense situations). Dr. Kisch very rightly examines these cases, as clear witness of arguments in behalf of the Spiegler.

The thorough attention he gives to the law 1) of *retaliation* historically and in aspects per se, 2) to the law of *servitude*, pp. 133-140, which was a crucial problem in Eike's day (one can conveniently find much, though somewhat scattered, writing on this problem in G. G. Coulton: *Five Centuries of Religion*, vols I and II), 3) to the *refusal of a judge* to pass judgment on a crime (on which the author gives an excellent and interesting analysis and history, pp. 146-153), these, and other significant cases, even if lesser in range, are striking witnesses to Eike's feeling of the identity of human experience and idea represented in laws given in the Bible and of laws he would hope to see defined and established in his Saxon land.

The Chapter, "Biblical Spirit in the *Sachsenspiegel*," is a crowning chapter to which previous chapters have led by the deft method (but never by erroneous nor by exaggerated emphases), and by his sound use of the texts of Code and Bible, and of the auxiliary literatures.

One more matter as to Eike's biblical knowledge, and this will lead us, soon, into wider historical fields. That is the "Jewish Thought in the *Sachsenspiegel*," the character of it, and then the channel of it. To many, Dr. Kisch's last chapter will be almost entirely new, i.e. that phase of information here upon Christian and Jewish association, in written or personal form, to which this chapter, as Dr. Kisch would say, I am sure, only partially leads. The Old Testament and its "world of ideas" was a field that presented to Christians in that age a necessity, and also a desideratum. The chapter is apt, and proper here; it is historically and logically right in the survey of forces.

Dr. Kisch as always in this book, has in this phase of materials worked soundly and profitably. The historical articulation of Hebraic thought

with Christian understanding of the Hebrew Scriptures is a study of first magnitude, we well know. It was to have after 1200 A.D. an ever increasing meaning, learning, and effect. Its demands and interests were from of old, back of the days when even Jerome and Augustine, though not harmoniously, would speak of the *Consulti Hebraei,* and of the *Hebraica veritas.* Today, anew and more deeply than ever in critical scholarship we wish to know the inner significance of phrases in Christian writings of the twelfth and thirteenth centuries, *Hebraei dicunt, Hebraei putant,* especially since they bear witness to an intellectual life (and we believe social and institutional, too), that is to be understood only out of the documents and monuments of history that run beyond commentary materials, as formally established for school, homiletic, and exegetical occupations of the Latini. There seems to have been an almost new energy and purpose in the expansion of Christian learning in Hebraic literatures which saw definite ascent with the scholars of the twelfth century.

But this is only one of the historical subjects that the *Sachsenspiegel* reveals as being in the air of the time, and of course, in Eike's mind. We may look for them, and should do so, as forging instruments of the Code. What measure of these elements there are is a large question, i.e. of the contemporary forces. Nor may one, it appears clearly, judge Eike in what he might some day be found to have given us in his "Mirror", judging him by canons of our higher criticism. For, critics might say, "Look at his understanding of the Donation of Constantine, of Josephus and Vespasian, and at other historical habits."

This is said because the reviewer believes that Dr. Kisch proves the worth of the *Sachsenspiegel* in more ways than along that one line which is the main purpose and argument of his book.

The *Sachsenspiegel* has been slightly, hardly at all, known in English books, and in a good many German histories, as far as I know, only briefly alluded to. Where we have met it, we have hardly sensed its nature, language, land, or purpose. We have not known at all intimately the text, and texts. One had read in J. C. Gieseler's *Ecclesiastical History,* §55, and note 13, (English Translation, 1843, 48): "The *Sachsenspiegel* laid down fundamental laws which contravened the Pope's universal sway," and in connection with this statement a reference to a condemnation by the Papacy of fourteen articles (some of them printed here,) with correction of Mansi, who attributed them to Gregory IX (within Eike's own time); and note is made here of critical examination that assigns them to Gregory XI, 1374. Or, one has found little more than mention by Johann Loserth in his *Geschichte des späteren Mittelalters* (1903), p. 129. In pages unusually valuable and interesting for the Hohenstaufen age, this one point is all he gives us: "Die gennannten

sechs Fürsten werden in dem (um 1230 abgefassten) *Sachsenspiegel* als die ersten an der Kur bezeichnet."

These two statements, particular and limited, were chosen each for a purpose. But the reviewer wonders if they do not portray, even on the part of German historians, themselves, faulty understanding and a too slight estimation of Eike's work. They have before them no doubt large learning about significant things in the great days of the Church under Innocent III, Honorius III, and Gregory IX, and in the times of Engelbert of Cologne and of his friend Walther von der Vogelweide; they know the brilliant and hectic times of Frederick II; they know of the Silver Crown at Aachen in 1215, and the crown at Rome 1220, and of the privilegia, granted to Church, and then to Princes; they know the inquisition led by Conrad of Marburg in Saxony. How many things occurred in the days of Eike! That these many events have more than echoes in the *Sachsenspiegel* is apparent. If one looks for the reason for apparent inattention to the Code — a Code of *law* in a time of decision, and of action, and of thought — one would hardly dare say that they took it for granted that the major events and meanings were written in alfresco lines, and need not be traced nor investigated again, as to their possible deeper implications.

Whatever we may conclude on this point, i.e. the scanty attention to the Code by historians, it is now apparent that every paragraph of it has radiating lines that reach to events of its time that had, each of them, great significance. It may be that law is yet, to many, law, and that they trust the legal mind to give it adequate exposition, — perhaps even all the historical or intellectual exposition they may think it possesses, or that has any worth.

A book that can be described as a sound introduction to a field of study and its texts, that at the same time can carry on in its processes a clear argument without evasions, subtleties, or effort at persuasion is a book that must be called, if these characterizations are true, a singularly valuable book. It is a work for the scholar, and for the seminary student, too. It is a model of research, never faltering as to the best canons of investigation. It is singularly free from the lesser faults that so easily beset a writer in word and grammar, and from lapses in sustaining its reasonings. The marvel is that the writer could so successfully control so many hundreds of points of information and so many critical evaluations as he here has done.

Finally we would express an earnest wish: May we have some day under Dr. Kisch's directing hand an English version of the *Sachsenspiegel.*

BOOK REVIEWS

GREEK IN JEWISH PALESTINE: Studies in the Life and Manners of Jewish Palestine in the II-IV Centuries C.E. By *Saul Lieberman.* The Jewish Theological Seminary. New York, 1942, pp. IX+207.

A careful study of Professor Lieberman's book will prove so rewarding to any Hebrew scholar with some knowledge of Greek or to any classical scholar with some knowledge of Hebrew and Aramaic that the reader is likely to wish, objectively, that the author had enlarged the scope of the work and elucidated other obscure passages, and to wish, enviously, that he (the reader) himself had written the book. Few scholars are fortunate enough to combine so profound a knowledge of rabbinic literature with so extensive a knowledge of Greek literature, papyri and inscriptions as does Lieberman. The reviewer hopes that the author will have the time and inclination to give us a Dictionary of Tannaitic Hebrew and Aramaic incorporating the numerous discoveries which he and other scholars have made in the past few decades.

In the author's own words (p.vii) he has tried "to develop the subject of the relations between the Jewish and non-Jewish cultural spheres in Palestine. This undertaking, I feel, is justified and desirable in view of the opinion to which my very learned colleagues, the Talmudists, persistently adhere, namely, that the Rabbis were very little influenced by the outside Hellenistic world." This general statement he amplifies further on (p.6) by stating that his comparative study of economics and legal institutions in Palestine and the Hellenistic world "will convince the student of the close contact between Jewish Palestine and the Hellenistic world in general. One of the surest means for the study of this contact is provided by the analysis of the Greek vocabulary which is contained in Rabbinic literature." He rightly stresses the point that the study of loan words cannot be undertaken on the basis of single words alone but that words and phrases must be studied in their cultural setting. Another important contribution which Lieberman makes in his analysis of Talmudic texts is the demonstration that the Rabbis addressed various classes of Jews and various localities in different terms, and that the circumstances of each utterance must be examined before the statement itself can be fully understood.

The material is divided into eight sections as follows (with an Introduction and an Appendix on the Greek letters *Chi* and *Theta* in relation to Hebrew *Taw*): The Greek of the Rabbis; The Greek of the Synagogue; Gentiles and Semi-Proselytes; Pleasures and Fears (meaning sports and magic formulas etc.); Oaths and Vows; Greek and Latin Proverbs in Rabbinic Literature; Misunderstood Expressions and Words. The last section, incidentally, has really

very little to do with the thesis of the book, but is nevertheless a welcome contribution to our understanding of various Talmudic idioms.

A detailed philological study of this kind cannot be adequately reviewed or appraised in the limited space at the reviewer's disposal. One must content oneself with the general statement that Lieberman's arguments are convincing on the whole, and with citing some illustrations of the author's ingenious and often brilliant confrontation of Greek and Rabbinic texts, and, finally, with noting some queries or differences of opinion which the author may care to consider in the event that he plans to publish a revised or expanded edition of this valuable book.

Before noting some of the particular emendations or explanations, it may be of interest to record some of the more general conclusions to which the author has come as a result of detailed philological comparisons. "Probably the upper class knew Greek literature, the middle class was less conversant with it, while the knowledge of the lower class was limited to the vernacular only" (p.21). He has given interesting evidence for the belief that Greek translations of the Bible other than the Septuagint were used in Palestine (p.47). He has also quoted some occasional and untendentious passages from early rabbinic literature showing that there was considerable friendliness and mutual tolerance between Jews and Gentiles in Palestine (p.68 ff.) This attitude he summarizes as follows (pp.89-90): "The learned Rabbis were conscious of their great task of guarding the true faith, the high ethics and the pure family life of the Jews against any outside contamination; they made hedge upon hedge around the Law in order to protect it and to preserve it in its entire purity. But they were not blind, nay they refused to close their eyes to reality. They observed attentively and studied carefully the non-Jewish Hellenized world; they were quite conscious and well aware of it; they knew its shortcomings and failures. But they never denied the great virtue of the individual in that world. He was a human being with all his weaknesses and failings, but one who, in course of time, began to aspire towards the better and the higher." Very interesting too is that portion of the chapter on "Pleasures and Fears" in which the author shows how the Rabbis realistically compromised in the matter of the people's addiction to foreign custom in swearing and using magical or semi-magical formulas of healing, and how they Judaized some of these practices.

Some of the many passages in which Lieberman has illuminatingly explained a difficult text are the following: pp. 37 ff. on *TP Rosh Ha-Shanah* 1,3,57 a; 44 ff. *Shir Ha-Shirim Rabba* iii.4, reading פיליאי קקיסכאטי *pagi palaia kakeschate* "you old extremely bad trap!"; 68 ff. *TP Megillah* iii.2, 74a, including the demonstration that בא and אתא are technical terms for "become a convert (to Judaism)"; 106 ff. connecting the three pillars in *Shir Ha-Shirim Rabba* vi.8 with the pillars mentioned in a Greek incantation found in Roman Africa; 117 ff. on the interchange of נדר and שבע, meaning both "to vow" and "to swear" (cf. colloquial English "I vow its a grand sight", meaning "I swear, its a grand sight"); 123 ff. evidence that the oath

formula יבוא עלי אם is used only by the learned or influential, while מך מכך is used by the common people; 126 n.91 a shrewd guess that rabbinic stories of the faithful dog are borrowed from oriental fables (cf. now Emeneau in גפה *JAOS.* 61.1-17); 140 ff. that = *agapé* = Isis in *Siphre* 1.115 = *TB Men.* 44a; 149 ff. on Tanhuma *Shophetim* 10.99 and a Greek parallel, and the following section showing that Petronius and the Rabbis drew from a common source; 156 ff. an excellent supplement to the work of H. Lewy and others on rabbinic parallels to Greek and Latin proverbs.

If the reviewer in what follows cites a number of doubtful or possibly erroneous arguments larger than the number of passages selected for praise in the preceding paragraph, it is only because the latter are a small part of the great mass of new valuable material Lieberman has offered, while the former are the only points (exclusive of slips and misprints) on which he ventures to criticize the learned author.

P. 8 — it is difficult to see what is wrong with taking קלייון as *keleuó;* one would expect either a present or an aorist but not an imperfect.

21 — should not סורסי be rendered "Aramaic" rather than "Syriac"? But this is a minor point.

28 — the suffix *arios* here called Greek might more accurately be described as the Greek borrowing of a Latin suffix.

33 — that LXX *orchêstês* translates ריקים and not רוקדים in 2 *Sam.* vi. 20 was long ago stated by Schleusner, whose *Lexicon* Lieberman seems to have overlooked.

37 — for reconstructed *para basileos* perhaps we should substitute *para basilei.*

41 — Lieberman seems to suggest that the denominative verb משכן is etymologically related to the root משך, which, of course, it is not.

42 — Lieberman translates "in ius vocanti matronam corpus eius attingere non permiserunt" as "they did not permit to touch (= to seize) the body of a matron summoned to court;" more accurately it may be rendered "they did not permit the one who summoned a matron to court to touch her body."

54 f. — The objection made by Lieberman to reconstructing *apèilon* in *TP Ber.* ix. 3 seems to apply even more strongly to *epillon,* which he prefers; in the reviewer's opinion the former fits the context better; moreover it is doubtful whether, as the author states, *apeilon* was not current Pal. Aramaic.

59 — the author's reconstruction of *poieso soi hopos poiesas* is excellent in substance, but *hopos* could hardly mean "as," which would be *hos* or *kathos,* while *poiesas* must be corrected to *epoiesas.*

101 — Should not מרכיבין in *Tos. Shebiit* 1.9 be rendered "graft" rather than "inoculate"?; the later is obsolete in this sense.

141 n. 196 — *hegemon* is rendered "general", but may just as well mean "governor" or the like.

133 f. — איטרא is rendered "ram" and equated with *krios;* but the latter regularly translates איל in the LXX, whereas איטרא usually means "lamb".

148 n. 21 — it seems doubtful whether *dipsia hydata* in Jos. *Ap.* i. 164 should be translated "serpents' water" on the basis of the reference to serpents polluting water in *Mishnah Ter.* viii. 4; *dipsas* "serpent" is merely the transferred meaning of the adjective *dipsios as* applied to a "thirst-producing" creature; moreover the passage in Josephus is a quotation from Hermippus, and there is no cogent reason to assume that the author was acquainted with Jewish teaching.

Finally a few slips and misprints may be noticed (in addition to which there are a few places where English idiom is violated — but comparatively few).

110 — for "less civilized" read "more civilized."

129 n. 106 for "Assiriologie" read "Assyriologie".

156 — for a "comparison between the two may be very beneficial to them" read "a comparison between the two may be very helpful in understanding them."

160 n. 112 — for "Aruch" read "Archiv."

The reviewer can best conclude by repeating his conviction that Lieberman's book is a remarkably fine contribution to our understanding of the cultural relations between Greeks and Jews in Palestine and is at the same time a valuable aid in explaining some difficult rabbinic passages.

Jewish Institute of Religion, and Columbia University RALPH MARCUS

MAJOR TRENDS IN JEWISH MYSTICISM, by *Gershom G. Scholem.* The Hilda Stich Strook Lectures, 1938, delivered at the Jewish Institute of Religion, New York. Schocken Publishing House. Jerusalem, 1941. XVI+440 pp.

IN order to pursue a spiritual movement with thoroughness and justice one must have faith in its inner sense and *raison d'être.* This does not mean that Kantian philosophy can be described only by a Kantian or mysticism only by a mystic. It does mean, however, that scholarship alone is not enough and cannot compensate for the lack of a positive attitude to the subject dealt with, not to say that an antagonistic approach will blind one to the value and often even to the very facts of the questions in issue.

The *Wissenschaft des Judentums,* by and large, could not look favorably on Kabbalah and mysticism. Though this school learned its methods of research to a considerable extent from the German historians and philologists who, in turn, were imbued with the romantic sentiment, it remained substantially dependent upon the Enlightenment for its evaluation of thought as well as of events. It was due to that inheritance that the foremost representatives of the *Wissenschaft* such as Jost, Geiger, and Graetz, scarcely knew how to deal with mystical conceptions. Philosophy, though evidently a foreign branch grafted on the Jewish tree, received a place of honor; Kabbalah, theosophy, mysticism, much more closely interwoven in the fabric of the national genius were condemned as morbid excrescences to be cut out by the knife of the rationalist surgeon.

Though this point of view seems to have been discarded by most Jewish scholars, particularly since the rise of modern nationalism, its influence is still evident in liberalism and reformism. The present catastrophe in Eastern Europe may deprive Judaism of its richest source of mystical creative power. Thus Scholem's work appears in an opportune moment. The importance of this book lies in the fact that it presents mysticism as a main trend in Judaism and not as an isolated phenomenon. The author's close contact with kabbalistic circles in Palestine has given him a rare insight into the processes of kabbalistic thinking. Without accepting their theosophical lore as *the* truth, he has come to recognize in their company the validity of mystical piety as a vital current running through about two thousand years of Jewish development. These associations have enabled him to uncover manuscript material which indicates that the mystical experience is still a fresh one and that our time is still productive of mystical speculation, as evidenced by the great work of Rabbi Kook (1938), which Scholem characterizes as "a veritable *theologia mystica* of Judaism," and "the last example of productive kabbalistic thought" (p. 350, n. 17).

It is extraordinarily difficult, if not impossible, to define mysticism since "immediate awareness of relation with God" or "intimate consciousness of the Divine Presence" (Rufus Jones' definition, which Scholem adopts) is not restricted to this particular type of pious devotion, but is, in the reviewer's opinion, to be found in any profound and serious religious act, such as prayer, especially when prayer is accompanied by the certainty of being answered by God. I should prefer to say *religion* or rather *religiosity* is the capacity of sensing the Divine Presence and its effect upon the soul. When the individual no longer enjoys this intimate experience, then faith, however truly and earnestly professed, becomes theology or a so-called religious *Weltanschauung*.

As a matter of fact, Scholem is not so much concerned with differentiating the mystical consciousness from the religious attitude as with describing the objective worlds by which the divine secret manifests itself in mystical speculation. This is inherent in the character of the Jewish religion. "The Jews retained a particularly vivid sense of the incongruity of mystical experience with that idea of God which stressed the aspects of Creator, King and Law-giver" (p. 16). The consequence is that "among hundreds of kabbalists . . . . . hardly ten would provide sufficient material for a biography . . . . with little or nothing to give us an insight into their personalities" (p. 17). No doubt we have here an essential difference between Jewish and non-Jewish mysticism. I am reminded of Otto's *West-östliche Mystik* in which similar European and Indian conceptions are compared and traced to completely divergent attitudes towards the world.

Scholem contends that mystical religion differs from institutional faith in that the adherents of the former understand by Revelation not only the historic event at Mt. Sinai, but a constant repetition of that act. The ancient revelation has yet to unfold itself to the mystic; the secret revelation is to him the real and decisive one (p. 9). However, "revelation" not only discloses the hidden knowledge of what *is* or *will happen*, it also unveils over and over again the personal connection of the religious soul with God. The center of gravity shifts from the great historic event of the very beginning to the personal experience of those who are living in later times. But according to Jehudah Halevi, the exact and devout fulfilment of the *mitzvot* effects a miraculous union between the believing Jew and God. The mystical trend of that "most Jewish of Jewish philosophers" has always been recognized (p. 25). Maimonides' theory of the human intellect leads to the consequence that man's rational soul, united with the active intellect, passes into a higher form of existence where it becomes questionable whether or not its individual existence may be maintained. Some characteristics of mysticism are evident in mediaeval Aristotelianism. What is true of the mystic who, "as it were forestalls the processes of history by anticipating in his own life the enjoyment of the last age" (p. 20), is no less true of many a rationalist of that school.

Speculation on or even experience of the immediate connection between God and man is not particularly Jewish and may for this reason no more belong to the history of Jewish mysticism than Spinoza's doctrine does. Its

field, as Scholem circumscribes it, is the mystical approach to the three great ideas Creation, Revelation, and Redemption in their peculiarly Jewish meanings (p. 9), which Scholem characterizes as "theosophy," particularly so far as the *Zohar* is concerned. "Theosophy postulates a kind of Divine emanation whereby God, abandoning his self-contained repose, awakens to mysterious life; further, it maintains that the mysteries of Creation reflect the pulsation of this Divine life" (p. 203). Thus we encounter again the tendency of advancing to the *objective* ideas of religion; the personal experience of the mystic recedes into the background.

The description of the individual expressions of Jewish mysticism confirms that there is no abstract mystical religion within the boundaries of Judaism (Lecture 1). The present review cannot enter into a discussion of the particular problems pursued in the various stages of the spiritual development. The work discusses: 1. the Merkabah-mysticism and Jewish gnosticism, including the *Hekhalot-books, Yorde Merkabah, Shiur Komah,* and the *Book of Creation;* 2. the mediaeval Hasidim in Germany, particularly centering on the *Book of the Devout;* 3. Abraham Abulafia and prophetic kabbalism; 4. the *Zohar,* including a philological analysis of the book, its authorship (with a telling comparison of this work with the other writings of Moshe de Leon), and its theosophical doctrine; 5. Isaac Luria and his school; 6. Sabbatianism and mystical heresy; 7. the Eastern Hasidism of modern times. The author's mastery of the vast material to whose increase his own discoveries have contributed considerably, his succinct and clear exposition, his critical utilization of the literature of ancient and modern times which renders the annotations and the bibliography a rich storehouse for every student in this field, makes these lectures *the* history of the mystical tendency in Judaism. The book concludes with the significant sentence: "To speak of the mystical course which, in the great cataclysm now stirring the Jewish people more deeply perhaps than in the entire history of Exile, destiny may still have in store for us — and I for one believe that there is such a course — is the task of prophets, not of professors" (p. 345).

One or two examples may be singled out to illustrate Scholem's new approach to certain phenomena. The mystical heresy of Sabbatai Zwi, the great "illumination" which he experienced and his final apostasy are explained through a psychological analysis of the sources which reveals how he became a "holy sinner" and how his antinomianism and even his defection from Judaism were regarded as necessary steps. Not so convincing is the attempt to show a connection between the Frankist movement which led many of its adherents to Catholicism and modern Jewish rationalism and reformism. Scholem previously voiced this opinion in a paper (published in the *Schocken-Almanach* 1937) where he emphasized that much literature concerning the antinomistic and anti-orthodox attitude was deliberately destroyed by Frank's followers. We can understand psychologically how an extreme irrationalism may break through to rationalism, freethinking and ultimately to cynicism. It is evident, too, that an orthodox adherent of one religion, can readily adopt some other orthodox belief. We shall have to wait until new discoveries uncover

the truth in this respect. The antinomistic rationalism of the western Jews seems a very sober affair. The true liberals believed — rightfully or not — that a "purified" Judaism was closer to the Faith of Reason than any other religion.

All in all this is an outstanding contribution to Jewish scholarship.

Fairmont, W. Va. MAX WIENER

YALKUT RASHI (ANTHOLOGY OF RASHI), by *Saul Kleiman.* St. Louis, 1942. 676 pp.

THIS bulky Hebrew volume, entitled *Yalkut Rashi,* contains, in the author's words, "about four thousand one hundred choice selections, embracing theology, religion, ethical conduct, human relationship, education, nature, history, biography, poetry, stories". It is clearly a labor of love on the part of the author, a Hebrew teacher of long standing in Kansas City. The selections, classified and arranged in one hundred and forty-one chapters, are culled from *all* of the works of Rashi, and also of the 'school of Rashi', — even from works about which there is great doubt as to the authorship of Rashi. The work is, in fact, a *Yalkut* of the "Rashi *literature*".

Quite helpful to the student of Rashi are the many, excellent footnotes which trace the statements in the *corpus* to their original sources in the whole wide field of rabbinic literature. Mr. Kleiman made abundant use of Berliner's edition of Rashi on the Pentateuch; he could have found much help for tracing sources of Rashi on Isaiah, Minor Prophets, and Psalms, had he made use of I. Maarsen's editions of Rashi; e. g., p. 38, item 19, which Maarsen (Rashi: on *Psalms,* p. 60, 1.8) traces to *Mid. Tehillim* 19, 2 and *Yerushal. Berakot* 9, 1. It is to be noted, however, that in most cases where no source is given by our author, the few scientific editions of the Rashi text thus far published likewise know of no sources. Of much value are those footnotes which show, by comparison of texts, Rashi's occasional nuances and special emphases away from, or in modification of the original rabbinic source.

The work is intended, according to the author, for the Hebrew reader, for writers, preachers, public speakers, and to serve as an introduction, in Jewish schools, to the literature of the Haggada and Midrash. Mr. Kleiman wants Rashi restored to his rightful high place as *the* great teacher of the People of Israel. Yet, in the opinion of the reviewer, this *Yalkut,* just because it is a "yalkut", defeats the very purpose of the author. As one reads through the pages, one is prone to ask: What did Rashi contribute? Was he a mere excerptor of the rabbinic literature? What was there "original" in the ideas of Rashi? The work under review only brings out in greater relief what all readers of Rashi's Bible Commentary know full well: Rashi's great sources of information on the biblical passages are the Midrash and Talmud. But when we examine these very selections *in context,* and not in a *Yalkut,* we find that Rashi has done something for the reader by his re-writing, and by his carrying on further explanations as they are in his mind. He is an *artist;* he has the old materials; as an artist he has paints and clay, but he refashions by showing what lies in their possibilities, and in bringing to clarity what others

might not have seen or felt. Rashi is the spiritual expositor, and we might say, in a true sense, the "poet" expositor. It must also be noted that Rashi had a specific purpose in choosing each particular *midrash*, and this can only be seen in context; Rashi did not write for edification in general.

The social historian will find of special interest chapter 127, dealing with crafts, arts, and commerce, — the making of ink, salt, fishing, bee-culture, merchandising, etc. etc. (pp. 581-594).

This work is only of general interest to the Rashi student; a better, more logical arrangement of topics would have helped to make it, perhaps, somewhat of a scientific contribution to the field of Rashi studies.

Pittsburgh, Pennsylvania. HERMAN HAILPERIN

THE AMERICAN JEWISH YEAR BOOK 5703. Volume 44, edited for the American Jewish Committee by *Harry Schneiderman* and *Morris T. Fine*. Jewish Publication Society of America. Philadelphia, 1942. XXIX + 522 pp.

THE great importance and practical value of this Year Book for the student of current Jewish history has previously been stressed in these pages. Although the 1942/43 volume is considerably reduced in size because of the obvious necessity of economizing, it still contains a rich fund of information, some of it even of scholarly interest. Space permits no more than a listing of the most important articles. The Review of the Year, which summarizes all significant events affecting Jews throughout the world during the past year, covers two hundred pages and reflects the war situation. It is the cooperative work of members of the staff of the American Jewish Committee and other experts. Of particular interest is Dr. Joshua Trachtenberg's report on religious work in the Army and Navy. Mr. Harry J. Alderman has compiled a useful bibliography of books of Jewish interest in English published in the United States from July 1941 to June 1942. Its section "Reference and Annals" should, in the future, include important articles from scholarly periodicals. Among the memorial articles of obituaries the following are of special interest to historians: Rabbi Saadia Gaon by Robert Gordis; Nachman Krochmal by Max Nussbaum; Alexander Kohut by Ismar Elbogen; Louis D. Brandeis by Louis E. Levinthal. The volume concludes with directories and lists of Jewish organizations, and a section "Statistics of Jews" concentrating on Jewish immigration to the United States, other American countries, and to Palestine.

G. K.

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PERSONAL

SIGMUND SEELIGMANN

(1873-1941)

About one year ago on a date unascertainable at present due to war conditions, there died in Amsterdam, Holland, Mr. Sigmund Seeligmann, a Jewish historian of note, bibliographer, bibliophile, and possessor of one of the greatest private collections of Hebraica and Judaica. Born in 1873 in Karlsruhe, Germany, he lived for more than fifty years in Amsterdam and there devoted his full time to scientific research, without holding an official position. In his *Über das Marranenproblem vom ökonomischen Standpunkt* (1925) he propounded the theory that the marranos, who immigrated to Antwerp, Amsterdam, London, Hamburg, and settled in American colonies, were prompted primarily by economic motives while their return to Judaism was merely an accessory consequence of their successful resettlement. A selected bibliography prepared by Mr. Helmuth Galliner and published hereafter shows Mr. Seeligmann's particular interest in the history of Dutch Jewry. Mr. Seeligmann's hospitable home was in peace time a meeting place of Jewish scholars from all over the world, and became later a refuge to many of them who had been driven from their respective homelands by brutal Nazi persecution. His memory will remain enshrined in the annals of Jewish history and in the hearts of his numerous friends.

GUIDO KISCH

A SELECTED BIBLIOGRAPHY OF SIGMUND SEELIGMANN

Compiled by HELMUTH GALLINER

ABBREVIATIONS

Bijdraagen en Mededeelingen van het Genootschap voor de Joodsche Wetenschap in Nederland = *BMJW*

Centralblaad voor Israeliten in Nederland = *CIN*

Mitteilungen zur jüdischen Volkskunde = *MzjV*.

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3. *Bibliographie en historie. Bijdrage tot de geschiedenis der eerste Sephardim in Amsterdam.* Amsterdam, 1927. 62pp. 8^0.
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LOUIS LEWIN

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G. K.

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RAYMUND MARTINI AND HIS ALLEGED FORGERIES

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I

MARTINI'S QUOTATIONS FROM *Bereshith Rabba* OF R. MOSHE HA-DARSHAN

The old controversy over the authenticity of Raymund Martini's quotations from Jewish sources in his *Pugio Fidei* has recently been revived. Professor Yitzhak Baer of the Hebrew University in Jerusalem, in a long article (in Hebrew) entitled: "The Forged Midrashim of Raymund Martini and their Place in the Religious Controversies in the Middle Ages,"[1] severely condemns Martini.[2] More than half of the article is devoted to the material adduced by Geronimo (Hieronymus de Sancta Fide) at the famous disputation at Tortosa, to the attitude of the Jews at that disputation, and to the citations of Geronimo as compared with those of Martini. The author concludes that Martini deliberately abridged, expanded, or otherwise altered the Jewish texts to suit his purpose. Moreover, Martini is charged with fabricating a whole *Midrash*. All the quotations cited by Martini

1 המדרשים המזוייפים של ריימונדוס מרטיני ומקומם במלחמת הדת של ימי הבינים, *Studies in Memory of Asher Gulak and Samuel Klein* (Jerusalem, 1942), pp. 28-48, see the bibliography *ibid.*, p. 28, note 1.

2 See especially p. 44.

in the name of *Bereshith Rabba*[3] of R. Moshe ha-Darshan are alleged to have been concocted by Martini himself.[4]

However, there is sometimes nothing more misleading than a series of quotations detached from their context. The reader might not have found any one of the quotations conclusive by itself, but he is overwhelmed by the accumulated mass of them. We shall therefore do well to analyze the indictment against Martini in its component parts and examine each of them separately.

Firstly, the disputation of Tortosa must be eliminated from our discussion. Geronimo was far from being a Jewish scholar; he drew almost all his information from the *Pugio Fidei*.[5] The Jewish participants in the disputation realized the difficulties of the apostate and probably took advantage of them. Records of public debates which took place in a heated atmosphere of mutual distrust are not a trustworthy source. We shall deal only with the book of Martini which was written some hundred and thirty-five years before the disputation at Tortosa, and which served as a manual for subsequent anti-Jewish polemics.

The most suspicious parts of the *Pugio Fidei* are the passages quoted by Martini in the name of *BR.* of R. Moshe ha-Darshan. As already noted, it is now maintained that all those passages were invented by Martini himself. Since this *Midrash* is not extant, its former existence as a genuine Jewish source cannot be positively demonstrated. Here two questions arise: 1. Was the book, attributed by Martini to R. Moshe ha-Darshan, actually composed by the latter (or at least compiled in good faith by a Rabbanite), or was it a Christian fabrication? 2. If it was a Christian fabrication, was Martini the forger?

In the view of the present writer there are no serious obstacles in the way of accepting the *Midrash* as genuine on the whole. A few passages cited from it by Martini are

[3] Hereafter quoted as *BR.*

[4] Pp. 32, 34, 37, and particularly 46.

[5] See Lieberman, *Shkiin* (Jerusalem, 1939), pp. 53 ff.

found in unimpeachable Jewish sources. One long quotation,[6] which looks very suspicious, is extant in *Midrash Bereshith Rabbathi.*[7] But it is contended[8] that the whole passage is a later interpolation in *Bereshith Rabbathi,* because the Jewish disputants at Tortosa asserted that they had not found this passage in their books. Other passages quoted by Martini[9] from the *Midrash* in question are found in the same *Bereshith Rabbathi* (p. 239). However, these passages are not accepted[10] as genuine because they are reminiscent of Matthew XXI. 1-6 and XXVII. 28 respectively. Whether the foregoing three passages are interpolated or not can neither be proved nor disproved. However, another charge,[11] which is intended to heighten the suspicion against the two last-named passages, can be shown to be unfounded. Martini[12] is accused of having deliberately introduced a verse containing the symbol of גפן into his quotation from the *Babylonian Talmud.*[13] The reading of Martini is found in Cod. Paris[14] of the *Babylonian Talmud* and in *Yalkut ha-Makhiri.*[15]

Furthermore, it is stated[16] that Martini[17] quotes two *midrashim*: one on *Vayyikra* XVII—which could not be traced—and the other in the name of *BR.* of R. Moshe ha-Darshan on *Gen.* IL. 8. Martini is accused[16] of concocting both *midrashim* by combining fragments of different *midrashim* and verses. However, Martini refers to his source clearly: "*Midrash Vajikra . . . Levit.* 17. v. 3," and, on p. 868, he is even more explicit: "In *Tanchuma Levitic.* 17, vers 3."

[6] *Pugio Fidei* (hereafter quoted as *P.F.*), ed. Jo. Benedictus Carpzov (Lipsiae, 1687), p. 350.

[7] Ed. Albeck, p. 131.

[8] P. 32 and p. 46.

[9] *P.F.*, pp. 842, 850.

[10] P. 34, n. 2.

[11] *Ibid.*

[12] *P.F.*, p. 538.

[13] *Berakhoth*, 57[a]. Martini quotes from there:
הרואה שורקה בחלום יצפה למשיח שנ' ג פ ן מ מ צ ר י ם ת ס י ע .

[14] Rabbinovicz, *Variae Lectiones, ad. loc.*, p. 316, n. 200.

[15] Ps. ch. CXXII, p. 244. But it reads לנחמה instead of למשיח of our editions and Martini.

[16] Pp. 42-43.

[17] *P.F.*, pp. 642-643.

It is almost impossible not to find his source, for the *midrash* he quotes is extant in all recensions and editions of the *Tanhuma* to just the verse he refers to.[18] Martini certainly did not fabricate this *midrash* but faithfully copied his source. From the long passage of the *Tanhuma* he omitted one statement of R. Meir (or R. Ami) regarding the Jewish nation.[19] The omission might be either deliberate or accidental (by *homoioteleuton*), but, curiously enough, the second quotation, that from the *BR.* of R. Moshe ha-Darshan, supplies us with the omitted passage.[20] Thus our *Tanhuma* reveals that there is nothing spurious in Martini's quotation from *BR.* of R. Moshe ha-Darshan.[21] The only suspicious phrase is: בישע ישראל אינו אומר אלא בישע אלהים but a similar reading is found in Cod. Rome of the *Tanhuma*.[22]

Similarly, Martini[23] quotes a long passage from the *Midrash* in question about the abolition of the dietary laws in the future world. The whole passage is extant in the later compilation annexed to *Midrash Tehilim*.[24] It is maintained[25] that it was forged by Martini and subsequently embodied in the unauthentic additions to *Midrash Tehilim*. The part of our *Midrash* which deals with *Gen.* IX. 3 and compares the unclean animals to the herb of the field is alleged to be Christian, as can be seen from Justin Martyr's *Dialogue* ch. XX.[26] But the *Midrash* says clearly: כשם ש ה י ו טהורים ת ח ל ה ל ב נ י נ ח שנ' כירק עשב נתתי לכם את כל, ומה חירק עשב טהור לכל אף החיה והבהמה ה י ו ט ה ו ר י ם ל כ ם i.e. the comparison refers to the status of the Noahides, and this is neither more nor less than a quotation from *Vayyikra*

18 אחרי מות , end.
19 כביכול בשישראל נגאלין הוא נגאל.
20 *P. F.*, 644.
21 The statement of R. Abbahu is found literally in *Midrash Tehilim*, ed. Buber, ch. XCI, end.
22 As recorded by Buber, *Tanhuma*, III, p. 71, n. 184.
23 *P. F.*, pp. 802 ff.
24 Ch. CXLVI, ed. Buber, p. 535.
25 P. 39.
26 We may add: Clemens of Alex., *Paedag.* II, 1, Migne, *PG.*, VIII, 405[a]; Tertull., *De ieiunio*, 4, and particularly, *De anima*, 38.

Rabba, XIII. 2. As for the abolition of the Law in the future world it is a genuine Jewish idea.[27] There is therefore no decisive proof for considering the passage a mere forgery.

In fact, the whole question of this *Midrash* could be dismissed with one general statement. All symbols and ideas derived from the Bible are Jewish regardless of the meaning and the importance they subsequently acquired in the Church. The idea of the righteous suffering voluntarily for the salvation of the wicked, the symbols of the dove and the vine are both biblical and rabbinic.[28] It is hardly safe to conclude that a certain talmudic passage is a forgery only because it contains ideas or symbols which the Christians were especially fond of.[29]

The arguments of the Rabbis at the public religious disputations cannot always be taken at their face value. Attempts to prove the Christian truth from the Jewish Bible seemed preposterous to the Rabbis. They often regarded them as unworthy of serious rebuttal and only gave stop-gap answers,[30] such as they regularly resorted to when asked silly questions.[31] They assumed something similar to the attitude of grown-up people when they are annoyed with importunate questions by little children. The attempt to prove the Christian truth from the *Talmud* seemed even more ridiculous to the medieval Rabbis than the attempt to prove it from the Bible appeared to the ancient Rabbis. They took it as seriously as the heathen took the arguments from Homer[32] in support of monotheism,[33] or as the Christians might take

[27] See *Tosaphoth Nidda,* 61[b], *s. v.* אמר. Cf. *Shkiin,* p. 81.

[28] Martini, *P.F.,* p. 328, did not take advantage of his quotation from the *Talmud* to introduce the symbol of the *fish* into his discussion.

[29] See, for instance, *Shkiin,* pp. 58 and 64; Lieberman, *Yemenite Midrashim* (Jerusalem, 1940), pp. 14-17.

[30] *Palestinian Berakhoth,* IX, 13[a] and parallels.

[31] *Palestinian Shabbath,* III, 6[a]; *Sanhedrin,* I, 19[b]; *Aboda Zara,* III, 42[d] (and parallels); *Babylonian Hullin,* 27[b]; *Pesikta de R. Kahana,* 40[b] and elsewhere.

[32] Iliad, II, 204.

[33] See Eusebius, *De Martiribus Palaestinae,* I, 1.

an argument from the Vulgate rendering of *Exod.* XXII. 20[34] in support of solar monolatry.[35] Thus, the arguments of the Rabbis in reply to the citations of the Christians from *BR.* of R. Moshe ha-Darshan cannot be taken literally.

We conclude therefore that the quotations from this *Midrash* are probably genuine, but of course no one can be absolutely sure of this inasmuch as the *Midrash* is no longer extant.

But, on the other hand, we can safely assume that the *Midrash* was certainly not fabricated by Martini; to charge Martini with the forgery of this *Midrash* is to credit him with too great an amount of Jewish learning. Only a Jew familiar with the *midrashic* style from his childhood could master rabbinic Hebrew to such a degree as to fabricate a new *Midrash* from fragments of genuine *Midrashim* and connect them adequately. Martini's knowledge of rabbinics[36] does not justify the charge. As a matter of fact there is good ground to believe that this suspicious *Midrash* was already used in the disputation at Barcelona (1263), where Nahmanides saw it and did not question its authenticity.[37] The *Midrash* was subsequently lost as many much more important books were,[38] and its loss is no proof whatever of its spuriousness.[39]

II

MARTINI'S QUOTATIONS FROM RABBINIC SOURCES IN GENERAL

Martini did not content himself with the quotations from the suspicious *Midrash* treated above but drew heavily

[34] *Qui immolat diis, occidetur, praeterquam Domino soli* (=*Soli!*).

[35] See Edmond Le Blant, *Les persécuteurs et les martyrs* (Paris, 1893), p. 84.

[36] On it, see *Shkiin*, p. 44.

[37] See *Shkiin*, p. 79; Baer, p. 45, n. 1, and Albeck's reply in his additional notes, *ibid.*, p. 49.

[38] As the *Mekhilta* of R. Simeon ben Yohai, *Siphre Zuta*, and others.

[39] Cf. Baer, p. 44.

upon rabbinic literature of undoubted authenticity. Here we are in a position to compare his quotations with the sources extant in print and in manuscript. He certainly allowed himself much freedom in his citations. He abridged them, added verses from the Scriptures and sometimes quoted his own interpretations as part of the text.[1] If a modern scholar were to allow himself such freedom we should certainly consider him a forger. But Martini was a man of his age. The Rabbis themselves sometimes adopted such liberties as quoting interpretations as part of the text.[2] The ancients quoted Scripture with considerable verbal freedom, and Martini cannot be judged by modern standards.

Moreover, as we have already pointed out,[3] sometimes the translations of Martini do not correspond with the immediately preceding Hebrew text, but with some other genuine text. Therefore, although the translations are correct they do not match the text they purport to translate. In addition, his quotations show divergences in readings and translations of the same passages. All this suggests that various individuals contributed to the work of Martini. The very few spurious citations[4] may safely be charged to his collaborators who perhaps misled him. For it is hard to believe that Martini would risk the whole reputation of his life-work by introducing in his book a few forged quotations.

Finally, it must be said that Martini's faults have been somewhat exaggerated. We shall confine ourselves to an examination of the charges contained in the long note[5] where "a little anthology of Raymund's forgeries"[6] is presented. We shall examine *all* the charges, one by one, in the order in which they are made.

1 See *Shkiin*, pp. 62 ff.

2 See Lieberman, *Hayerushalmi Kiphshuto* (Jerusalem, 1934), Introduction p. 25, and *Tashlum Tosephta* (Jerusalem, 1937), p. 19.

3 *Shkiin*, p. 47; cf. *infra*, ch. III, n. 16.

4 See *Shkiin*, p. 65.

5 Pp. 43-44.

6 ילקוט קטן של זיופי ר' רחמון.

1. Martini[7] quotes from *Bereshith Rabba*:[8] אברהם אין כתובה בו שמירת שבת.[9] He is charged with forgery for having quoted only part of a sentence and not the whole sentence.

But the conclusion of the sentence does not change at all the fragment cited by Martini. He quoted and translated it correctly but he misinterpreted it. If Martini were a modern scholar, he would say that the *Midrash* implies that Abraham did not observe the Sabbath, which is practically what he did say.

2. Martini[10] cites a passage in the name of the *Siphre,* and he is accused of combining two *Midrashim* and adding a verse to them in order to create a false impression.

Martini did not combine two *Midrashim* but copied his source.[11] The verse he quoted is extant in the *Siphre*[12] in connection with our *midrash,* and Martini probably had it in the *Siphre Zuta.*[13]

3. Martini[14] quotes *Bereshith Rabba*[14a] where it is stated that Jericho was taken on a Sabbath. But he adds: א"ר רחמון הה"ד וביום השביעי תסבו את העיר שבע פעמים, Dixit R. Rachmon, hoc est quod scribitur Jos. 6. v. 4 et *in die septimo circumibitis civitatem septem vicibus.* He is accused of deliberately adding a Christological verse, and we are referred to Harnack, *Die Altercatio Simonis et Theophili* (1863) [read: 1883], pp. 41, 55, 93.

[7] *P.F.*, p. 793.

[8] Ed. Theodor, p. 95.

[9] "No mention of the observance of the Sabbath is made in connection with Abraham," i. e., Scripture does not state *explicitly* that Abraham observed the Sabbath.

[10] *P.F.*, 793-794.

[11] *Siphre Zuta,* ed. Horowitz, p. 258.

[12] *Idem,* p. 62.

[13] This book is no more extant, but was reconstructed by Horowitz from quotations in various books. The whole passage (except the verse) as quoted by Martini is incorporated in the *Midrash Haggadol.*

[14] *P.F.*, 794.

[14a] Ed. Theodor, p. 477.

However, the Christology of the verse[15] has nothing to do with our subject. The rabbinic view regarding the day of the fall of Jericho perfectly coincides with the Christian, and it can be derived only from the verse quoted by R. Rachmon. As a matter of fact it is clearly stated in the *Palestinian Talmud*:[16] שלא נכבשה יריחו אלא בשבת דכתיב כה תעשה ששת ימים וכתיב ביום השביעי תסובו את העיר שבע פעמים.[17] R. Rachmon only explained the simple meaning of the *midrash*, in the same way as it is explicitly stated in the *Palestinian Talmud*.[18]

4. Martini[19] translates *Deut.* XII. 15 הטמא והטהור יאכלנו כצבי וכאיל, immundum atque mundum comedentur sicut damela atque cervus, and is therefore accused of forgery.

This is not a forgery, but an example of Christian *midrashic* interpretation.

5. Martini[20] is accused of interpolating the words לעתיד לבא into a passage of the *Palestinian Talmud*.[21]

I am inclined to accept Martini's reading as genuine, for it is corroborated by *Midrash Vayyikra Rabba*,[22] *Tanhuma*,[23] and other sources.

6. Martini[24] cites a passage from *Bereschit Ketanna*[25] to *Gen.* IL. 11. He is accused of having himself composed the whole passage.

[15] See Eduard Bratke, *Sitzungsberichte der Kaiserlichen Akademie der Wissenschaften in Wien*, vol. CXLVIII (1904), p. 100.

[16] *Shabbath*, I, 4[a], bot. and parallel.

[17] See *Pene Moshe, ad loc.*

[18] Similarly, Martini is accused (p. 37) of deliberately adding a Christological verse from the *Talmud*. The latter (*Baba Bathra*, 25[a]) deals with the divine immanence, and R. Rachmon adds (in Hebrew) the verses of Jer. XXIII, 23 ff. What could be more natural than the addition of these verses in this place?

[19] *P.F.*, p. 803.

[20] *Ibid.*, p. 819.

[21] *Yoma*, end.

[22] XV, end.

[23] מצורע end, ed. Buber III, p. 48, p. 53; *ibid.*, IV, p. 120.

[24] *P.F.*, p. 819.

[25] This is his regular appellation of our *Midrash Rabba*.

However, the passage is found in the very *Midrash*[26] and in the very place he refers to.

7. Martini is accused of associating[27] two separate passages with two different verses in order to mislead the reader into the belief that *Lament.* III. 28-29 refers to the Almighty.

Martini faithfully copied the source he referred to,[28] he only omitted the word וכו' (*etc.*) at the end of his quotation, but he is right in his interpretation, for the passage concludes: והדין יתן בעפר פיהו, וכתיב יתן למכהו לחי ישבע בחרפה, i. e., these two verses also provoked Rabbi to tears. There is no trace of forgery in his quotation.

8. Martini[29] quotes the *Palestinian Talmud*[30] וכפיו פרושות השמים כגון הדין נוקרם היה עומד and translates it: Et manus ejus erant expansae ad coelum.[30a] Num sicut iste *crucifixus,* vel in *cruce* expansus erat stans.

This passage of Martini has probably crept into the "anthology of Martini's forgeries" by mistake, for Martini undoubtedly translated *crucifixus* in good faith, and followed here the old Christian tradition[31] (as Baer himself realized). It is rather amusing to note that Martini simply saw the *crux* in this word, which is indeed a *crux* of Jewish philologists.

9. Martini is charged with fabricating[32] (in the name of *BR.* of R. Moshe ha-Darshan) the following statement: נגילה ונשמחה בך, אימתי כשיעלו הגליות מגיהנם.

Not only this phrase, but the whole passage quoted by Martini is extant in *Shir Hashirim Zuta,*[33] the word מגיהנם, however, missing. But since Martini quotes it from a secondary source it is possible that the word was incorporated

[26] In all editions, including ed. Theodor-Albeck, p. 1280.
[27] *P.F.*, p. 848.
[28] *Ekha Rabba,* to those verses; extant in all editions, besides Buber's.
[29] *P.F.*, p. 851.
[30] *Berakhoth,* I, 3c.
[30a] I *Kings,* VIII, 54.
[31] Just. Mart., *Dial.*, XC. 1, and many others.
[32] *P.F.*, p. 880.
[33] Ed. Schechter, p. 14.

in the text as an interpretation. In any case, it is hardly safe to accuse Martini of himself concocting the whole phrase.

10. Martini is accused of deleting[34] the end of a passage in *Midrash Tehilim*[35] and replacing it with a verse which he himself introduced.

Martini deleted nothing. He did not finish his quotation because the rest of the passage was not needed for his purpose (but it did not defeat his aim either). True, he added a verse at the end of his quotation, but, as said, it was the general practice of his age.

Thus, "the anthology of Martini's forgeries" turns out to be a mere fiction.

Finally, we must take into consideration the imperfection of the human senses. When a man is possessed by an idea in which he implicitly believes, he is sometimes liable to be misled by his own senses, so as not to notice single words or letters, and even to misread them, when they contradict his convictions.

Perhaps no better defense of Martini has ever been written than the article of his accuser. We have seen above that Martini[36] gave detailed and accurate references to his genuine sources, yet his accuser denied their existence because he was miraculously prevented from finding them.

Similarly, Martini[37] is charged[38] with the deliberate deletion (for Christological purposes) of the word טובות in the phrase מדות טובות of *Midrash Tehilim*.[39] However, in all the editions[40] of the *Midrash* (except one) the word טובות

34 *P.F.*, p. 914.
35 Ch. LXXIV, end.
36 *P.F.*, pp. 642 and 868; 793-794;819.
37 *Ibid.*, p. 494.
38 *P.* 41.
39 Ch. L.
40 Including *Yalkut ha-Makhiri, ad loc.*, p. 272.

is not extant. It was thoughtlessly inserted into the text published by Buber[41] by a person who misunderstood the sense of מדות here.

But the climax of all the charges against Martini is the accusation[42] that he introduced[43] the Christian reading אמי ל פ נ י (instead of אמי ל ב נ י) into *Prov.* IV. 3. This writer is blamed[44] for overlooking this fact. The truth, however, is that not only was לפני the reading of the ancient[45] and the medieval Rabbis,[46] but it is also the reading of our modern editions of the Bible. A Bible containing the "Jewish" reading לבני would be condemned as erroneous by the Synagogue. And if a distinguished modern scholar who knows Hebrew better than Martini and whose honesty cannot be questioned was misled by his own eyes (a lapse from which no one is immune) in a time when clearly printed books are in common use, what then can be expected from a medieval scholar who was not thoroughly versed in Hebrew and who had only handwritten copies at his disposal? Some of Martini's blunders are certainly to be charged to the natural imperfection of the human senses.

III

THE IMPORTANCE OF THE *Pugio Fidei* FOR TALMUDIC SCHOLARSHIP

Baer goes a step further. He concludes: It is difficult for me to accept the view that Martini's *thesaurus* contains

41 P. 279.

42 P. 42.

43 *P.F.*, p. 523.

44 P. 42.

45 So *Tanhuma Pekudei* 3: כי בן הייתי לאבי רך ויחיד לפני אמי... כי בן הייתי לאבי ק ו ד ם שיצאתי ממעי אמי הייתי בנו של הקב"ה... שלא היה שום אדם בחבורתי ל פ נ י אמי וכו׳.
But for the source this *midrash* would certainly have been condemned as undoubtedly Christological.

46 See the commentary of Nahmias on *Prov., ad loc.*, p. 20.

important material for talmudic scholars.[1] In other words, he condemns *all* Martini's quotations regardless of their content and purport. In view, however, of the notorious paucity of manuscripts of the *Talmud* and especially of certain *Midrashim*, any quotation from these sources is very welcome (particularly quotations of Spanish origin). Unless therefore we presume that Martini invariably and needlessly altered every rabbinic passage he quoted, the above verdict is not valid.

Here also I must completely disagree with my learned friend. As pointed out above, Martini has in the majority of cases faithfully copied his sources.[2] He has preserved for us a treasure of invaluable readings.[3] It is from him, and only from him, that we learn that at least one long proem of *Midrash Ekha Rabba* is missing in our editions, including all the manuscripts used by Buber.[4] And even in suspicious cases Martini's book turns out to be a valuable help. So, for instance, he quotes[5] from the *Babylonian Talmud*:[6] אמר ליה ר' אחא בריה דרבא לרב אשי בידה ממש סמכין ליה או בשמיה סמכי ליה א"ל מ ו ת נ י נ ן (read: מותבינן) י ד א א ר י ש י ה ... וסמכי ליה בשמא וקרו ליה רב ... וחד לא סמיך and he translates: Dixit R. Acha filius Rabba ad R. Asse: Cum manu fiebat confirmatio, vel ordinatio supra dictorum judicum, vel nomine tantum? Dixit ei, *Imponebant manum capiti ejus et confirmabant, vel ordinabant eum et* vocabant eum Rab . . . et unus non ordinabat per manuum impositionem? . . . According to this reading ordination is performed by a literal laying on of hands. In our editions of the *Talmud* the words which

1 קשה לי להניח שיש באוצר זה חומר הגון בשביל חוקרי הספרות התלמודית.

2 Of course, all quotations even in sources of unquestionable authority and honesty are to be used with care (see *Hayerushalmi Kiphshuto*, Introduction, p. 24), and those found in polemical sources have to be used with particular caution.

3 See *Shkiin*, p. 74 ff.

4 See *ibid.*, p. 75.

5 *P.F.*, p. 315.

6 *Sanhedrin*, 13[b].

we have spaced in the original and italicized in the translation are missing. They are also wanting in all the manuscripts used by Rabbinovicz; they were unknown to the African R. Hananel, the Spanish Maimonides, and others,[7] and consequently the rabbinic decision was that no actual imposition of hands is required in the ordination of judges. It might therefore appear that Martini invented a whole sentence and interpolated it in the talmudic passage in order to corroborate the Christian practice,[8] and this suspicion is strengthened by his translation of וחד לא סמיך with: "Et unus non ordinabat *per manuum impositionem*," where the last three words are superfluous.

However, R. Judah the Barcelonian[9] in his *Sepher ha-Shetaroth*[10] (p. 132) records explicitly that ordination was performed by a literal laying on of hands, and he quotes our passage of the *Babylonian Talmud* with the spaced words.[11] The same reading seems to be confirmed by an eleventh century fragment,[12] where the text is defective, but can be restored with the help of the *Pugio Fidei*. Thus, not only do we learn from a ***prima facie*** suspect passage of Martini the ancient practice of ordination but it helps us to restore an important medieval text.

There are minor but still important "suspicious" readings to which Martini was the first, and for a long time the only, witness. So, for instance, he quotes[13] from *Bereshith Rabba*:[14] והקב"ה היה בורא ש א ו ר ו של מלך המשיח and trans-

[7] See *Shkiin*, p. 77.

[8] See Cabrol-Leclerq, *Dictionnaire*, III, pp. 2588 ff.

[9] *Fl.* in Spain at the end of the eleventh and the beginning of the twelfth centuries.

[10] Published for the first time in 1898.

[11] See *Shkiin*, p. 77.

[12] Jacob Mann, *The Jews in Egypt and in Palestine under the Fatimid Caliphs* (Oxford, 1922) II, p. 227, bottom.

[13] *P.F.*, p. 715.

[14] To *Gen.* 38 v. 1, ed. Theodor-Albeck, p. 1030.

lates: Deus vero optimus maximus erat procreans *carnem* regis Messiae. All our editions including the scientific edition of Theodor-Albeck read: אורו instead of שאורו . The reading of Martini is therefore more than suspicious.

But although Theodor recorded no variant to the word אורו, Albeck inserted a note (in Theodor's commentary) informing us that the Cod. Brit. Mus.[15] had originally שאורו but the first letter was deleted. Thus, the reading שאורו is proved genuine, and is no doubt the original one. As for Martini's Latin rendering *carnem*, it is neither a mistranslation nor a falsification. It corresponds to another genuine reading שאירו which is actually present in *Midrash Haggadol*.[16]

Baer concludes his article:[17] "I can only agree with the words of the sage (L. Ginzberg, *Tarbiz*, IV, p. 303): 'No evidence can be accepted from a forger'." The sage, of course, is right in principle, but in this particular case it happens that the evidence produced by the "forger" is correct. The question involved was whether the reading ר' יוסי הגלילי, R. Yose *Galilaeus* adduced by Martini[18] from the *Siphra*[19] is genuine. Since this quotation of Martini contains a Christian interpolation (as is unanimously agreed by all scholars) there was good ground for distrusting Martini's inclusion of the word הגלילי Galilaeus, so long as there was no other evidence for this reading. But it has been shown[20] that this reading is extant in Cod. Rome of the *Siphra*, a

[15] A manuscript written not later than the middle of the twelfth century; see George Margouliouth, *Catalogue of the Hebrew and Samaritan Manuscripts in the British Museum*, II, 340.

[16] *Gen.*, ed. Schechter, p. 568 and p. 813 (corrections to 568 line 19). For other instances of Martini's translation of a genuine reading different from that in the text, see *supra*, p. 93.

[17] ונאמנים עלי דברי החכם (ל. גינצברג, תרביץ ד' עמ' 303): אין למידין מזייפן.

[18] *P.F.*, p. 866.

[19] Ed. Weiss, fol. 27[a].

[20] *Shkiin*, p. 66.

dated manuscript[21] of 1073! Even here, therefore, Martini has at least a corroborative value.

More than six centuries have passed since the death of Martini; he has now been summoned before the judicial court of History on charges of forgery. If he were brought before the court of the disciples of the Rabbis, whose writings he had derided and distorted, they would not declare him guilty of deliberate falsification. For error is not forgery.

[21] A photograph of the end of the manuscript containing the date is available in Friedmann's edition of *Seder Eliyyahu Rabba*, after the author's Preface.

THE 'JEWISH EXECUTION'

IN MEDIAEVAL GERMANY

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I

Introductory Remarks

HANGING an offender by the feet, instead of by the neck, and similarly stringing up two dogs beside him was a form of mediaeval criminal punishment. Its application to Jewish felons has recently been made the subject of a detailed historical study.[1] Documents bearing on individual cases of this so-called "Jewish Execution," chiefly from the 15th to the 17th century, are there assembled from various secondary sources, translated into English, and interpreted. They include minute legal instructions to court and executioner, and circumstantial descriptions by eye witnesses of the different phases of this type of execution, exceedingly cruel even by mediaeval standards of penal law. Scrutiny of these documents produces a clear picture of the external process and the regional extension of this legal custom. It was probably intended to intensify the culprit's punishment, by making it more painful and ignominious, and, at the same time, to sharpen its deterrent effect. These legal and psychological objectives enabled the "Jewish execution" to survive almost up to the threshhold of the century of Enlightenment and Tolerance.

The student of legal and social history will feel that the picture displayed in narrative sources such as diaries, chronicles, broadsides, popular tracts, or theological works for mis-

[1] Rudolf Glanz, "The 'Jewish Execution' in Medieval Germany," in *Jewish Social Studies*, V (1943), pp. 3-26; hereafter referred to as "Glanz."

sionary propaganda from the fifteenth to the eighteenth century, needs further historical elucidation from mediaeval legal sources of earlier centuries. Fortunately these are not lacking. Their proper understanding, based on the content and reasoning of the mediaeval law-books in particular, will be further prompted by the consideration of the legal-historical background as well as of the civilization in general. Such a perspective will also light the way to a better insight into the legal and cultural developments in the later centuries. Pictorial representations from as late as the seventeenth and eighteenth centuries need for proper evaluation to be compared with mediaeval manuscript illuminations. All this will not only make the historical picture more complete, but will also replace some merely hypothetical explanations with interpretations flowing directly from the mediaeval sources.

This very wide scope is obviously attainable only through a systematic search in the entire body of pertinent source material that has come down from the Middle Ages. The range of the present study is much more restricted. It does not aim at a monographic inquiry into all the problems of legal and cultural history posed by the so-called "Jewish execution." It draws on and interprets only certain material at hand, collected in the course of the present writer's studies on *Jewry-Law in Mediaeval Germany*.[2] Although no attempt has been made to be exhaustive in any respect, the sources here to be examined and the present state of our knowledge of mediaeval legal history seem fully to bear out the conclusions to follow.

II

THE SO-CALLED "JEWISH EXECUTION"

First the designation "Jewish Execution" deserves attention. Once introduced into scholarly usage, it may for bre-

[2] With regard to several problems which, in the presentation to follow, could receive only passing mention, the reader is referred to this writer's forthcoming volume *Jewry-Law in Mediaeval Germany in the Light of Law-Books and Court Decisions*, to be published shortly.

vity's sake be retained. This, however, it must be stressed, is only a concession to expediency, further motivated by the lack of a more appropriate term to describe briefly the institution of mediaeval criminal law under discussion.

With reference to the term "Jewish execution" two facts must be borne in mind.

First, this designation is as inadequate and ambiguous as, for instance, the English rendering "Jewish serfdom" for the Latin *servitus Judeorum*, the expression used in the mediaeval sources for the legal concept of Chamber Serfdom.[3] Both English designations fail to clarify the subject matter involved. The term "Jewish execution" might easily be misunderstood as indicating a punishment inflicted under Jewish law. Moreover, the penalty here under consideration was never in the entire course of its historical development applied exclusively, although it was at times applied specifically, to Jewish offenders.

Secondly, the term "Jewish execution" is not in accordance with the wording used in the mediaeval or later sources. Neither the German compound *Judenstrafe* nor any other *terminus technicus*, Latin or German, for which "Jewish execution" would be an equivalent, is found in the relevant law-sources known to this writer. The characterization *more judaico*, so familiar to every student of Jewish history because of its designation of the particular oath prescribed for Jews in mediaeval times, does not occur in the sources in connection with the "Jewish execution."[4]

[3] Cf. Guido Kisch, "The Jewry-Law of the Mediaeval German Law-Books," Part II, in *Proceedings of the American Academy for Jewish Research*, X (1940), p. 151 note 95; hereafter cited as Kisch, "Jewry-Law," II.

[4] The term *more judaico* in a source of the middle of the fourteenth century, the *Brünner Schöffenbuch*, by the municipal clerk Johannes (of Gelnhausen?), ed. by Emil Franz Rössler, *Die Stadtrechte von Brünn aus dem XIII. und* XIV. *Jahrhundert* (Prague, 1852), chap. 432, p. 202, does not refer to what is called "Jewish Execution": ". . . pilleus de scutella ligno quodam elevato superius scutellae *more judaico* imposito factus cum pice ardente crinibus et capiti judaei impressus cum eodem pilleo, ut a christianis suspensis discerneretur." This form of punishment itself is not designated "as execution 'in the Jewish manner' (*more judaico*)." The text unequivocally states that a piece of wood was placed on top of the inverted bowl, the improvised Jew's hat, to give it the appearance of the real pointed hat "of the Jewish manner."

This term, then, is the arbitrary coinage of a modern author. In employing it one must not forget this fact. And one must also be cognizant of the true nature of the punishment to which that designation refers.

Again it should be emphasized that Jewish criminals were by no means the only ones to be executed in the described manner, either in the Middle Ages or in more recent centuries. It is a fact, for which ample evidence will be adduced hereafter, that in Central Europe up to the end of the fourteenth century the "Jewish execution" was completely unknown as a specifically "Jewish" kind of punishment. Nor can the historical origin of this intensification in the execution of the death penalty be traced back to its application to Jewish transgressors. The "Jewish execution" is, furthermore, even from the fifteenth century onwards, not a punishment for all acts of felony committed by Jews, but for theft only.

It is obvious that all the detail-questions of legal history, raised here by the various connotations of the term "Jewish execution," must be cleared up in order to reconstruct the historical evolution and the true significance of this custom in the mediaeval practice of criminal law. This will also pave the way for a proper consideration of whether and to what extent an "extension" of the "Jewish execution" to other groups or to other cases of felony may have taken place.

III

"WITH A THIEFE TO THE GALLOWES"[5]

In mediaeval criminal law hanging on the gallows was particularly, and almost exclusively, the punishment for

[5] German legal proverbs: "Der Galgen gehört dem Dieb," or "Dem Dieb teilt man den Galgen zu;" Eduard Graf and Mathias Dietherr, *Deutsche Rechtssprichwörter* (Nördlingen, 1864; second ed., 1869), p. 364 no. 447; p. 580 *s. v. Galgen; Sachsenspiegel*, II, 13, 1: *"Den dief sol men hengen;"* Saxon Landpeace of September 1, 1221, ch. 8: *fur suspendetur;* Karl August Eckhardt, *Sachsenspiegel Land- und Lehnrecht* (Hannover, 1933), p. 69; Karl von Amira, *Todesstrafen* (see *infra*, note 6), pp. 182 f. and note 4. The quotation in the title is from Shakespeare; cf. *Oxford Universal English Dictionary* (American Ed., 1937), Vol. IV, *s. v.* Gallows.

theft.[6] For this reason the hangman was summarily called *diefhanger*. Hanging was considered an especially ignominious form of the death penalty. The corpse had to remain exposed on the gallows for some length of time.

Jewish thieves had to share this degrading penalty with Christians guilty of the same offense. The *Sachsenspiegel*, composed between 1221 and 1224, the outstanding account of Saxon customary law, has not in its articles on Jewry-law any special regulation referring to Jewish thieves. This means that, as in all such cases of silence, the general rules applied also to the Jews,[7] who thus were subject to the same legal treatment as Christians.

The correctness of this conclusion is demonstrated by the illuminated manuscripts of the *Sachsenspiegel*. Among these, the Heidelberg codex, dating from about 1300-1315, not quite a hundred years after the compilation of the Saxon code, is the oldest one preserved. The Oldenburg manuscript was completed in 1336. The illuminated manuscript of Dresden, published in Karl von Amira's monumental edition with a detailed commentary,[8] dates from about the middle of the fourteenth century. The picture illustrating *Sachsenspiegel*, III, 7, 4, here reproduced (Plate 1), shows a Jewish offender (third figure from the left) brought into court; in the picture in the Heidelberg manuscript his hands are bound crosswise in front of him. The plaintiff (fourth figure) points with his right hand to the ecclesiastical objects found with the Jew, a vessel and a book; with left forefinger raised he calls for attention. At the left of the picture the Jew is being

[6] For details see Rudolf His, *Das Strafrecht des deutschen Mittelalters*, I (Leipzig, 1920), pp. 491 ff.; Karl von Amira, *Die germanischen Todesstrafen, Untersuchungen zur Rechts-und Religionsgeschichte*, in *Abhandlungen der Bayerischen Akademie der Wissenschaften*, philosophisch-philologische und historische Klasse, vol. XXXI, Abhandlung 3 (Munich, 1922), pp. 87-105, 201-204; quoted hereafter as: Amira, *Todesstrafen*.

[7] Cf. G. Kisch, "The Jewry-Law of the Medieval German Law-Books," Part I, in *Proceedings of the American Academy for Jewish Research*, VIII (1935-36), pp. 129-133; hereafter quoted as: Kisch, "Jewry-Law," I.

[8] Karl von Amira, *Die Dresdener Bilderhandschrift des Sachsenspiegels*, I: Ausgabe, two vols. (Leipzig, 1902); II: Erläuterungen, two vols. (Leipzig, 1925-26); hereafter quoted as: Amira, *Sachsenspiegel*.

"judged as a thief," that is, he is hanged like any thief according to *Sachsenspiegel*, II, 13, 1. The Jew is hanged, however, not by his feet, but by the neck like every thief; his hands are bound behind him. Compared with the execution of a Christian thief, as pictured in the illustration of *Sachsenspiegel*, II, 13, 1, that of a Jew is in no way different except for the pointed hat worn by the Jew. With respect to the manner of hanging, the Oldenburg illuminated manuscript shows the most archaic representation: the Jew's trunk is bared, his hands bound across his back; his eyes are covered. The Dresden and Heidelberg manuscripts clothe the Jew in the penitent's shirt, as universally used; the Heidelberg manuscript fetters his hands in front, the Dresden manuscript leaves his eyes uncovered.[9] All the manuscripts are alike in showing the Jew hanged by the neck. In none of the representations does one find the accompaniment of dogs.

Neither the *Sachsenspiegel* nor any of the other mediaeval German law-books mentions an intensification in punishment for Jews such as hanging by the feet or adding vicious dogs. In his *Gloss* (*ca.* 1325) Johann von Buch commenting on *Sachsenspiegel*, III, 7, 4, an article concerned with the punishment of a Jewish thief, refers explicitly to his comments on II, 13, 1,[10] implying that the general rules of punishment and execution should be applied in cases of Jewish thieves too.

From all this evidence the conclusion follows of necessity that the so-called "Jewish execution" had no basis in Saxon law and custom in the era of the law-books, beginning with the *Sachsenspiegel* and reaching to the end of the fourteenth century. If a commentator on the Saxon law such as Johann

[9] Cf. Amira, *Todesstrafen*, p. 313 no. 481; Amira, *Sachsenspiegel*, II 1, pp. 466 f.; Hans Fehr, *Das Recht im Bilde* (Erlenbach-Zürich, 1923), p. 86 no. 102; hereafter quoted as: Fehr.

[10] *Sachsenspiegel*, ed. by Christoff Zobel (Leipzig, 1560), fol. 333 r: *Man soll uber ihn richten als uber einen dieb, etc.* Solches stehet hievor in dem andern buch in dem dreitzehenden artickel, und in *legibus ff. de poenis l. capitalium.* § *famosas* [*Dig.* 48, 19, 15] *et in usib. feud. de pace tenenda.* § *si quis quinque.*

Sachsenspiegel Landrecht, III, 7, 4
A Jew "Judged as a Thief"



1. Picture-Manuscript of Heidelberg (1300-1315)



2. Picture-Manuscript of Dresden (Middle of 14th Century)

Jews Hanged with Dogs and Monkeys



104. Zwei Juden (Kaiphas u. Achasam) werden mit zwei Hunden u. zwei Affen gehenkt (14. Jh.)

Passional of the State Library in Munich (1398)

Schandgemälde of Jewish Merchants Against Their Defaulting Debtor



State Archives of Munich (*ca.* 1490)

von Buch had witnessed an intensification in the punishment of Jewish thieves as impressive as the "Jewish execution" must have been, he certainly would have noted it in his commentary, just as he noted and criticized the "peculiar custom that the Jews, when taking an oath, shall stand on a pig's skin" (*Gloss* on *Sachsenspiegel,* III, 7, 1).[11] In view of the wide validity and influence of the *Sachsenspiegel* law in mediaeval Europe it is safe to assume that in Central Europe there is no trace in law or custom of the "Jewish execution" as a commonly applied means of intensification or degradation in executing Jewish thieves. It was therefore with good reason that Saxon jurists of the seventeenth century strictly denied that such a legal or judicial practice ever did exist in Saxony, and particularly with respect to Jewish offenders.[12]

The only deviation from the legal treatment of Christians observable in the mediaeval execution of Jews is in their wearing a Jew's hat on this occasion too. This feature is conspicuous in the illuminated manuscripts of the *Sachsenspiegel,* all of which picture the Jew on the gallows wearing the well known mediaeval pointed Jew's-hat. The general wearing of these hats was made obligatory in Germany from the second half of the thirteenth century on, as attested by several law

[11] Cf. Kisch, "Jewry-Law," I, p. 145.

[12] Cf. Christian Gottlob Haltaus, *Glossarium Germanicum medii aevi* (Leipzig, 1758), col. 975 f.; Glanz, pp. 18 f.; cf. also Johannes Jodocus Beck, *Tractatus de Juribus Judaeorum: Von Recht der Juden* (Nuremberg, 1741), pp. 318 f.—In this connection it may be mentioned that in mediaeval Germany Jews were not compelled, as was the custom in other countries, to serve as hangmen for the Christian community. The employment of Jews as executioners, the executions being performed in the Jewish cemetery, was intended as a humiliation for both the Jews and the Christian culprits sentenced. This custom seems to have originated in Byzantium. From the eleventh to the fifteenth century it was widespread throughout the area once ruled by the Byzantine emperors and in other parts of the Mediterranean, such as Crete, Corfu, Palermo, Venice. Cf. Samuel Krauss, *Studien zur byzantinisch-jüdischen Geschichte* (Vienna, 1914), pp. 53 f.; Joshua Starr, *The Jews in the Byzantine Empire* 641-1204 (Athens, 1939), p. 202, no. 149; Starr, "Jewish Life in Crete under the Rule of Venice," in *Proceedings of the American Academy for Jewish Research,* XII (1942), pp. 74-76.

sources of that time,[13] while no provision of this kind is found in the *Sachsenspiegel*. The point in issue was, according to the South-German law-book, *Schwabenspiegel* (ca. 1275), that, by wearing Jew's-hats, the Jews shall be "marked off from the Christians, so that one shall not take them for Jews."[14] Exactly the same reason was given in a case related in the *Brünner Schöffenbuch*, dating from the middle of the fourteenth century. There a piece of wood was placed atop an inverted bowl, an improvised Jew's-hat, to make it appear like a real Jew's-hat, "in the Jewish manner" (*more judaico*). "The Jew should be distinguishable from hanged Christians."[15]

This discrimination and the reason for it, as explicitly stated, deserve attention. Without the Jew's hat, the Jews seem to have been indistinguishable from the Christians among whom they lived.[16] This must have been so also with Jewish offenders after their execution. The fact that a distinguishing mark was prescribed, offers convincing proof that the "otherness" of the Jew could not have impressed itself to any great extent on the minds of the general populace in those days.[16a] Otherwise no need would have been felt for devising a special mark to distinguish Jews; and conversion to Christianity, which sometimes occurred on the gallows, would not at once have done away with all discrimination. The distinguishing mark was naturally felt by the Jews as a discrimination and humiliation.[17]

[13] G. Kisch, "The Yellow Badge in History," in *Historia Judaica*, IV (1942), pp. 107, 138 note 15, reproducing all references to the wearing of the Jew's hat found in the mediaeval German law-books.

[14] Heinrich Gottfried Gengler, *Des Schwabenspiegels Landrechtsbuch*, second ed. (Erlangen, 1875), article 214, 10: "die juden suln hüte tragen, die spitz sin; da mit sint si uz gezeichent von den christen, daz man si für juden haben sol."

[15] See the Latin text, *supra*, note 4.

[16] Cf. G. Kisch, "The Yellow Badge in History," pp. 99 f.

[16a] Cf. G. Kisch, *Speculum*, XIV (1939), p. 368.

[17] In a case which occurred as late as 1597 in Italy, the Jews of Montagnana tried to avert the execution of a Jew wearing a red Jew's-hat because of the humiliation which would be inflicted on the entire community; cf. Ludwig Blau, *Leo Modenas Briefe und Schriftstücke* (Budapest, 1905), pp. 41, 110 f., nos. 113-114.

IV

ANCIENT ORIGIN AND PAGAN CHARACTER OF THE "JEWISH EXECUTION"

The strange procedure of the "Jewish execution" attracted the attention of many an outstanding scholar in the history of law, religion, and general civilization.[18] Jacob Grimm thought that this common practice was intended in general, as well as particularly in its application to Jews, to augment the ignominy of the punishment and to intensify the suffering of the culprit.[19] He supported this opinion with documentary evidence from the thirteenth to the seventeenth century. Wilhelm Eduard Wilda, the well-known historian of Germanic criminal law, explained the stringing-up of dogs or wolves beside the culprit as intended to stigmatize the latter as a *neiding,* an ignominious and odious transgressor.[20] It was Karl von Amira who, in his comprehensive and fundamental work on the history of capital punishment in Germanic law, religion, and custom, found the origin of the so-called Jewish execution in pre-Christian Germanic rites.[21] Public punishment was a religious act, the sacrifice of an offender for an unexpiable crime. The immolation of the culprit was accompanied by the sacrifice of dogs (or wolves), these being a favorite food of Odin, the god who hurtles through the tree-tops in the gale and there seeks his sacrifices. If the hanging signifies a sacrifice to Woden, the concomitant hanging of dogs in the execution becomes similarly intelligible. The dog as a favorite animal of the wind god is offered as an additional sacrifice by the side of the man, whose value

[18] Only the most outstanding authorities can be quoted. For other references see Georg Stahm, *Das Strafrecht der Stadt Dortmund bis zur Mitte des XVI. Jahrhunderts* (Heidelberg, 1910), p. 251 note 6.

[19] Jacob Grimm, *Deutsche Rechtsaltertümer,* fourth ed. by Andreas Heusler and Rudolf Hübner, II (Leipzig, 1899), pp. 261-263.

[20] Wilhelm Eduard Wilda, *Das Strafrecht der Germanen* (Halle, 1842), p. 502.

[21] Amira, *Todesstrafen,* pp. 87 ff., 201-204; cf. Amira, *Grundriss des germanischen Rechts,* third ed. (Strasbourg, 1913), pp. 240 f.

as principal offering may appear dubious to the recipient. Von Amira specifically observed:[22]

> Outstanding among the peculiarities of the ancient ritual of hanging is the suspension of one or two dogs, by the hind legs, beside the convicted man. From the material collected hereon by J. Grimm (*Rechtsaltertümer*, II, 261-263) there emerges not only the wide spread of this custom in German and Scandinavian countries but also its great antiquity. There can be no question of its having originated in the Middle Ages, still less of its having arisen as a particular penalty for Jews. The custom simply persisted longest in this character.

That the custom of suspending dogs together with criminals has its origin in the ancient Germanic ritual of sacrifice is, indeed, very interesting to the student of the history of civilization. This historical root has, however, only limited significance for the history of the "Jewish execution." As von Amira correctly stated, the discovery of the ancient origin of the "Jewish execution" merely forestalls theories of its coming into use as late as the Middle Ages or exclusively with regard to Jews. But it has no bearing on the externals of the "Jewish execution": the hanging of men or dogs upside-down is left unaccounted for; no historical explanation is discoverable. Furthermore, the sacrificial character of the punishment of hanging as well as that of making additions to the principal sacrifice, without doubt universally known in pre-Christian times, must just as surely have faded from consciousness under the powerful influence of Christianity and the Church. The tendency to eradicate everything reminiscent of paganism prevailed at an early date.[23] What thus remained of the ancient sacrifice through the ages was, as in

[22] Amira, *Todesstrafen*, p. 105.

[23] Cf., e. g., Fehr, *Das Recht im Bilde*, pp. 77 f., and with regard to the Christianizing activities of the Teutonic Order in Prussia, Erich Maschke, *Der deutsche Orden und die Preussen, Bekehrung und Unterwerfung in der preussisch-baltischen Mission des 13. Jahrhunderts* (Eberings *Historische Studien*, Heft 176, Berlin, 1928); on the Christianization of the Wends, the Slavs once inhabiting Lusatia and extending over Northern Germany, see Karl G. Hugelmann, "Die Rechtsstellung der Wenden im deutschen Mittelalter," in *Zeitschrift der Savignystiftung für Rechtsgeschichte*, German. Abt., LVIII (1938), pp. 245 f. and note 2.

numerous similar instances, the preservation of an outward form, continuously employed, but divested of its original ritualistic significance. No evidence is needed to show that such a cultural evolution left open the possibility of substituting for the original meaning of the custom, now fallen into oblivion, a new and timely interpretation. As a matter of fact, it needed laborious research and scholarly sagacity to dig up in prehistoric times the ancient root of the penalty of hanging on the gallows with attendant dogs.[24] This at the same time shows clearly how far-fetched a hypothesis it would be to assume an intentional perpetuation of the ancient sacrificial practice as a form of punishment reserved specifically for Jews.

For similar reasons, no connecting link is discernible between the "Jewish execution" and another institution of mediaeval law and folk-custom: the criminal prosecution and capital punishment of animals.[25] Whether maledictions against animals are permissible is discussed in scholastic literature from about 1200 on; the first actual instance is reported in the year 1338. Maledictions and excommunications flourished in ecclesiastical practice in the fifteenth century. This was also the century of trials of animals before ecclesiastical as well as secular courts. Animals were subjected to public

[24] It is erroneous to assume, as Glanz, p. 23 note 44, does, that the ancient Germanic origin of the custom of hanging dogs beside felons was recognized as early as the Middle Ages: "The artist has been careful to depict no dogs, fully realizing that to represent this typical Germanic form of execution in an illustration to the Old Testament would involve an anachronism." The picture in question, from a Munich manuscript of about 1300, an illustration to *Joshua* X. 26, is described in Amira, *Todesstrafen*, p. 313, no. 482. The men to be hanged are, of course, the five kings of the Amorites, and not Jews, as Glanz maintains. The Jews distinguished as such by their pointed hats are pictured standing *before* the gallows, not hanging from it. With this correction Glanz's interpretations and hypotheses fall to the ground.

[25] Karl von Amira, "Tierstrafen und Tierprozesse," in *Mitteilungen des Instituts für Österreichische Geschichtsforschung*, XII (1891), pp. 545-601, especially pp. 545, 568 f.; E. P. Evans, *The Criminal Prosecution and Capital Punishment of Animals* (London, 1906); Hans Albert Berkenhoff, *Tierstrafe, Tierbannung, und rechtsrituelle Tiertötung im Mittelalter*, University of Bonn Jur. D. Thesis (Bühl-Baden, 1937).—The essay by Tobler, "Tierprozesse in der Schweiz," reprinted from *Sonntagsblatt des Bund* (Bern, 1893) was not available to the present writer.

prosecution and criminal punishment for transgressions or damages caused by them. Hanging, burying alive, burning at the stake were carried out by the executioner with the same circumstance and solemn publicity as in executing the death penalty on human beings. The death sentence concluded a trial with all the formalities and minutiae prescribed by the regular rules of judicial procedure. No such proceedings are related in the sources in connection with cases of "Jewish execution." Therefore the idea of linking the suspension of dogs beside Jewish felons in any way to the animal trials as practised in the later Middle Ages can be readily dismissed.

In the *Coustumes et Stilles de Bourgoigne*, art. 197, of *ca.* 1270-1360, dealing with trials of oxen and horses, Jews are seemingly equated with beasts:

> ". . . . . mes se autres bestes ou juyf le font, [namely, commit the crime of homicide], ilz doiuent estre pendus par les piez derreniers."[26]

Historical interest attaches to this article of French customary law of the later Middle Ages because of the generality of the rule expressed in it, although dogs are not mentioned. It is, however, clear beyond any doubt that this customary law of Burgundy does not reproduce or reflect at all the situation prevailing in Germany until the end of the fourteenth century. A glance at the *Sachsenspiegel's* regulations on the Jews and their legal status[27] makes it superfluous to prove in more detail that the Jews in Saxony and Central Europe were in no way put on the same level with animals.

[26] Charles Giraud, *Essai sur l'histoire du droit Français au Moyen Age*, II (Paris, 1846), p. 302. The theory, rejected *supra* in the text, was advanced by Glanz, p. 20, on the basis of a wrong dating. Glanz ascribed the Burgundian source to the twelfth century, taking this mistaken date from Evans (see note 25), p. 165. Glanz as well as Evans could have ascertained the correct date of the *Coustumes de Burgoigne* from Giraud and from Amira, "Tierstrafen und Tierprozesse," p. 550 note 1, where the reference is reproduced *in extenso*. Furthermore, Glanz's translation of the passage is also wrong, as are some of his other translations. It ought to read as follows: "If other animals or an ox or horse belonging to a Jew commit the crime, they shall be hanged by the hind legs." For a discussion of this point, see Jacob J. Rabinowitz, "A Note on the 'Jewish Execution,'" *Jewish Social Studies*, V (1943), pp. 305 f.

[27] See, for the present, G. Kisch, "Jewry-Law," I, II.

In fact they were fully recognized as to their rights and legal standing. The "Jewish execution", as will be remembered, was entirely unknown in the wide territory dominated by the Saxon law-book. Furthermore, the punishment in the Burgundian law source is a penalty for homicide, not for theft. This also points to a more general character and use.

There is yet another form of capital punishment in mediaeval criminal law in which animals were made to accompany the culprit in the execution. It is the death penalty of drowning in a sack, called in the sources *Säcken.*[28] This type of execution is not as ancient as hanging on the gallows. It does not occur in the *Sachsenspiegel* and remained unknown also to the contemporary imperial legislation. Until the end of the Middle Ages it was not practised in Central Europe, otherwise reference to it would not be entirely missing from the extant law sources of cities such as Dortmund, Lübeck, Hamburg, Kiel, Hildesheim, Goslar, and those of Saxony and Thuringia.[29] There seems ti be no recorded case of a Jew executed in this manner.[29a] It was only after the adoption of Roman law in Germany that the *poena cullei* and its symbolical ritual could win influence on the old execution

[28] His, *Das Strafrecht des deutschen Mittelalters,* I, p. 500 f.; Amira, *Todesstrafen,* pp. 142 f.

[29] His, *op. cit.,* I, p. 501 and note 4: "Der *Sachsenspiegel* kennt die Strafe des Ertränkens nicht—ebensowenig wie die damalige Reichsgesetzgebung—und bis zum Ende des Mittelalters scheint sie in Sachsen überhaupt nicht üblich gewesen zu sein."

[29a] While reading proof I came upon a document, reference to which may here be made for the sake of completeness. A capitulary, ascribed to Charlemagne prior to 814, the genuineness of which is however rightfully suspected, applies the capital punishment for parricides to a Jew offending against a Christian or a Christian law, namely to be sewn into a sack and thrown into a deep abyss or burnt. Alfred Boretius, *Capitularia Regum Francorum,* in *Monumenta Germaniae Historica,* Legum sectio II, Tom. I, Pars I (Hannover, 1881), p. 259, *Capitula de judaeis,* no. 6:

> Quod si judeus aliquod maleficium contra christianam legem aut Christianum aliquem fecerit et exinde convictus fuerit, aut culleo parricidali insinuatur et in profundo gurgite proiciatur aut igni comburatur.

This text is not found in Julius Aronius, *Regesten zur Geschichte der Juden im fränkischen und deutschen Reiche bis zum Jahre* 1273 (Berlin, 1902), no. 78, p. 29.

of drowning in sack.[30] Now the same animals as required in the Roman law codes (*Dig.* XLVIII, 9, 9; *Inst. Just.* IV, 18, 6) namely dog, cock, serpent, and monkey, were sewed up in the sack with the culprit and all were drowned together.

There is evidently no immediate connection between the hanging of dogs with a culprit and this custom in Roman law, although the latter, too, goes back to ancient religion and animal sacrifice.[31] Here as little as in the case of Odin's sacrifice can a link be found to the putative transmutation of the ancient sacrificial custom into a specific method of punishment for Jews. The Jew was by no means regarded as "racially an alien" (incidentally an anachronistic conception), for whom the old sacrificial practice would have been reserved as a specifically appropriate form of punishment, after the distinction between the various Germanic tribes had already broken down.[32] The tribal differences between the Germans,

[30] Infliction of the *poena cullei* occurs in the decisions of the supreme tribunals in Saxony as late as the sixteenth century and is always explicitly referred back to Roman law as the special punishment of *parricidium*. Even at that time, however, its adoption was not undisputed, as can be seen from the following legal opinion of the middle of the sixteenth century by Doctor Andreas Franck:

> [Concerning the penalty of a woman who had her husband killed]:
> . . . So mag sie nach Schärfe der Rechte, *poena parricidii* gestrafft werden, *per l.* 1. *ff. ad l. Pomp*[*eiam*] *de parric* [*idiis*] [*Digesta* 48, 9]. Denn der Text sagt daselbst *de uxore, et cujus dolo malo factum est,* und man pfleget *poenam parricidii* zu sprechen, dass Mann oder Weib mit einer Katzen, Schlangen, Kaphan und Hund in einem Sack vernehet, ins Wasser geworfen und darinnen ersaufet solle werden. Es helt aber [Bartolomaeus] Salic[etus] [died 1412] *in l.* 2. C[*od. Just.*] *qui par*[*entes*] *vel lib*[*eros*] *occid*[*erunt*] [*Cod. Just.* IX 17, 1], dass *poena parricidii* heute nicht in Übung sey, sondern man solle die entheupten, wie auch die *gl*[*ossa*] helt *in d. l.* 1. *ff. ad l. Pom. par. in ver. poena.* Und wenn ich Richter were, so wolte ich die Straf bey der Enthäuptung bleiben lassen, angesehen den klaren Text. . . . Wiewol die H[erren] Schöppen etlichs mal, wenn ein weib iren man erschlagen hat lassen, *poenam parricidii* haben gesprochen, so wolte ich doch nicht gern zu solcher Schärf raten.

This legal opinion is published in Georgius Beatus, *Sententiarum Definitivarum Saxonicarum de Criminalibus . . . Centuriae Decem* (Gera, 1610), pp. 72 f., ch. VIII; another decision sentencing a parricide to the *poena cullei* (ca. 1545), *ibidem,* p. 82 f., ch. XVII.

[31] Cf. Pauly-Wissowa, *Realencyclopädie der klassischen Altertumswissenschaft,* IV (Stuttgart, 1901), pp. 1747 ff.

[32] Thus Glanz, p. 22; cf. *supra,* text and note 16a.—On race and law in mediaeval Germany, now G. Kisch, "Nationalism and Race in Mediaeval Law," in *Seminar,* I (1943), pp. 65-73.

as is universally recognized, were preserved throughout the Middle Ages. They found visible expression in a variety of legal systems (Saxon, Thuringian, Suebian, etc.)[32a] and have not been abolished to this very day. No theory, then, can satisfactorily explain the origin and significance of the "Jewish execution" as a specific punishment for Jews, if it is based on the aforementioned propositions.

Nevertheless, some importance for the study of the history of the "Jewish execution" attaches to the combination of the ancient *poena cullei* with the German form of death penalty by *Säcken*. It reveals, namely, the mediaeval attitude to the animal symbolism involved. We need not make any guesses about its motivation, but can directly present the fourteenth-century view as expressed by no less an authority than Johann von Buch, judge at the court of the Elector of Brandenburg and famed glossator of the *Sachsenspiegel* (*ca.* 1325). He writes, commenting on *Sachsenspiegel* II, 14, 2:[33]

> The *leges* also except certain murderers on account of their inhuman atrocity, namely, those who kill father and mother or their own children or the like, who are called parricides; those also who aid or give counsel and instruction in such acts. These shall first be dragged and then sewn into a hide together with a dog, a monkey, an adder, and a cock, and shall be thrown before a weir or into the nearest body of water, according to the opportunities of the country, so that these beasts among themselves shall bite the evildoer. Now you might say, what is this? Hear, I will explain it to you, for the imperial laws have ordered these penalties not without particular significance. The dog indicates that such a man has never shown honor to his parents, like the dog, who is blind the first nine days. The cock signifies the man's crime and unbridled presumption wreaked on his father or child. The adder signifies the misfortune of such parents. For of their procreation it is said that when they would mate, the male puts his head into the female's mouth, whereby she conceives, and thereupon she bites off the male's head from lust. Then when she gives birth to her young she, in turn, must die through them: for when they are about to be born, they bite their way out of the mother's body, of which she dies in that hour. The monkey

[32a] Cf., e. g., James W. Thompson, *Feudal Germany* (Chicago, 1928), p. 366.
[33] *Sachsenspiegel*, ed. Zobel (Leipzig, 1560), fol. 211 r.

> signifies the likeness of man or the image of death without deed. For as the monkey is like a man in many things and yet is no man, so was this one similar to a man, but in deed and heart was not a man because he could act so inhumanly against his own flesh and blood. That this penalty shall be imposed on him, you find in *Insti. de pub. jud.* § *alia* [*Instit.*, IV 18, 6] *et C. de his qui paren. vel. libe. occi. l. si quis* [*Cod. Just.*, IX 17, 1] *et ff. ad l. Pom. de parricidis l.* 1 [*Dig.*, 48, 9, 1]. For where the crime is great as it is here, there shall be also great *poena* and punishment as *C. ad l. Jul. de vi pub. seu privata l. crimen* [*Cod. Just.*, IX 12, 9], as you find written also at the end of the *Gloss* on the following article.

This comment speaks for itself. Its conception is very general, referring to all such felons without distinction of group. Two motives are stressed: intensification of punishment for particularly grave crimes; and the symbolical likening of the culprit's character to the characteristics of certain animals.

Only one more remark need be added. As has been pointed out already, there is no documentary evidence to show that any execution by *Säcken* was practiced in Saxony before the end of the Middle Ages.[34] Among the law-books only the *Blume of Magdeburg*[35] mentions *Säcken* as the punishment for the murder of parents or near relatives, precisely the crime for which Roman law prescribes the *poena cullei.* This is not accidental, for that law-book was written at the end of the fourteenth century by Nicholas Wurm, a jurist trained in the Roman law, just as Johann von Buch had been. In the seventy-odd years separating these two jurists the influence of the ideas and institutions of Roman law had made headway in Germany.

[34] Cf. His, *Das Strafrecht des deutschen Mittelalters*, I, p. 501, note 4: "Die Erwähnung der *poena cullei* in den romanisierenden Quellen [*sc.* Buch's Commentary on the *Sachsenspiegel; Blume von Magdeburg; Laienspiegel*] beweist für die ältere Zeit jedenfalls noch nicht ihre wirkliche Anwendung."

[35] Ed. by Hugo Boehlau (Weimar, 1868), II 5, 18:

> Wer seinen vater odir muter totit odir andir sein elderen, den sol man mit gluhindin czehenen slahin, daz keins ganczis an im blybit. Und sol in in einen lederin sag vornehin mit einem affin unde einr notern und mit einen hanen und mit einem hunde, und sol in werfin in ein wazsir.

V

THE "JEWISH EXECUTION" AS PENALTY FOR JEWS

To this writer's knowledge, the earliest example of hanging a person by the feet and similarly suspending dogs is recorded by Adam of Bremen in his *Gesta Hammenburgensis Ecclesiae Pontificum* (*ca.* 1072-1076). The passage, to be dated about 1048, reads:[37]

> Coming thence to Lismona the Emperor was treacherously, as is said, surrounded by Count Thiedmar, but made safe by the zeal of our Archbishop [Adalbert of Bremen]. Wherefore this Count was summoned to the law-court by the Emperor and, when he would purge himself by combat, was killed by his vassal named Arnold. Not many days thereafter, this man was seized by the son of Thiedmar and, hanged by the legs between two dogs, expired. Whence he himself was seized by the Emperor and condemned to exile in perpetuity.

Arnoldus' suspension by the feet between two dogs was evidently an act of revenge and retribution. The situation described leaves no room for doubt about the intention underlying that act of self-help. The son wished to take revenge for his father's death. Thus he put the murderer to death in the cruelest and most humiliating manner possible. The persons involved belonged to the nobility. All the more ignominious must that kind of execution have appeared. It was a quite exceptional case in every respect. Jews had nothing to do with it.

[37] *Monumenta Germaniae Historica*, Scriptores, VII (Hannover, 1846), III, 8, p. 338:

> Caesar inde Lismonam veniens mox, ut aiunt, per insidias a Thiedmaro comite circumventus, archiepiscopi nostri studio defensus est. Quare idem comes a caesare vocatus in ius, cum se purgare duello mallet, a setellite suo nomine Arnoldo est interfectus. Qui et ipse non post multos dies a filio Thietmari comprehensus, et per tybias suspensus inter duos canes efflavit, unde et ipse ab imperatore comprehensus et perpetuo est exilio dampnatus. Cuius mortem dux germanus et filii eius acerrime zelantes in archiepiscopum, ex eo tempore ipsum et ecclesiam eius et familiam ecclesiae letali odio persecuti sunt. Cumque pax ficta interdum ambas conciliasse partes videretur, nichilominus tamen illi qui ducem secuntur, antiqui memores odii, quod patres eorum exercuerunt in ecclesiam, nostros impugnare non cessarunt, affligentes omnibus modis.

What is probably the earliest actual case of hanging by the feet as the penalty for Jewish thieves, with no attendant dogs, however, is found in the *Annals and Chronicles of Kolmar*. It dates from 1296 and reads:[38]

> "In the year before, a Jew was hanged by the feet in Sulzmatt, on account of theft. He remained alive for eight days and freed himself by raising himself above the gallows; yet he was unable to flee because of the wounds on his feet."

Two more accounts from the twelfth and thirteenth centuries respectively mention the hanging of dogs and wolves together with persons, but do not refer to Jews.[39]

These are all the instances yielded by mediaeval German sources from the eleventh to the end of the fourteenth century. They testify to the fact that the suspension of wolves or dogs beside culprits was a quite general custom. Even if further research should bring to light additional examples concerned with Jews, to the unbiased historian they must appear—like the one mentioned here as the only one so far known—merely as individual cases, in no way differing from those involving Christian offenders. In other words, hanging together with dogs was no specific punishment for Jews, no particular *Judenstrafe,* in the mediaeval period here under consideration.[40]

To obtain confirmation of this historical evaluation, one may take a glance at the numerous instances of "Jewish

[38] *Die Geschichtsschreiber der deutschen Vorzeit,* XIII. Jahrhundert, vol. VII, second ed. (Leipzig, *sine anno* [1897]), p. 92.

[39] Grimm, *Deutsche Rechtsaltertümer,* II, p. 263, mentions the one passage from Saxo Grammaticus' (*ca.* 1150-1208) *Historia Danica,* and, p. 261, a poem of the thirteenth century.—In 1327 cats were hanged together with robber-knights in Thuringia; cf. His, I. p. 493.

[40] Fehr, *Das Recht im Bilde,* p. 87, no. 103, also emphasized "dass das Henken mit Hunden nicht ausschliesslich Judenstrafe war." Furthermore, Emanuel Forchhammer, "Beiträge zur Geschichte der deutschen Juden mit besonderer Beziehung auf Magdeburg und die benachbarte Gegend," in *Geschichtsblätter für Stadt und Land Magdeburg,* XLVI (1911), p. 388, maintained: "Wenn man Juden an den Füssen zwischen zwei Hunden aufhängte, so ist das keine für die Juden bestimmte, besonders entehrende Art des Hängens, sondern war in schweren Fällen auch bei Christen üblich." Unfortunately, both authors contented themselves with their respective statements but did not adduce specific evidence for their support.

execution" narrated and pictured in legal as well as popular sources from the end of the fourteenth through the fifteenth to the seventeenth century.[41] There can be no doubt that in the last-mentioned three centuries hanging culprits by the feet between two dogs was, indeed, practised as a particularly intensified form of punishment, especially applied to Jewish offenders. This is conspicuous, although Christians were still hanged upside-down in the sixteenth and seventeenth centuries, without dogs attendant, as attested by pictorial representations. The brothers John and Cornelis de Witt, the Dutch statesmen, suffering execution in this way by popular justice at the Hague in 1672, offer a striking example.[42] The at one time general use of this form of capital punishment was not yet forgotten. All this brings clearly into view that, up to the end of the fourteenth century, the so-called "Jewish execution" was not a punishment specifically or exclusively inflicted on Jewish offenders.[42a]

Now, how did it come about that this general kind of punishment, originally applied to Christians as well as Jews, was transformed into a penalty particularly for Jewish offenders?

It is, beyond doubt, not merely accidental that one of the earliest mediaeval pictures, if not the first, showing Jews hanged with dogs, dates from as late as 1398.[43] It is a minia-

[41] The number of examples adduced by Glanz can easily be augmented from the cases pictured and treated by Fehr, *op. cit.*, pp. 84-87. Cf. also Fehr, "Geschichte der Rechtspflege," in *Wissen ist Macht* (1934), pp. 620 f., and picture no. 617. Additional instances will be mentioned later, probably without exhausting the material available.

[42] Etching, probably of 1672, by Romain de Hooghe, reproduced in Fehr, no. 128; see *ibidem*, p. 102 f.

[42a] In a defamatory pamphlet against the Germans in Bohemia, of the first half of the fourteenth century, the author praises the golden age "when the Germans were made the targets for arrows, deprived of sight, hanged by the feet, or cast over the city wall . . ."; "Salubriter stabat mundus, quando Theutunici pro signo ad sagittam ponebantur, ibi oculis orbabantur, hic pede suspendebantur, ibi extra menia proiciebantur, . . ."; Wilhelm Wostry, "Ein deutschfeindliches Pamphlet aus Böhmen aus dem 14. Jahrhundert," in *Mitteilungen des Vereins für Geschichte der Deutschen in Böhmen*, LIII (1915), p. 231.

[43] Reproduced in Fehr, *Das Recht im Bilde*, no. 104; cf. *ibidem*, p. 87.

ture found in a Passional of the State Library in Munich which was composed and illuminated for Isabella of Bavaria, Queen of France. Two Jews are pictured on the gallows, suspended in the traditional German manner by the neck, and beside them two dogs and two monkeys, all the animals strung up by the hind legs. This picture seems to be unique. Monkeys, certainly not easily obtainable in mediaeval Central Europe,[44] are here employed as a symbol of ignominy in the highest degree. They symbolize the fact that, as the monkey is like man only in figure, the Jewish delinquent, too, has nothing in common with a human being except the human figure. In addition they are biting the felons, thus manifestly increasing their suffering (Plate 2).

The monkey is neither an ancient Germanic nor a mediaeval German symbol. We are immediately reminded of the Roman punishment for the crime of parricide, the *poena cullei,* described and interpreted as to its symbolism in Johann von Buch's *Gloss* on *Sachsenspiegel,* II, 14, 2. It is evident that the monkey as a symbol of ignominy, was borrowed from Roman law.[45] The borrowing of a symbol which in Roman law was connected with the penalty for parricide, and its employment in executing Jews, was possibly suggested by the old Christian doctrine that likened the Jew to the fratricide Cain. Obvious though this association of ideas is, no narrative source can be adduced in support of it.

Another symbol of ignominy, ancient as well as mediaeval, is the dog.[46] This animal likewise had a function in the Roman *poena cullei,* also discussed in Buch's commentary. It was even better fit for and more readily adopted by mediaeval criminal law. What may have survived of ancient sacrificial

[44] In actual executions cats took the place of monkeys; cf. Fehr, p. 87; His, I, p. 500.

[45] This opinion is universally accepted with regard to the transformation of the penalty of *Säcken* into a punishment identical with the ancient *poena cullei;* cf. His, I, p. 500; Amira, *Todesstrafen,* p. 142; Fehr, pp. 87, 99.

[46] Cf. C. G. Haltaus, *Glossarium Germanicum medii aevi,* col. 974 ff. (*"contemtissimum animal"*); J. Grimm, *Deutsche Rechtsaltertümer,* passim; Hanns Bächtold-Stäubli, *Handwörterbuch des deutschen Aberglaubens,* IV (Berlin-Leipzig, 1931-32), pp. 487 ff.

reminiscences in criminal practice or popular consciousness received new meaning and symbolism. It must be borne in mind that in the fourteenth century Roman-law ideas began to penetrate strongly into German legal thought; a whole literature sprang up intended to harmonize the native law with the Roman and Canon legal systems, and to popularize the foreign concepts of law throughout Germany. This adoption or "reception" of Roman law,[47] first restricted to juridical thought and literature, gradually outgrew the "theoretical" stage and, in the fifteenth century, became transformed into a powerful movement, the "practical reception" of Roman law. The final result was the victory of the foreign over the autochthonous Germanic law. The anti-Jewish Roman legislation as laid down in Justinian's Code, now becoming recognized as law valid in the German Realm, was an important factor in the deterioration of the legal status of the Jews.[48] The influence of Roman law was particularly effective in those legal domains in which the mediaeval development of German law had reached a phase close to that of the codes of the Roman Empire. Here the temptation was great to adopt mechanically institutions or individual regulations of the Roman legal system. This is exactly what happened to a great extent in the field of mediaeval Jewry-law. The decades following the era of the Black Death, with its repercussions on the political and economic status of the German Jewish community, were particularly receptive to such developments.

Making the punishment for Jewish offenders very painful and extremely degrading was only one of the numerous means employed by legislation and legal practice in the later Middle Ages to deprive the Jews not only of their legally recognized status, but also of the recognition of their human dignity. The symbolism of dog and monkey, as a

[47] Cf. Eberhard von Künssberg's article "Rezeption," in *Handwörterbuch der Rechtswissenschaft*, V (Berlin-Leipzig, 1928), pp. 128 f., with bibliography.

[48] This fact, so far completely overlooked by research, will be treated extensively in the present writer's forthcoming book, *Jewry-Law in Mediaeval Germany in the Light of Law-Books and Court Decisions.*

special feature in the execution of Jewish felons from the end of the fourteenth century on, may well be ascribed, even if only indirectly, to the revival of animal symbolism in Germany stimulated by the reception of the Roman law.

Dogs were particularly appropriate, indeed, as attributes for Jewish criminals, from another point of view also. Although economic motives had already begun to be felt, it was still the difference in religion which, even in the second half of the fourteenth century, dominated the relationships between Christians and Jews and determined the attitude of Christian Europe toward this group of unbelievers. As is well known, the dog, being an unclean animal, was in biblical and rabbinical literature regarded as the embodiment of shamelessness and wickedness, hence a symbol of contempt.[49] The dog is second only to the pig, the popular motif most commonly employed in mediaeval art for the delineation of Judaism in the image of a sow.[50] According to some mediaeval laws, the Jew was required to stand on a bloody pigskin, while taking an oath, a part of the degrading ceremonial particularly devised for Jews.[51] Jewish criminals were at times dragged on a pig's skin to the place of execution.[52]

Viewed in this light, does it not appear logical that dogs should also have been employed symbolically in the punishment of Jewish offenders?

This practice may well antedate the reception of Roman law in Germany, just as the pig symbolism can be traced back to an earlier period, though it became particularly widespread only at the close of the Middle Ages.[53] But it was

[49] Cf. Kaufmann Kohler's article "Dog," in *Jewish Encyclopedia*, IV (New York, 1903), p. 631.

[50] Cf. David Kaufmann, *Gesammelte Schriften*, I (Frankfurt a. M., 1908), pp. 161 ff.; Joseph Reider, "Jews in Medieval Art," in *Essays on Antisemitism*, ed. by K. S. Pinson (New York, 1942), pp. 49 ff.

[51] See *supra*, note 11.

[52] His, I, p. 366 note 4.

[53] This fact was correctly observed already by H. Otte, *Handbuch der kirchlichen Kunstarchäologie*, I, fifth ed. (Leipzig, 1883), pp. 494 f., quoted by Kaufmann, *op. cit.*, I, p. 165, namely, "dass das Bild sich sehr weit verbreitet hatte und besonders am Ausgange des Mittelalters sehr beliebt war."

actually this custom that supplied a connecting link with the revivified animal symbolism of Roman law. It was, moreover, completely in line with the whole ideological make-up of the fifteenth and sixteenth centuries, with their increasing application of torture and fantastic intensification of punishments,[54] to transform the hanging of a culprit by the feet between dogs from a general aggravation of punishment into a penalty specifically intended for and applied to Jews. It is characteristic, indeed, that this development found its completion in the second edition of Ulrich Tenngler's *Laienspiegel* (1511),[55] that "encyclopedia of the universal secular law," which represented a harmonization of Roman, Canon and German law, and in which an extensive section from the notorious *Malleus Maleficarum* was incorporated.

The practice of hanging Jews in particular upside-down together with dogs, as observed in those late centuries, is an expression of the contemporary mind and has as little to do with ancient sacrificialism as with contemporaneous superstition.[55a] To seek a basis for this custom in the resentment of Jewish "otherness" would be to project modern

[54] Cf. Fehr, p. 77 f.; Hans Fehr, *Massenkunst im 16. Jahrhundert* (Berlin, 1924), pp. 22-37. Fehr stated in the latter work, p. 35: "Die bis an das Perverse grenzenden grausamen Executionen erklären sich nur aus der Dämonologie der Zeit. Der Verbrecher war ein von Dämonen besessener Mensch. Die zugefügte Qual richtete sich daher weniger gegen ein Wesen von unserem Fleisch und Blut, als gegen den boshaften Dämon, der den Menschen zum Verbrechen angetrieben hatte." An excellent illustration is the figure of the devil inciting Hans Judmann, in the *Schandgemälde* (Plate 3). Cf. also the recent publication by Joshua Trachtenberg, *The Devil and the Jews: The Mediaeval Conception of the Jew and its Relation to Modern Antisemitism* (New Haven, 1943).

[55] *Laienspiegel*, second ed. (Augusta Vindelicorum, 1511), fol. CCXVI: "Den Juden zwischen zwayen wütenden oder beyssenden Hunden zu der gewonlichen richtstat ziehen *vel* schlaiffen mit dem strang oder ketten, bey seinen füssen an ainen besondern galgen zwischen die Hund nach verkerter mass hencken, damitt er also vom leben zum tod gericht werd, in seinen plinden iudischen unglauben;" quoted in Haltaus, *Glossarium Germanicum Medii Aevi*, col. 975.—On the *Laienspiegel*, see Richard Schröder and Eberhard von Künssberg, *Lehrbuch der deutschen Rechtsgeschichte*, seventh ed. (Berlin-Leipzig, 1932), pp. 965 f.; on the *Malleus Maleficarum*, *ibidem*, p. 856; Hans Fehr, "Gottesurteil und Folter," in *Festgabe für Rudolf Stammler zum 70. Geburtstage* (Berlin, 1926), pp. 242 ff.

[55a] Cf. Fehr's article "Hundtragen," in *Handwörterbuch des deutschen Aberglaubens*, IV, p. 502.

racial theories into mediaeval times and thought. There is no basis for anything of the sort in the pertinent source material of the Middle Ages.

VI

APPLICATION AND EXTENSION OF THE "JEWISH EXECUTION"

That the "Jewish execution" in its specific form unfolded only within the general development of criminal law and procedure, is plainly visible also from the range of its application.

It has already been emphasized that in mediaeval criminal law hanging on the gallows, in itself a particularly ignominious form of death penalty, was exclusively imposed for theft. There is not one exception to this rule among all the instances recorded in connection with the "Jewish execution." All Jewish offenders executed by hanging by the feet with attendant dogs are explicitly designated as thieves. The execution of Jewish thieves as pictured in the illuminated manuscripts of the *Sachsenspiegel* and described in the *Brünner Schöffenbuch,* namely hanging by the neck, the head covered with a Jew's hat, is historically the original form of punishment. It would mean distorting the historical evolution described to regard the archetype as a "variation from the standard form of the 'Jewish execution.' " The latter is rather an intensification of the once general method of executing thieves. Filling the hat with boiling pitch that would course over the culprit's body, was undeniably an intensification of the punishment.[55b] The same end was attained by

[55b]It probably had its historical origin and finds juridical justification in some of the curses frequently recurring in medieval Jewry oath formulae: "that sulphur and pitch may rain upon your neck as it rained over Sodom and Gomorrah; so that the same sulphur and pitch shall pour over you as at Babylon overwhelmed two hundred men or more;"—"so daz swebel und daz pech uf dinen hals müeze regnen, das über Sodoma und über Gomorra regente; und so daz selbe swebel und pech dich überrinnen müeze, daz ze Babylonia überran zwei hundert man oder mer;" from the Jewry oath formula in *Schwabenspiegel* (*ca.* 1275), ed. Gengler (*supra,* note 14), art. 215. The practice mentioned here is probably the historical basis and explanation

hanging upside-down, which prolonged the death agony for days. Suspending dogs, finally, augmented the suffering still more[56] and at the same time heightened the element of ignominy and ridicule to a still greater degree,[57] thus bringing the intensification of the punishment to a climax. Originally suspending dogs, with this aim, was employed as universally as the hanging of the thieves themselves, neither punishment being restricted to Jewish culprits. They were imposed on Christian as well as Jewish felons when special intensification and humiliation were to be inflicted. It would be a reversal of the historical development described here if an "extension" to Christian culprits of the "Jewish execution" in its specific final form were construed at as early a date as the middle of the fourteenth century. No such example is found in the sources.

An actual extension of the "Jewish execution" took place only in the fifteenth century, after it had assumed the character of a typical punishment for Jews. In the cases to be presented, the attendant circumstances and characteristic features remove the slightest doubt that they were in fact an extension of the "Jewish execution." But this extension was merely figurative.

for the Yiddish proverb, "Auf dem ganow brent dus hitel." This seems worthwhile noting since no acceptable explanation of this widespread proverb has been offered as yet. In particular, the anecdote related by Ignaz Bernstein, *Jüdische Sprichwörter und Redensarten*, second ed. (Warsaw, 1908), p. 55, *s. v. Ganow*, no. 5, does not explain its meaning in a satisfactory way.

[56] That this was the purpose is sometimes explicitly pointed out, as in the case reported from Dortmund in 1486, where two especially vicious dogs were used "to deliver the Jew to death by biting;" Dietrich Westhoff's Chronicle, in *Die Chroniken der deutschen Städte*, XX (Leipzig, 1887), p. 349:

> und dat hovet nach der erden hangende an die galgen gehefftiget, neven im twe levendige grote hunde in secker up gehangen, und als dieselvigen ouch van den bodel gevestiget und gehangen hebben, die secke affgethogen, umb den juden mit bitten tom dode to brengen, des aver nuwerlde to Dortmunde gescheen was.

A picture pertaining to this case is found in Detmar Mülher, *Grosse Chronik von Dortmund* (1616), p. 411.

[57] Dietrich Westhoff's Chronicle (see note 56) concludes the story in this characteristic manner: "do hengen die drei hunde tosamen am galgen und ok ires levens ende genommen"—"there hang the three dogs together on the gallows and also ended their lives."

The reference here is to a practice customary in the mediaeval law of contract, applied to violators of civil obligations. In case of default the creditor, whether so empowered by contractual stipulation or not, could publicly attack his debtor's honor in word and picture. The defaulter was derided in lampoons and caricatures and proclaimed a rogue or *Schelm*. Hence this procedure was called *Schelmenschelten*.[58] The honor of the debtor was forfeited to the creditor by his failure to meet his obligations. The injured creditor composed a *Scheltbrief* full of defamations and insults of the defaulting debtors or sureties, who were designated as lawbreakers and without honor. The satirical posters expressive of this practice picture the debtors in shameful and humiliating situations, particularly undergoing execution, as on the gallows, on the wheel, at the stake, or in the pillory.

In Germany—but not in Poland—Jews enjoyed the right to make use of this powerful means of forcing debtors to meet their obligations. In the Munich State Archives there is preserved a satirical picture of this kind directed by the Jewish merchants, Saydro Straubinger and Isaac of Regensburg, against their defaulting debtor, Hans von Judmann zu Affeking (about 1490, reproduced on Plate 3).[59] In contradistinction to the usual way of picturing the debtor, namely, hanged on the gallows by the neck, Hans von Judmann appears suspended by the feet. The Jewish creditors, then, made use for their *Schandgemälde* of the kind of execution applied at that time particularly to Jewish thieves. This was intended as an especially cutting humiliation for a member of the Christian nobility. Dogs do not, however, appear in the picture. Beside the nobleman's figure his coat of arms is also suspended upside-down from the gallows. In its middle field it shows three silver Jew's hats, and it is surmounted

[58] Cf. G. Kisch, "Ehrenschelte und Schandgemälde," in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, German Abt., LI (1931), pp. 514-520, including full bibliography.

[59] The reproduction is taken from Otto Hupp, *Scheltbriefe und Schandbilder, ein Rechtsbehelf aus dem 15. und 16. Jahrhundert* (Schleissheim near Munich, 1930), p. 23.

by a fourth of very large size. The Jew's hats as well as the name Judmann indicate the Jewish origin of the incriminated nobleman,[59a] possibly another reason for the figurative application of the "Jewish execution."

Among the pictures of this kind which have come down to us there is another one showing the debtor hanged by the feet, with two ravens or crows.[60] This time the effigy represents no lesser a person than Landgrave Ludwig I of Hesse. His creditor was no Jew, but a member of the Christian nobility, Johann von Löwenstein, who issued this *Schandgemälde* on November 2, 1438. The reason why the "Jewish" manner of execution with inverted coat of arms was applied in this case can be gathered from the accompanying lampoon. It compares the defaulting debtor to Judas Iscariot and says:

> The wind, which went forth from Judas when he hanged himself, has beaten against the Landgrave's eyes and ears, so that he neither saw nor heard his princely honor.

There can be no doubt that both *Schandgemälde* described represent real cases of a figurative extension of the "Jewish execution" to Christian felons.[61]

No extension, however, is demonstrable with regard to felonies under threat of hanging, overriding the general principles of mediaeval criminal law by the merely arbitrary acts of capricious princes. The "Jewish execution" never was transformed into a "general punishment" of indiscriminate application to almost any crime.

It can be observed, however, that a combination of

[59a] On the Christian name *Judeus* indicating Jewish origin, cf. Otto Stobbe, *Die Juden in Deutschland während des Mittelalters in politischer, socialer und rechtlicher Beziehung* (Braunschweig, 1866), p. 268 f., n. 156.

[60] Reproduced in Hupp, *op. cit.*, p. 19.

[61] The fact that in the second half of the fifteenth century hanging upside-down was still in use for Christian felons, is interestingly demonstrated by a *Schandgemälde* on a printed broadside of 1461. It pictures a knight, Nicholas Herr von Abensberg, who was accused of having stolen a gold chain worth three thousand florins from Benigna of Tanndorf. A reproduction is found in Otto Hupp, *Wappenkunst und Wappenkunde* (Munich, 1927), p. 31. Another picture of a Christian felon, a knight, who, in the sixteenth century (1576), was first hanged upside-down and then executed by the sword, in Fehr, *Das Recht im Bilde*, p. 81, no. 91.

hanging and burning is pictured on broadsides of the sixteenth and seventeenth centuries. This, as a rule, must be due to the fact that the thief was found guilty of an additional crime under the penalty of death by fire. In the Middle Ages death by fire was the penalty for arson and, particularly from the thirteenth century on, for heresy and apostasy.[62] The denial of Christianity by a convert or, tantamount to this, the return of a baptized Jew to his ancestral faith was regarded as a particular instance of heresy.[63] This was, for example, the additional charge against the thief Engelberger of Vienna, a baptized Jew who, in 1642, was executed by hanging by the feet and simultaneous burning. His crimes are clearly specified in the caption of the often-reproduced broadside on this celebrated case in Austrian criminal history.[64] It reads:

> A very memorable *Historia* of a Jew baptized but relapsed again from Christianity who, together with two other Jews, was seized for theft in Vienna and brought to justice.

The picture shows the other two Jewish culprits on another gallows hanged by the neck. The juridical reason for Engelberger's so-to-say double execution was his double crime: theft and heresy by apostasy. His punishment was to be particularly humiliating: hence his suspension by the feet in contrast to the two Jewish thieves hanged by the neck. The broadside does not mention, however, that he had also committed blasphemy.

According to Canon law as well as mediaeval German law blasphemy as such was threatened with various kinds of

[62] Cf. His, II (1935), pp. 18 ff.; Amira, *Todesstrafen*, pp. 158 ff., 219 f.

[63] Cf., e. g. *Schwabenspiegel*, ed. Lassberg, art. 262; ed. Gengler, art. 214, 8: "And if he [the baptized Jew] denies the Christian faith, and will not cease therefrom, he shall be burnt as a heretic."

[64] Georg Liebe, *Das Judentum in der deutschen Vergangenheit* (Leipzig, 1903), p. 104: "Eine sehr denckwürdige Historia von einem getauften, doch wider vom Christenthumb abgefallenen Juden, welcher wegen Diebstal sampt zweyen andern Juden in Wien ergriffen, und justificirt worden." In once more reproducing this broadside, Glanz p. 8/9, omitted this caption necessary for juridical understanding.

discretionary punishment, but not with death at the stake.[65] No extension of the "Jewish execution" to this crime nor a generalization of the penalty for heresy could have taken place. It was only the later Roman law which, in *Nov. Just.*, LXXVII, c. 1, § 1, 2, had placed blasphemy under the penalty of death. The Christian-Roman tendency became influential in Germany through the early romanizing jurisprudence. In the Stendal *Gloss* on *Sachsenspiegel*, III, 7, 3, a commentary in Latin, composed after 1374 and before 1434, one reads:[66]

> If then a Jew perpetrating a crime against a Christian is punishable, much the more so, if he blasphemes God, he shall be penalized by lawful process through the secular power. And since God is great and venerable above all, hence injury to Him should be considered the greater. . . . Hence it is graver to violate the eternal than the temporal Majesty. . . . Wherefore such a blasphemer is not undeservedly to suffer punishment in head and life through the secular power, according to imperial law. . . .

The pertinent passage, from which this argument was taken, *Nov. Just.*, LXXVII, c. 1, §§ 1, 2, is however not quoted. Secular legislation accepted this train of thought as late as 1530 and 1532. The *Reichs-Polizeiordnung* of 1530, tit. 1-3, introduced the death penalty for blasphemy, but only for relapse after two previous convictions. The *Constitutio Carolina Criminalis* of Emperor Charles V, in its article 106, added the death penalty to the discretionary punishments for blasphemy enumerated there.[67] It was therefore, insignificant local exceptions notwithstanding, that as late as 1530 this severest form of punishment for blasphemy became generally applicable also to Jews. From then on apostasy and heresy by relapse into Judaism were no longer the only offenses against religion under capital punishment.

[65] Paul Hinschius, *System des katholischen Kirchenrechts*, IV (Berlin, 1888), p. 793 note 3; V (1895), pp. 699-701; Hinschius, article "Gotteslästerung (Blasphemie)," in *Realencyklopädie für protestantische Theologie und Kirche*, VII, third ed. (Leipzig, 1899), pp. 31-33; His, II, p. 1 ff.

[66] *Sachsenspiegel*, ed. Augsburg, 1516.

[67] Joseph Kohler, *Die Carolina und ihre Vorgängerinnen*, I (Halle a. S., 1900), pp. 57 f.

Jews who, on the point of execution, in order to save their lives professed a desire for baptism or actually received it, might have become guilty of blasphemy upon learning that their conversion had profited them nothing but the omission of the special degradation appointed for Jews.[68] From the sources, however, it seems that Jewish offenders often remained steadfast in their faith. Cases of conversion are also related, as well as of mercy granted on the intervention of high ecclesiastical or secular dignitaries.[69] It would make an interesting chapter in the history of civilizaton to describe the activities, intentions, and results of ecclesiastical assistance in the process of execution. Investigating the development of the prerogative and practice of pardon would provide another fascinating contribution to the history of law and of human tragedy and heroism. These tasks are, however, outside the scope of the present essay.

[68] Cf. e. g., Sigismund Hosmann, *Das schwer zu bekehrende Judenhertz*, second ed. (Helmstädt, 1701), pp. 14-21; Heinrich Conrad, *Das Judenbuch des Magister Hosmann*, second ed. (Stuttgart, 1919), pp. 95 ff., 106, 109 ff.

[69] Cf., for the present, Glanz, pp. 4 f., 11, 13 f.; also, Augusta Steinberg, *Studien zur Geschichte der Juden in der Schweiz während des Mittelalters* (Zürich, 1903), pp. 122 f.

THE HEBREW HERITAGE OF MEDIAEVAL CHRISTIAN BIBLICAL SCHOLARSHIP*

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THE contents of the Hebrew Scriptures were an integral part of Christian thought practically from the beginning of Christianity. The product of Jewish study of the Scriptures in the centuries before Christianity was also to become a part of the Christian heritage. The whole field of rabbinic literature was the outgrowth of those studies. Jewish exegesis may rightly be termed *the exposition of Judaism, with Scripture as its base.* The Christians inherited the Scriptures with a vast commentary which had grown up out of a *civilization,* and therefore the Christian civilization would inevitably meet *Scripture and Talmud* in their entirety. The Jewish exegetical points in the New Testament,[1] and the presence of *Midrash* and *Haggada* in the writings of the Church Fathers,[2] are too well known to call for comment—except to note that the Christians never revised the New Testament or the Church Fathers. There was no castigation or expurgation of the Church Fathers because of their many references to the materials of the Hebrew heritage. We use the word "heritage", because no better word seems available. For it is not the matter of language merely; it is every connotative and cultural concomitant that it bears.

What was the Old Testament to the Christian? It was still a book "outside," to a certain degree. Yet we must say

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[1] See G. F. Moore, *Judaism in the First Centuries of the Christian Era,* I, (Cambridge, 1927), 249 f.

[2] See S. Krauss, "Church Fathers", *Jewish Encyclopedia,* IV 82; L. Ginzberg, *Legends of the Jews,* V, p. IX; in vols. V and VI, Ginzberg refers to about eight hundred passages in the Church Fathers together with their parallels in the Talmud and Midrash.

this with caution. Christians, after all, did feel that it was theirs; they had made it theirs; they believed that God had given it to the world and that it was intended for them. The Old Testament, we must bear in mind always, was *Christian* Scripture for the mediaeval Christian expositors. Many of the Christian writers seem perfectly at home in the Old Testament, they show a deep naturalization, even in the Hebrew word and idea, as *e. g.*, St. Jerome (331-420), or Hugo of St. Victor (d. 1141), or Andrew of St. Victor (d. 1175), or Nicolas de Lyra (1270-1349). Whatever our opinion of the theological view of the Old Testament as a "preparation," in the historian's purview it could not be a "preparation" only. If it were *only* a "preparation," it would never have reached the full flower of cultural truth in Hugo Grotius' application of it to universal culture and law, John Selden's application of it to the universal law of nature, and John Milton's universal epic of theology. But one must not deny this naturalization of culture in *mediaeval* men. The Old Testament was not merely a story-book for them, a *Historienbibel.* It was a book of culture, because it was God's word. So in treating of this Christian interest, and of Christian reliance upon Jews and upon Hebrew books for light on the Scriptures, one should not do so in self-praise, with a feeling of priority on the part of the Jews, as if they had doled out morsels to the Christians.

On this, one word more. Augustinus Steuchus Eugubinus (1496-1549), an Italian Catholic exegete, said that Rashi (*ca.* 1030-1105) had taken almost all of his explanations of Scripture from St. Jerome (!).[3] It is unnecessary to expatiate here on what led this scholar to such a conclusion. Steuchus did not know, or could not know, that

[3] At the date of this writing, the present author, after much searching, had not yet obtained the exegetical works of Augustinus Steuchus in any of the American libraries. He has therefore depended, in this case, upon secondary sources. It is interesting to note here that Azariah dei Rossi in his *Me'or 'Enayim* quotes Steuchus eleven times. See L. Geiger, *Das Studium der hebräischen Sprache in Deutschland vom Ende des 15. bis zur Mitte des 16. Jahrhunderts* (Breslau, 1870), p. 83, for the reference to Steuchus' view that Rashi had gleaned most of his information from St. Jerome.

similarities do not of themselves prove actual contacts, that the historical evidence for relations always lies first in common material over a long period of time, and if this is wanting, all comparisons may prove to be fictitious. In a somewhat similar manner, contemporary scholarship[4] reasons uncritically when it concludes much too rapidly that a *haggada* or *midrash* found in William de la Mare (*fl.* 1280), or in Hugo, or in Nicolas de Lyra necessarily has its immediate source in the *Talmud* and *Midrash,* or in Rashi, Ibn Ezra, or Kimhi. Throughout the Middle Ages, certainly from the time of Gregory the Great (600), there were many *haggadot* and *midrashim* which had become part of the *common* fund of thought of Jews and Christians. The halakic and haggadic *Midrash* had supplied early approaches to an exegetical understanding of the material that became the heritage of the Christian world. The multitude of instances that can be adduced in the long course of this history shows a thoroughly fundamental dependence. If one may resort to a figure of speech, it could be said that in the nature of the case the Jewish stream took its course on a higher plateau (partly because it has the older), and released its rivulets that they might run down into the other stream. This volume of thought may be conceived of also as the waters coursing from the mountain tops and higher plateaus, always seeking level ground and creating the great rivers, the *common* streams. Jews and Christians did not encroach upon each other's bounds; they simply followed a common stream, on different banks of the river. Nevertheless they call back to each other. Judaism, in its diaspora, had the usual problems that arise among all moving cultures. And though it was more tenacious of its ideas and better fortified with ordinances, it should properly be said that it was not wholly aloof and hedged about. It gave and it received. It received the need and the impulsion to enlarge and clarify

[4] See Beryl Smalley, *The Study of the Bible in the Middle Ages,* (Oxford, 1941), p. 78, n. 6; cf. the present writer's extended review of this book, "Jewish 'Influence' on Christian Biblical Scholars In The Middle Ages," *Historia Judaica,* IV, (1942), p. 167.

its own field of ideas. In the later Middle Ages distinguished Jewish scholars knew the Latin text of the Vulgate[5]—though for pure polemical purposes especially, it is true. The *Pardes*, the four-fold method of interpretation among the Jews of the *later* Middle Ages, was an adoption of the four-fold scheme of the Christians,[6] though the seeds were already present in the earlier Jewish development. For it is to be remembered that at the very basis of Jewish and Christian exegesis there lay those necessities that would produce common procedures in interpretation.

Of course, the Latin Vulgate is naturally the center of this heritage in the West. In how far were mediaeval Christian scholars dissatisfied with the Vulgate as a version? Here also we must proceed cautiously.

St. Jerome's conviction about the inadequacies of the LXX, as a version, compelled him to take a further step in the direction of the original material and even to reject the tradition concerning the supernatural and prophetic inspiration of the Septuagint translation. In his "Preface to the Pentateuch" he says:

I do not know who the author was who first invented the story of the seventy cells at Alexandria in which the translators, completely separated from one another, wrote the same things. Aristeas . . . and Josephus, long after, relate nothing of the kind. They wrote that the Seventy, assembled in one basilica, consulted together, and did not prophesy. For it is one thing to be a seer, another to be a translator. The former, through the Spirit, foretells things to come; the latter must use his learning and facility in speech to translate what he understands.[7]

[5] For R. Samuel b. Meir's references to the Latin Vulgate, see the *Pentateuch Commentary of R. Samuel b. Meir, ed.* David Rosen, (Breslau, 1881), pp. 72 and 111 (*Gen.* 49:10 and *Exod.* 20:13 respectively). R. Joseph Bekor Shor was well acquainted with the Latin Bible; see S. Poznanski. Introduction to *The Commentary of Eliezer of Beaugency on Ezekiel and the Twelve Minor Prophets* (Warsaw, 1913), pp. LXI, LXIX f. It is generally known that R. Yom-Tob Lipmann Mühlhausen of Prague, (*ca.* 1400), the author of the *Sefer Nizzahon*, was well acquainted with the Latin Bible, both the Old and the New Testament texts.

[6] W. Bacher, "L'Éxégèse biblique dans le Zohar," *REJ.* XXII (1891), 38.

[7] *Patrologia Latina*, 28:150 f. Et nescio quis primus author, septuaginta cellulas Alexandriae mendacio suo extruxerit, quibus divisi, eadem scriptitarent. Cum Aristeas . . . et multo post tempore Josephus, nihil tale retulerint. Sed in una basilica congregatos, contulisse scribant, non prophetasse. Aliud est enim

This excerpt from Jerome is generally well known. But scholars seem to have missed the full implication of Jerome's statement. That Jerome subjected the legend of the inspiration of the LXX to rational criticism is clear. But Jerome also implies: "My translation is likewise imperfect. The Latin is an imperfect vehicle. I am also not a seer; I am a translator. For the spirit we must go back to the Jews." In the course of his work Jerome seems to grow sensitive, rightly sensitive, on this point, lest some should not see that he was not ascribing a linguistic and exegetical finality to his version. So he wrote a great deal around it for this purpose. If one reads St. Jerome's letters[8] to St. Augustine bearing on this question, and his Prefaces,[9] one comes away with the impression that he is uneasy about his Latin version. He is saying in effect: "Do not lay aside the original. Do not take this Latin version as if you can deduce every exegesis from it. It is a Latin instrument for the West." Were this not so, would Jerome have written his several Commentaries? And as my teacher, Professor Hatfield, has often said to me: "Jerome almost implores people not to stop with his Latin instrument." Of course, there were ups and downs; at times it was more pronounced than at others. Jerome left a responsibility, a task. Thus, when the time came for Roger Bacon, in the thirteenth century, to speak, and when he appealed *against* the *Latini*[10] (that is, those who

vatem, aliud esse interpretem. Ibi Spiritus ventura praedicit, hic eruditio et verborum copia, ea quae intelligit transfert. Irenaeus, Justin Martyr, Epiphanius—and Augustine among the Latins—adhered to the notion of the divine inspiration of the seventy translators.

[8] J. Schmid, SS. *Eusebii Hieronymi et Aurelii Augustini Epistulae Mutuae*, (Bonn, 1930), pp. 43, 70 ff., and p. 10 of the "Prolegomena," (Vol. 22 of the *Florilegium patristicum tam veteris quam medii aevi auctores complectens*, edited by B. Geyer, and J. Zellinger).

[9] See especially the statement in the Preface to *Job*, *PL* 28:1084, and in the Preface to *Proverbs*, *Ecclesiastes*, and the *Song of Songs*, *ibid.*, col. 1245: Si cui sane Septuaginta interpretum magis editio placet, habet eam a nobis olim emendatam. Neque enim sic nova cudimus, ut vetera destruamus.

[10] See J. H. Bridges, *The 'Opus Majus' of Roger Bacon* (London, 1900), I, 66 f., and *Fr. Rogeri Bacon Opera quaedam hactenus inedita, ed.* J. S. Brewer (London, 1859), I, 33, 88-93. Bacon stressed, again and again, that the ignorance of the original languages was the great cause of error and confusion in theology and philosophy.

depend on Latin translations, of Scripture or of philosophy), he was not disputing any dogma. Roger Bacon had a perfect right to say this without being charged with heresy. He was not arguing against something official; he was talking about a habit.

And for the spirit the Christians did go back to the Jews—to Jewish books and to Jewish persons. Such a process moves in two directions: there is the appreciative form, and there are the negative, critical results. In either case, it is an expression of basic interest. In acrimonious situations (social, political and economical), and in disputatious times, Jews and Christians turn bitter toward each other. But when this acrimony is not present, we are led to measure the magnitude of this cultural interchange. There was, for example, the question of the Messiah. We could make a book out of the Messianic issue alone—nay, volumes. A Jewish scholar, some years ago, wrote a valuable book of 586 pages on the interpretation, in antiquity and in the Middle Ages, of one passage in Scripture—*Gen.* 49:10, "The sceptre shall not depart from Judah etc., *ad ki yabo shilo.*"[11] But this procedure of tracing the controversial points only—however valuable as a contribution to the history of Messianic exegesis—would not let us see the whole. The historian must balance the controversial and the positive.

The opposition, of course, is real. So the question arises, How can we believe that this Hebrew exegetical heritage had any significance in face of the consideration given to the problem of the "Gentiles" (Jews and Arabs) by the Fourth Lateran Council (1215) and in face of the outbreaks against the Talmud in Paris, over a period of years in the middle of the thirteenth century? Historically speaking, however, one must remember that isolation is dangerous. We must not isolate an incident—for example, the burning of the Talmud and Rashi. The habit of isolating events needs correction, *when correctives are present.* At the very time of the disputation

[11] Adolf Posnanski, *Schiloh, Ein Beitrag zur Geschichte der Messiaslehre —Die Auslegung von Genesis* 49, 10 *im Altertume bis zu Ende des Mittelalters* (Leipzig, 1904).

of 1240, the rabbis in Paris were teaching priests Hebrew, the rabbinic commentaries, and undoubtedly Rashi. During the course of the disputation itself, Rabbi Jehiel of Paris, the Jewish spokesman, says: "We teach the Scriptures to the Christians, for there are ever so many priests who know how to read a Jewish book."[12] About fifty years before this outbreak, Hugo of St. Victor and Andrew of St. Victor, and their followers, were using Rashi and his school normally as part of their exegetical method.[13] Thereafter a decline seemed to set in. The question here then is: Did the general anti-Jewish attitude operate against its learning as well as against the Jewish people in the first half of the thirteenth century to produce a decline in the continuation of the Hebrew heritage? That there was a rising and indiscriminate animosity can be said almost without question. The burning of the Talmud was an "agitation" something like the agitations of our time. But one feels that he cannot pass from the Victorines to the evidences of a renewal of intellectual relations merely by saying this. It is certain that such a renewal did occur in the second half of the thirteenth century as we see in the *Correctoria,* the school of Roger Bacon, and in the *Pugio Fidei.* The members of the school of Roger Bacon, within one generation after the burning of the Talmud and Rashi, studied, borrowed and utilized the Rashi materials with great respect for their worth.[14] These movements may seem, at first, to have concentrated on the language, text and meaning of the Scriptures. But after all this was only a renewal of an old stream

[12] *Vikuah Rabbenu Yehiel mi-Paris, ed.* Grünbaum (Thorn, 1873), p. 10: ומלמדים תורה לגוי שהרי יש כמה גלחים יודעים לקרא בספר יהודית. F. I. Baer, "The Disputations of R. Yechiel of Paris and Nachmanides," *Tarbiz,* II, p. 176, is of the opinion that the Hebrew account of the Parisian disputation was actually written in the days of the agitation itself in order to bolster up the spirits of the Jews; he also believes that the Jews were familiar with the Latin account of the charges levelled against the Talmud.

[13] Smalley, *op. cit.,* pp. 78 f. and 127-144. The wide use which Hugo and Andrew made of the Jewish exegetical materials leads us to believe that they possessed a *"yalkut" perushim* of the members of the "school of Rashi." See also H. Hailperin, *Historia Judaica,* IV (1942), p. 168.

[14] S. Berger, *Quam notitiam linguae hebraicae habuerint Christiani medii aevi temporibus in Gallia,* (Nancy, 1895), pp. 32-45.

that seemingly had passed underground for a generation. The *odium theologicum,* however, of the first half of this century, which may seem to indicate a battle-line, did not kill nor even mar the interests which the Christian scholars knew had to be maintained. For while Christians, as in Paris, burned the Talmud, and Rashi, too, they translated rather carefully portions of the Talmud and of Rashi into Latin. And so it seems that even at a time of animosity they were doing the very things which would widen the interests of the next generation, and that toward a more positive and appreciative understanding. One might even go back to the commission appointed by the Christian authorities to examine the Talmud, and remember that the Church and State by simple edict could have forbidden any attention to it whatsoever. This they did not do. It might be argued that the examination of the Talmud was for the single pur- of making the points at issue all the stronger. But the other aspect of the situation must not be ignored. That is to say, a procedure which was carried on for nearly a decade must have had in it something more than merely a negative value; it bore an intellectual challenge, and one may say, a moral challenge, too.

What we have in mind here is to inquire whether Christian scholarship had lost its intellectual interests in the Hebrew background. It might seem so if one were to look only at historical animosities. But one cannot measure the intellectual and personal effects by reference to that alone. In fact animosities such as these sometimes deepen and widen, and even establish desires and demands for further investigation. While inciting prejudice against the Jews, the Christian polemical writings *ensured* the preservation and wider knowledge of the Hebrew heritage. It was in this way that the larger interests of the next century in the Hebrew materials were awakened during the time of the disputations.

Putting the most extreme interpretation, historically, on these acts of the Council and of the University of Paris, the historian must not forget that there were from time to

time reversals of these decrees and alleviations in certain localities, to say nothing of the fact that these decrees at no time seem to have had universal recognition and application. It is not too much at all to say that there was no well-defined program of hatred which *reached into all classes equally*. And one may even say further that scholars in many places and under many circumstances manifested high respect for Jewish scholars and Hebrew materials.

The genial approach to the Hebrew heritage by mediaeval Christian scholars will surprise us. The zeal with which they pursued this field, the fact that many of the scholars sincerely wished to *understand* the Hebrew Scriptures—they wanted to know *wie es eigentlich gewesen*—and the approach of both sides, does credit, when looked at fully enough, to the spirit of men. It is indeed surprising how rarely the mediaeval scholars forgot their manners.

The present writer's special study over a period of years has been in one phase of this field of investigation—Rashi and Christian biblical interpretation, particularly Nicolas de Lyra. Though some special references will be made to Lyra's comments, it is to be understood that we cannot remain sound historically if we lay all our emphasis on the work of Lyra. Lyra looms large because of the long historical prolegomena to his stupendous work and because of its consequences; one has to see all the threads. We feel the magnitude of the man because people after him used him so widely.[15]

We now cite, for example, a typical use of Rashi's Commentary by Lyra which reveals the influence of Rashi on Lyra's *mind*—an instance by no means exceptional, and

[15] After Lyra there was a line of scholars who by constant use of his Commentaries preserved a relationship to the Hebrew heritage; see Hailperin, "Intellectual Relations between Jews and Christians in Europe before 1500, described mainly according to the Evidence of Biblical Exegesis, with special reference to Rashi and Nicolas de Lyra," *University of Pittsburgh Bulletin, The Graduate School, Abstracts of Theses,* (Pittsburgh, 1933), Vol. IX, p. 144. Abarbanel, among the Jews, knew Lyra's commentaries; see his *Commentary on Isaiah* (Amsterdam, 1641), 53 b, col. 2, where he speaks of Lyra as ניקולאו המפרש הגדול שלהם.

to be duplicated almost everywhere in the *Postilla Litteralis*. On *Gen.* 1:7, "And God made the firmament," Lyra, arguing for specific creation, uses and quotes the *words* of Rashi to support his own ideas. The exegesis here hinges upon the difference between the concept, " to *make*" (v. 7) and the concept, "to *create*" (v. 1),—*asah* vs. *bara*. Now Lyra wants to avoid the idea that God had not already included all in the first act of *creatio* (*bara*), and *to show* that "to *make*" (*fieri*) is not to produce a new *thing* but rather a *quality*. Lyra is avoiding the Aristotelian conception, that "making" constitutes an extension of creation, because so it was already made (*bara*) in the work of creation; all that was to be *was* in the work of creation. It is purely a matter of emergence—it is there but has not emerged. Lyra says:

And God made the firmament. This word "*fieri*" (carrying the idea, "to be made") is not to be understood as (adding) "substantial form" (to matter) . . . But it is to be understood as referring to a certain quality of the firmament itself; however, what that quality might be is not expressed in the text. But Rabbi Salomon, the Hebrew, says that it is "solidity."[16]

These words rest on Rashi's exegesis of v. 6, "And God said, Let there be a firmament." Since *rakia* ("firmament") represents the heavens and these were created on the first day, the question arises, How do we understand the statement that they were created on the second day? Rashi, with his eye on the Midrash, says "*yehi*" means "*yithazek harakia*;"

Let the heavens be made firm (strengthen themselves), for although the heavens were created on the first day they were still unstable and they became fixed, [as it were], on the second day by the loud command of the Holy One, blessed be He, when He said, "Let there be a firmament." And that is what (Scripture) [Job 26:11] wrote: "The pillars of the heavens were weak"—the whole of the first day; and on the second day, [ibid.], "they became firm by His loud command"—as a human being is astonished and stands still at the rebuke of those who cause him to fear.[17]

[16] *Biblia Sacra*, I, (Venice, 1588), 25 B. *Et fecit Deus firmamentum, etc.* Istud fieri non intelligitur quantum ad formam substantialem . . . Sed intelligitur secundum aliquam qualitatem ipsius firmamenti; quae autem sit illa qualitas, in textu non exprimitur. Sed dicit Rabbi Salomon Hebraeus quod est soliditas.

[17] Rashi on the *Pentateuch, ed.* Berliner (Frankfurt a. M., 1905), p. 2.

Lyra, continuing his discussion of specific creation, then quotes Rashi again on the meaning of "to make" in "And God *made* the firmament." Here are Lyra's words:

Moreover that in Sacred Scripture anything is said "to be made" when it is according to an acquisition of an *accidental* disposition [and not a *substantial* one] is proved likewise through the statement of Rabbi Salomon, which occurs in *Deuteronomy* [21:12], concerning the Gentile woman taken captive by the Hebrew man, about whom it is said in the same place that if he wish to have her for a wife 'she shall shave her hair and pare her nails,' according to our translation [i. e. the Vulgate]. But the Hebrew text has: 'she shall *make* her nails.' From which it is manifestly evident that "the making of the nails" there is understood as an "*accidental* disposition" of those very (nails).[18]

It is to be noted that Lyra, at this point, is concerned only with Rashi's exegetical treatment of the general idea, "to *make*," and not with Rashi's full comment on *Deut.* 21:12 (i. e., the view of R. Akiba, *Yebamot* 48 a[19]). Lyra is impressed with Rashi's construing of "to make" as meaning "to bring into order."[20]

As is generally well known, Rashi's name appears on almost every folio of Lyra's *Postilla Litteralis super Biblia,* and sometimes several times on a folio. Lyra's task was real, not formal; it was not merely a pedantic inquiry. There are

[18] *Loc. cit.* Quod autem in Scriptura Sacra, res aliqua fieri dicatur, secundum acquisitionem alicuius dispositionis accidentalis, probat idem Rabbi Salomon per illud quod habetur *Deuter.*, de muliere gentili captiva apud Hebraeum virum, de qua dicitur ibidem, quod si voluerit habere eam uxorem, 'radet cesariem suam, et circumcidet ungues suos', secundum translationem nostram. Sed textus Hebraicus habet: 'et *faciet* ungues suos'. Ex quo patet manifeste quod fieri unguium, ibi accipitur pro dispositione accidentali ipsorum. The midrashic idea in the background of Rashi, *Gen.* 1:14 and 24, that *everything was created on the first day,* "except that some things *appeared* earlier and others later," has its counterpart in Lyra, *ad loc., op. cit.,* I, 26 B and 27 F; yet it cannot be said that Lyra depends on Rashi, on *Gen.* 1:14 and 24,—the idea is very old; it is Philonic—Platonic, Rabbinic, and Christian (Origen, Ephraem, Basilius); see in this connection, Ginzberg, *Legends,* V, 34, and *Die Haggada bei den Kirchenvätern,* p. 24. Ginzberg, in the latter work, refers to the relation of Origen's doctrine to the idea in *Tanhuma* (B), beginning of *Genesis,* p. 2,—"on the first day the *whole* world was *created* . . . 'And God said, let the earth bring forth' *Gen.* 1.24,—'bring forth' can refer only to matter made ready from the beginning."

[19] The older source is, of course, the *Sifrè,* ed. Friedmann (Vienna, 1864), 112 b.

[20] Does this use cause one to think also of the English, "to *make* one's toilet," or the German, "sich die Haare *machen?*"

times when Lyra prefers Rashi's interpretation to the translation of St. Jerome, and he says so. For example, on *Joel* 2:23, after citing the opinion of Jerome, Lyra adds: "However in the preceding matter I have followed Rabbi Salomon who seems to me to speak more fitly as far as this is concerned."[21] It is to be noted that Lyra turned to Rashi in the period of the keenest disputations; yet he appeals to him without apology. As one reads Lyra, one senses no polemical intent in his use of Rashi; it seems normal for him to do so. He consistently uses him. He is not drawing out of the archives some authority not known before. It is interesting to note that Lyra explains his reliance on Rashi's judgment because the Jews themselves attribute great authority to Rashi's exegesis. In his conclusion to his *Liber Differentiarum*, Lyra writes:

I want all to know that in the said works [i. e. the *Postilla* and *Liber Differentiarum*], I have not set down anything from the Hebrew out of my head only, but with the direction, and collation (of texts), and counsel of men learned in Hebrew. It must also be understood that among the Hebrews there are many equivocal nouns,[22] and in some places our translation [i. e. the Vulgate] carries one sense, the Hebrews another, just as I have shown in many places in the said works. Likewise the various Hebrew doctors, in expounding the Old Testament, differ among themselves on account of the said equivocation.[23] I, therefore, in such matters, have commonly followed Rabbi Salomon whose *doctrine* is reputed authentic in a higher degree, by modern Jews.[24]

[21] *Postilla Litteralis*, III (Nürnberg, 1485), on *Joel* 2:23: Secundum vero Hieronymum Johel prophetavit tardius, et sic contemporanei fuerent sibi Osee, Esaias, et ceteri illius temporis. In praecedentibus tamen secutus sum dictum Ra. Salomonis *qui videtur mihi quantum ad hoc dicere probabilius.* (The italics are the present author's). See also Lyra's appeal to Rashi for support of his comment on *Joel* 1:1, and in criticism of the view of St. Jerome.

[22] Lyra means, *e. g.*, נעל , a *shoe*, and נעל , *to lock, to bolt;* מורה , *rain*, and מורה , *teacher.*

[23] I have no doubt that Lyra, in commenting on *Amos* 2:6, q. v., had in mind the opposing opinions of Rashi and Kimhi, *ad. loc.*, on the question of בעבור נעלים.

[24] Omnes volo scire quod in dictis operibus nihil posui de Hebraico capite proprio tantum [*var. reading*, ex capite proprio tantum]; sed cum directione et collatione atque consilio virorum in Hebraico peritorum. Sciendum etiam quod apud Hebraeos multa sunt nomina equivoca, et aliquando translatio nostra tenet unum sensum, Hebraei alium,—sicut ostendi in pluribus locis in operibus praedictis. Varii etiam doctores Hebraici, Vetus Testamentum exponendo,

It hardly seems necessary to explain that "doctrine" here means the form and meaning of Rashi's exegesis. Lyra's resort to Jews for information was a normal habit of mediaeval Christian scholars from the days of the Church Fathers.

It is likewise true that to many Christians the Jewish exegetical tradition was also a living tradition which the Christians observed in the daily religious habits of a people in close proximity to them, and whose practices were based, in a certain sense, upon their own real and living exegesis of scriptural precept.[25] The *termini technici* by which the Christian scholars point to the Jewish materials as their source of information represent a freedom of phraseology and of reference. *In Hebraeo habetur, in Hebraeo, Hebraei dicunt, Hebraei putant, aiunt Hebraei, tradunt Hebraei, narrant Hebraei, secundum Hebraeos,* etc. etc., may have more than one meaning as to the actual source of information. They may mean what is said in Midrash and Talmud; or what Jerome or some other Church Father attributes to Jews; or what the *Glossa Ordinaria* quotes as a Jewish tradition from the Church Fathers; or what Rashi says, based on the Midrash; or what some member of Rashi's school says; or what Andrew of St. Victor attributes to Jewish tradition; or what *contemporary* Jews are telling their Christian inquirers. The present writer, in a previous study,[26] noted an instance of a fourteenth-century Christian scholar who refers to an exegetical judgment "according to the Hebrews," which can be found in Rashi, in the *Targum,* and in a late *midrash,* but also in the *Glossa Ordinaria* of the ninth century which,

propter equivocationem dictam inter se variant. Ego vero in talibus communiter secutus sum Rabbi Salomonem cuius doctrina apud Judaeos modernos magis autentica reputatur. For interesting information on the edition of the *Liber Differentiarum* used by the present writer, see Alexander Marx, *Studies in Jewish History and Folklore* (to be published soon), No. [137], notes 133, 134. This edition in my possession, (since it is nowhere recorded), seems to be the only copy in America of this little-known work of Lyra.

[25] For light on the history of the mediaeval Christian view of "thou shalt not seethe a kid in its mother's milk," see Smalley, *op. cit.*, pp. 236 ff. See also Lyra on *Exod.* 23:19, *non coques haedum etc.* (Venice, 1588), I, 173 C.

[26] Cf. Hailperin, "Nicolas De Lyra and Rashi: The Minor Prophets", in *Rashi Anniversary Volume, American Academy for Jewish Research, Texts and Studies,* I, (New York, 1941), pp. 141 f., n. 62.

in turn, most likely had derived it from the Church Fathers. In any event, these references are a frank avowal of the use of Jewish materials; there is nothing to hide, and not, in the slightest, a crime to speak it.

Yet there remains still another question. Could the relations between Jews and Christians have been at all genial and sincere in the face of certain primary theological differences? The more or less constant desire and felt duty of the Christians to convert the Jews was a natural concomitant of their convictions. Yet the conversion motif was not always the same. In Nicolas de Lyra, for example, it is not very articulate; in Roger Bacon it is quite strong.[27] The historical conditions were different. In Bacon's time the tide was rising for expulsion of the Jews from England; Bacon may have argued, in part, to placate the king. The statement of certain scholars[28] that the study of Hebrew by Christians throughout the Middle Ages was motivated mainly by the conversion motif is altogether too broad. The present writer is reminded of a question he raised in a previous study:[29] Let us imagine that the Christians had

[27] J. H. Bridges, *op. cit.*, Supplementary Volume, pp. 120 f. Tertio linguarum cognito necessaria est Latinis propter conversionem infidelium. Nam in manibus Latinorum residet potestas convertendi. Et ideo pereunt Judaei inter nos infiniti quia nullus eis scit praedicare, nec conferre cum eis nec disputare juxta sensum literalem, quia et veram literam habent [et] suas expositiones antiquas secundum [. . . . .]. At this point the Cottonian MS. Jul. D. V. has a blank in the manuscript. It is my opinion that the manuscript originally contained the phrase "according to Rabbi Salomon" or some such similar phrase. But how did the omission here of Rashi's name come about? In the same way that the loss of much of other of Bacon's Hebrew materials and references may have come about: through the ignorance and unwillingness of the transcribers to copy the passages which they did not understand, and which did not interest the people by whom they were employed. The name "Rabbi Salomon" may have been strange and unfamiliar to the *copyist*,—and it may have been written in Hebrew writing, inasmuch as this whole section of the *Opus Majus* abounds in Hebrew written characters. Cf. S. A. Hirsch, "Early English Hebraists: Roger Bacon", in *A Book of Essays*, (London, 1905), p. 55. S. Berger, *op. cit.*, p. 55, noted French Protestant scholar of the nineteenth century, is of the opinion that Roger Bacon knew Rashi and reckoned with his Commentaries.

[28] L. Geiger, *op. cit.*, pp. 1 f.; B. Walde, *Christliche Hebraisten Deutschlands am Ausgang des Mittelalters*, (Münster i. W., 1916), pp. 6 f.; G. F. Moore, "Christian Writers on Judaism", *HTR.*, XIV, July, 1921, p. 197.

[29] Hailperin, יחסיהם של חכמי־הנוצרים אל חכמי־ישראל והשפעתו של רשי״ עליהם

converted all the Jews of Europe—would then all Christian scholars henceforth have rejected the Hebrew heritage and all study of rabbinic commentaries? Of course, this conversion was generally hoped for. But other purposes and intentions were clearly avowed, and sometimes in such a form, as to persuade one that the conversion of the Jews was no longer of primary interest. It was not all framed in acrimonious disputation. The strength of the common intellectual concepts, the moral ideas, and even the social elements gave essential significance to the relations of many scholars. Lyra was but one of many who wanted to know the *sensus literalis* of Scripture (for Rashi and the Jews, the *peshat*). And there was a wide-spread feeling, right or wrong, that "the literal interpretation is the Jewish."[30] So the Christian scholars who declared that the literal sense is the foundation of the exegetical structure went to Jewish books and persons, and especially to Rashi, because he had expressly made it his avowed purpose to give the *peshat,* as far as it was right in the *practica,* not the *speculativa,* as the Christians of that time would have said. Some of the Christian scholars honestly sensed the dangers of allegory, and wanted to get at the original meaning intended by the author. It was also always evident that those who sought the historical-literal interpretation would know it with greater clarity and assurance if they turned to the original language of Scripture. A scholar of Lyra's stature seemed to find difficult and impossible things in the Latin text itself; for the closer, interior, contextual meanings, Lyra found, or sensed, contexual difficulties.[31] He undoubtedly also sought the *proprietas* of the Hebrew not only as an aid to correct the Latin. Lyra, like other great Christian scholars, was an intellectual who saw the great need of the exegesis of the Hebrew Bible altogether apart from the Vulgate.

Leaving aside the theological motives which emerge from

מפרשי התנ"ך הנוצריים (The Morris D. Levine Memorial Lecture), *Proceedings of the Rabbinical Assembly of America,* VII, (1940), p. 223.

[30] Smalley, *op. cit.,* p. 134; Hailperin, *Historia Judaica,* IV, p. 169, n. 16.

[31] See Hailperin, "Nicolas de Lyra and Rashi," pp. 129 f.

time to time, we can safely say that the spirit of true scholarship is by no means rare among the Christian biblical scholars. Lyra, it is true, rejects Rashi's views at times; but he likewise rejects St. Jerome,[32] and Andrew of St. Victor, and St. Augustine,[33] and St. Thomas Aquinas.[34] If Rashi is "perverse" on *Isaiah* 53, so likewise, in Lyra's eyes, is the great Andrew of St. Victor, and Lyra says so, coupling Rashi and Andrew, for they both hold that the "man of sorrows," (*Isaiah* 53:3), refers collectively to the Jewish people. "*Rabbi Salomon and Andrew* expound this chapter perversely," says Lyra, "as referring *ad literam* to the Jewish people."[35] Has not someone well said, "The history of all scholarship is a record of disagreement?" The mediaeval scholars weighed, examined, accepted, and rejected.

And when one considers the *polemical* writings, he must be especially careful to recognize that the vital problem is to know the precise function and historical significance of certain words. For example, what does *perfidia Judaica* mean when used by Lyra?[36] How can one translate *perfidia* and not mar the intention of the writer or speaker? It does vary with different writers. In Amulo[37] (841-852), Agobard's successor, it has a more acrimonious turn. In Lyra, it is a general term for the firmness and obstinacy with which Jews cling to their religion; one would err if he were to adduce a criminal or even unethical connotation from it. Lyra says, in

[32] See *supra*, note 21.

[33] *Biblia Sacra*, (Venice, 1588), I, 23 B; also Paul of Burgos, *ibid.*, 32 D.

[34] Lyra's introduction to the *Postillae* on *Isaiah* 8, (Antwerp, 1634), IV, 114: His igitur praedictis patet, quod solutiones Thomae ad rationes supra inductas ad probandum, quod litera huius capituli non posset nisi de filio Isaiae intelligi non valent, quia falsum assumunt.

[35] *Op. cit.*, (Venice, 1588), IV, 89 F. Rabbi Salomon et Andreas exponunt hoc capitulum ad literam de populo Judaeorum, dicentes, quo propheta de illo loquitur, quasi de homine uno . . . Sed eorum perversitas patet per doctores Hebraeorum antiquos, ut dictum est praecedenti capitulo. Lyra means here the *Targum* on *Isaiah* 52:13, to which he refers in the *Postillae, ad loc.*

[36] Lyra, on *Psalms* 2, (Rome, 1471-1472), II, CXXA: Vocat [i. e. Rashi] autem hereticos, conversos de Judaismo ad fidem Catholicam, qui contra alios permanentes in sua *perfidia Judaica* arguebant de hoc psalmo.

[37] *PL* 116:141: Detestanda Judaeorum perfidia. A. Lukyn Williams, *Adversus Judaeos*, (Cambridge, England, 1935), p. 358, paraphrases it in these words: "How abominably crafty these Jews are."

one of his polemical treatises, that "the Talmud and the commentaries of the Hebrew doctors are *false,* in great part."[38] What does Lyra mean here by "false"? It is clear from the whole context that "false" here means false with regard to the large (Christian) theological purpose and meaning of those writings, for example, the sacraments, typology, the Messiah, penance. There is also in Lyra the old charge[39] of the alleged corruption of the Hebrew text by the Jews—a charge, by the way, that had been repudiated by Origen and St. Jerome.[40] What does "*corrumpere*" mean to Lyra? The average modern, uncritical reader would very likely think of "corrupting" as changing the letter. We must inquire just what sort of change Lyra had in mind. From his "Second Prologue"[41] to the *Postillae* one might get the impression that Lyra intends to devote his work to such charges against the Jews. The interesting fact is that in years of study of Lyra's writings the present writer has found only three places in the stupendous *Postilla,* where Lyra makes such an accusation against the Jews—*Isaiah* 9:5; *Jeremiah* 23:6; *Hosea* 9:12.[42] Where we might expect Lyra to find "Jewish corruption" of the text, there he does not find it—*Gen.* 49:10 (*Shiloh*), *Isaiah* 7:14 (*almah* vs. *betulah*), the "servant" passages in *Isaiah,* ch. 52-53, and in the several Messianic *loci classici* of the *Psalms.* We give here

[38] *Contra Judaeos,* in Vol. VI, (Venice, 1588), 275 G: Licet autem huiusmodi scripturae in magna parte sint falsae, scilicet, Thalmud et glossae doctorum Hebraicorum . . .

[39] A. Lukyn Williams, *Justin Martyr, The Dialogue with Trypho—Translation, Introduction and Notes,* (London, 1930), pp. 150-155.

[40] *PL* 24:99. In his commentary on *Isaiah* 6:9, St. Jerome (quoting Origen) makes the point that if the charge were true, then Jesus and the Apostles, who laid other charges against the Scribes and Pharisees, would certainly at no time have remained silent "over this crime,—which was the greatest" . . . quod numquam Dominus et Apostoli, qui caetera crimina arguunt in Scribis et Pharisaeis de hoc crimine, quod erat maximum, reticuissent.

[41] (Venice, 1588), I, 3 G.

[42] It is a source of gratification to the present writer, recently to have discovered his judgment here corroborated by Humphrey Hody, who, in his *De Bibliorum Textibus Originalibus, Versionibus Graecis, et Latina Vulgata, Libri* IV, (Oxford, 1705), p. 431, says that he had found only three such places,—corresponding to the three found by the present author (Istiusmodi locos in *Commentariis* et in libello *Contra Judaeos de Divinitate Christi,* tantum tres reperio).

only the conclusions of an investigation which is pursued in detail elsewhere.[43] Lyra finds *circumstantial* grounds for his charge that the Hebrew text is altered: in the case of *Isaiah* 9:5, it is a question of pointing the text, and not of spelling; in *Jeremiah* 23:6, the charge in the *Postilla* imputes no Jewish invention of a new reading—the Jews simply connect their interpretation with the reading that already exists; on *Hosea* 9:12, Lyra's question has to do with the massorete's interpretation. We need not speak further here of the points that enter into Lyra's idea of "corruption," except to say that it is one thing to read a scholar's general statement in his Prologue, another to examine carefully the text and the actual cases.

What has made the present writer stand in awe again and again before many of the documents of the Hebrew heritage of the mediaeval Christian scholars is their general integrity and reliability in quoting their Jewish sources, and of conveying accurately the intention of the Jewish authorities. This is clear from a mere perusal of any page of Lyra's works, or of the thirteenth century *Correctoria,* or of the writings of Hugo or Andrew. Even in the heat of polemic, when one might expect some carelessness, there is, among the great scholars, a general accuracy and integrity. I may refer, by way of example, to one detail in the treament of *Jer.* 23:6 by Lyra, especially as he deals with it not in the *Postillae,* but in his *Contra Judaeos.*[44] Lyra is arguing for the reading יקראו instead of the Massoretic יקראו׳. He did not seem to feel that the *vocabunt eum* of the Vulgate (and of the Targum — דיחון קרן ליה) is, after all, a correct translation of יקראו׳, the impersonal "one will call him."[45] In the course of the argument Lyra says that there were Bibles which contained the "correct" reading יקראו׳. "Although I myself have not seen a Bible which is not corrupted in

[43] In this writer's forthcoming work, *Rashi and Christian Biblical Interpretation—An Essay in The History of Intellectual Borrowing.*

[44] (Venice, 1588), VI, 277 B.

[45] The false reading, יקראו׳, might have arisen because of the supposition that only the third person plural can stand impersonally.

that passage," adds Lyra, "yet I have heard from trustworthy people . . . that thus they had seen it in ancient Bibles, just as the translation of Jerome has it."[46] As I went more deeply into the question, I saw again, as in many other situations, evidence of Lyra's honesty and accuracy in reporting Hebrew information from outside the commonly known sources. For as late as in the First Rabbinic Bible (Venice, 1517-1518), the *basic* text of *Jer.* 23:6 has the reading יקראו, while the *margin* gives the accepted masoretic reading, יקרא. Therefore it is clear that in 1517 the reading which Lyra preferred — יקראו — was still widespread.[47] Even the *Pugio Fidei* of Raymundus Martini (the classic source of all great Christian polemicists), according to George Foot Moore,[48] "was composed for the purpose of converting Jews, not of vilifying them, and compared with much more recent anti-Judaic polemic it might almost be called gentlemanly, notwithstanding the suggestion of the assasin in the title. But its proper praise is that it is a genuine work of learning."

The writer feels that it is pertinent to recall the academic values which the study of this heritage, mutual to Jews and Christians, has produced. In another study[49] he cited several examples which show the importance of the Christian writings in helping to establish a critical edition of the Rashi Commentary on the Bible. Even the question of later accretions in the extant Rashi texts—from R. Joseph Kara, R. Samuel B. Meir, R. Joseph Bekor Shor—can be solved, in a degree, by the quotations from Rashi and his successors that appear in Lyra's writings.[50] The next point

[46] *Loc cit.*, Licet autem ego non viderim aliquam Bibliam, quae non sit in passu isto corrupta, tamen audivi a fidedignis . . . quod sic viderant in antiquis Bibliis, sicut habet translatio Hieronymi.

[47] I am indebted to Professor Alexander Sperber of the Jewish Theological Seminary of America for bringing my attention to this passage in the First Rabbinic Bible.

[48] "Christian Writers on Judaism," *HTR.*, XIV, (July, 1921), p. 205.

[49] "Nicolas de Lyra and Rashi", pp. 123 ff., notes 21, 22, 25, 32, 33.

[50] See J. Neumann, "Influence de Raschi et d'autres commentateurs Juifs sur les *Postillae perpetuae* de Nicolas de Lyre", *REJ.*, XXVI, (1893), pp. 179 f., and M. Liber, review of N. Porges, *Joseph Bechor-Schor, ein nord-*

to be made here reminds one of the statement of Professor Louis Ginzberg:[51] "The student of Jewish literature will be interested to learn that many a *haggadah* first met with in Jewish literature in a *midrash* composed in the seventh or eighth century, and even later, was transmitted as Jewish tradition by the Church Fathers of the fifth or fourth or even the third century." In the later Middle Ages the chronological divergence is not so wide, naturally, but we have found Jewish interpretations in Christian writings which appear, so far as we know now, in extant Jewish literature of a date later than the Christian source. For example, on *Exodus* 1:15, Hugo of St. Victor cites as a *Jewish* tradition the following: "It is asked how only two midwives could have sufficed for the whole kingdom. To which they respond that these two [Shiphrah and Puah] were the heads and that they had under them many assistant midwives."[52] The earliest Jewish source, so far as we know, is Ibn Ezra who says, *ad loc.*, "They were the chief midwives over all the others, for there is no doubt that there were more than 500 midwives, but these two were the heads who were responsible for gathering the royal taxes from their wages." Now Hugo died in 1141. Ibn Ezra began his Pentateuch Commentary at least ten years after Hugo died, and *Exodus*, very likely, after 1155.[53] Then again there are citations of *midrashim* which we do not have, or which were oral traditions that perhaps never found literary expression. We cite here two such Jewish traditions in Lyra. On *Exodus* 19:18, Nicolas de Lyra says that God revealed himself on Sinai in fire and smoke, 'because these take on no permanent form, and therefore would give the people no opportunity

französischer Bibelerklärer des XII Jahrhunderts, in *REJ.*, LVIII, (1909), pp. 309 ff.

[51] *Legends of the Jews*, V, p. IX.

[52] *PL* 175:61. Sed quaeritur quomodo duae tantum obstetrices potuerint sufficere toti regno. Ad quod respondetur has duas esse praelatas et multas sub se habere subjectas obstetrices. This statement is made in the general context of several haggadic *notulae*.

[53] See W. Bacher, *Abraham Ibn Esra als Grammatiker*, (Strassburg, 1882), pp. 23 f.

to model images after the apparition etc., according to Jewish tradition'—et ex parte superiori montis egrediebatur fumus et ignis de medio nubis. Facta est autem talis apparitio in nube et igne, quae non habent figuram stabilem, ne populus ad idolatriam pronus haberet occasionem faciendi sibi imagines, *ut dicunt Hebraei.*[54] Until now we have not yet found this thought in Jewish writings. Likewise on *Numbers* 24:17, וקרקר כל בני שת, "And shall waste all the children of Seth," Lyra says: "Rabbi Nathan says that 'Seth' as here understood is the *name of a city* in the land of Moab, whose people David had totally destroyed."[55] The present writer knows neither the identity of this "Rabbi Nathan" —(could he possibly have been R. Nathan Official?[56]) nor any extant Hebrew source dealing with this idea.

We are concerned in this paper, with the interpretation of Christian scholars as they found help, information, or objections in Hebrew writings. It can be at once assumed that the points at which the Christians would look most critically at any Jewish interpretation would be in the field of Prophecy, inasmuch, of course, as the Messianic problem was central for them. But let it not be forgotten that, because of this very fact, the Law would be of little importance to the Christians. Yet we know that the Law as *law* had been a subject of prime importance in the formative days of European Christianity, certainly from 500 to 1,000 C.E. The growing constitution of the Church reckoned

[54] *Op. cit.*, (Venice, 1588), I, 162 F and G.

[55] *Ibid.*, 308 H. *Vastabitque omnes filios Seth.* Dicit R. Nathan quod Seth prout hic accipitur est nomen civitatis in terra Moab cuius populum totaliter destruxit David.

[56] Shortly after the present writer delivered this lecture, he was happy to discover that the "R. Nathan" quoted by Lyra was indeed *R. Nathan Official.* See Zadoc Kahn, ספר יוסף המקנא (שמות עד סוף דברים), in *Festschrift zum siebzigsten Geburtstage A. Berliner's, ed.* A. Freimann and M. Hildesheimer, (Frankfurt a. M., 1903), Hebrew section, p. 86. According to the account, R. Nathan had a private religious disputation with the Pope [Gregory X] who discussed with R. Nathan the meaning of *Numbers* 24:17. The Pope, while in France, could have met R. Nathan Official,—for we know that Gregory X presided in person over the Council of Lyons, 1274; cf. *Catholic Encyclopedia,* VI, 799. These are the words bearing upon our problem: ומהוא קרקר כל א"ל בני שת אמרתי לו היא עיר מואב ונקראת שאון וזהו שכת' בירמיהו וקרקר כל בני שאון.

with the whole of the Hebrew economy—with penance, with domestic relations, and with the wider human relations, and even with the dietary laws.[57] And so it should be noted here that Christians took the *whole* Jewish interpretation of the Old Testament for their instruction. There are points of contention—and it must be said, among Jews, too—but the whole history of the Jews was also in the eyes of the Christians a fount of human experience.

The Christian interpretation might differ, we may find, in matters of significance and signification. But as to the historical foundation and human experience, and even the "word of God" to the Hebrew Prophets, the Christians nowhere and at no time could forget that this was the indispensable book. And this not as they alone would wish or think to see it, but as the Jewish rabbi in his inheritance of understanding and insight might have light to throw upon the Scriptures.

[57] See L. Diestel, *Geschichte des Alten Testamentes in der christlichen Kirche*, (Jena, 1869), pp. 151-155, and A. Wiener, *Die Jüdischen Speisegesetze nach ihren verschiedenen Gesichtspunkten*, (Breslau, 1895), p. 335; see, also, for the Germanic later Middle Ages, Guido Kisch, *Sachsenspiegel and Bible*, (Notre Dame, Indiana, 1941), pp. 21-26, *et passim*, especially pp. 117-179.

THE EARLIEST JEWISH PORTRAIT

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THE Scharfzandt window in Our Lady's Church in Munich contains three heads with Jewish features, one of which gives the impression of being a portrait.

How can we prove that a face in a picture is really a portrait? We cannot always be certain of this even when the picture bears the name of an historic personage. In the earlier Middle Ages such an inscription indicated that the artist intended to "represent" a certain individual rather than that he wished to "portray" him. The figure was meant to denote Henry III or Henry IV, not to show how Henry III or Henry IV looked in reality. This applies to portraits until the thirteenth century almost without exception. Carolingian rulers did not even scruple to seal their deeds with a classical cameo ostensibly transformed into a "portrait" by the addition of their names. Thus it could happen that Louis the Child (899-911), who died at the age of nineteen, appears on his seal with a full beard because he continued to use a Roman cameo with a portrait of Hadrian, first appropriated for this purpose by Louis the German (843-867).[1] However, this is an extreme case. Some early representations of German emperors show a modest attempt at individual characterization in the more obvious features, such as the form of a mustache or the proportions of the nose and eyes. This emphasis on individuality can be shown to increase with the general development of mediaeval sculpture and painting from "idealism"

[1] Percy Ernst Schramm, *Die deutschen Kaiser und Könige in Bildern ihrer Zeit* (Leipzig, 1928), p. 5.

to "naturalism." The famous statues of Chartres and Rheims exemplify what had been achieved in this direction by the first half of the thirteenth century. Yet, so characteristic a face as that of St. Joseph on the west facade of Rheims will strike the modern beholder as a "type"—the typical Gaullois —rather than the portrait of an individual person. Generally speaking, it was not until the second half of the fourteenth century that portraits as we know them became more frequent. The busts in Prague Cathedral are milestones on this road. But, when comparing their physiognomies with each other, we find that even here individual differences are largely suppressed in favor of a general formula to which the artist had become accustomed. This applies also to the bust of Emperor Charles IV which was certainly intended as an individual likeness.

The first immediately convincing portraits in Northern art are those by Jan van Eyck (*ca.* 1390-1441) and his contemporaries. These portraits presuppose a highly developed naturalism capable of characterizing the individual by a wealth of uniquely determined details. We have no means of knowing whether or not these pictures are perfect likenesses of sitters but we do not doubt it for a moment. These painters no longer worked from a general idea of eyes, nose or mouth, but built up their faces from carefully observed particulars. It is by the amount of such particularized characteristics, and not by mere feeling, that we are entitled to call a given representation a portrait in the full sense of the term. It is well known how much the early Flemish masters influenced the painters of Germany in the second half of the fifteenth century and the portrait of the Jew we are considering belongs in this development.

The name of the painter of the Scharfzandt window in Munich is known. He was Peter Hemmel from Andlau, a small town near Strasbourg in Alsace, born about 1425, and a citizen of Strasbourg from 1447 on. Most probably he went to the Netherlands as a young man in order to study the new

style of painting. We can identify him as a painter of stained glass only after 1461, the year he painted parts of the windows in the choir of the church of Walburg of Alsace. After this he fell under the spell of Martin Schongauer (*ca.* 1430-1491) who lived in Colmar not far from Strasbourg. Between 1470 and 1490 he seems to have been the most outstanding painter of stained glass in Southern Germany. No one else, at any rate, has left us an equally rich *oeuvre*.[2] The exact date of his death is not known, but the last record is of 1501.

The Scharfzandt window is not dated, but it is certainly after 1485, probably about 1490. It is named after the donor, a rich citizen of Munich, who is portrayed with his wife in the lowest section of the window, their coats of arms being added. But these are not the only portraits in the composition. In the section above the donor, St. Rupert is painted enthroned and surrounded by representatives of the Estates, and nearly all these are evidently portraits. Thus a Jewish portrait in this window is not surprising insofar as it is a portrait. It is surprising only in that it is the portrait of a Jew (Plate 1).

The three Jews take part in the scene depicted above St. Rupert, that is the Presentation of the Infant Jesus in the Temple. In the center, St. Joseph,[3] clad in a long garment, his head covered with a cap, offers the Child to the High Priest. Behind him, on the left, four women are seen, one of whom is the Virgin Mary, her head surrounded by a nimbus, and her hands joined in prayer. The second woman bears

[2] For the list of these works and the older literature on Hemmel (first confused with Hans Wild, who was probably his assistant), see Hans Haug, "Notes sur Pierre d'Andlau, Peintre Verrier à Strassbourg, et son Atelier," in *Archives Alsaciens d'histoire de l'art*, 1936, p. 79.

[3] Since no other man appears in the group before the altar and since the father of the Child has to be present at the ceremony, the identity of this figure can hardly be questioned. It must be mentioned, however, that in other works by Hemmel, even in another scene of the same window, St. Joseph is presented as a totally different type; cf. also the illustration in P. Frankl, "A Window in Augsburg Cathedral," *Parnassus*, XII (April, 1940), p. 11, with reference to the window of Hemmel in the Augsburg Cathedral.

two candles and the basket with the pigeons, while the third, with a beautiful and expressive face looks to the fourth with an expression of seriousness and sorrow, as though foreseeing the fate of the Child. Behind the High Priest, three men are seen standing like all the other figures in this ceremonial scene. These three men are characterized as Jews by their features. One cannot say the same of Joseph and the High Priest who are meant to represent Jews, but they lack the characteristics of Jews. The models Hemmel used were Germans and it is striking that this Jewish High Priest has no beard, so that he looks more like a Christian clergyman.

The three other men are evidently Jews not only iconographically but also physiognomically (Plate 2). Only one of them, however, strikes us as a real portrait; the two on the right are still "types." In depicting them Hemmel may have thought of living persons, but these persons themselves were "types" rather than individuals. There are persons who either look like the average of their fellows, or show their characteristics in so exaggerated a manner that they seem to be their own living caricatures—which applies of course to every people. If specimens of this kind are portrayed in an objective way, we are inclined to call the pictures either types or, in the second case, caricatures. The pulpy nose of the first man from the right, strongly curved, overhanging the upper lip and recurved below the tip is typically Jewish. The second head is less exaggerated as to the form of the nose, but it has heavy drooping eyelids and a fleshy protruding lower lip. Both heads are given in profile and the painter seems to have been interested in the expressive contours. But one cannot say that they were painted with malice. They are not caricatures, but belong in the painter's collection of living creatures observed in a spirit of objectivity. It is interesting to compare these types with the picture of a Jewish prophet in Hemmel's Augsburg window[4] which might almost have been drawn

[4] Frankl, *l.c.*, p. 12.

from the same model, but more nearly approaches a caricature. It must be admitted that it is difficult to draw a definite line between type, portrait, and caricature. The fact that the borderlines of these concepts are not always clear does not militate against their validity as such.

In contrast with these two "types" the third head seen in full face is a portrait. This man seems to be talking to the first man on the right, who points to the Child, while his interlocutor places his hand on an open book lying on a high lecturn. Both are of course discussing the Child and his connection with certain passages of the Bible. The man seen in full face bends to the left so that his head is the only one in the right half of the picture which is inclined at a diagonal, and thus corresponds significantly with the beautiful woman analogously placed at the left, who also looks towards a partner (Plate 3).

The man depicted in this portrait has a face of alongated proportions. He too has a long curved and drooping nose, but all this is rendered delicately without any exaggeration. His face is incomparably nobler than those of the other two Jews, yet much more individual than the somewhat empty faces of the High Priest and St. Joseph. His expression is intelligent, vivid and concentrated, his forehead smooth. The open mouth suggests speech and the copious modeling of his cheeks bespeaks the stirring experiences of his life. The physiognomy of this man somewhat resembles the conventional type used for Jesus in late fifteenth century art, but it differs from it in the shape of the mouth. It is as though the painter had felt that he should not idealize his model too much. The whole face has an underlying handsomeness, but it acquires life and individuality through its deviation from regularity. The channel of the upper lip is misplaced and the whole mouth seems to protrude as if slightly prognathous.

Technically this face conforms in part to the system which Hemmel had appropriated from the engravings of

Schongauer. His acquaintance with these works appears in this very picture from the fact that he borrowed two dogs from Schongauer's *Jesus before Pilate* (B. 14); they fill the empty space before the altar.[5] The hatchings follow the modeling of the face and they are subtle enough to give the whole face a character of uniqueness.

The Jew portrayed has a parted beard and abundant hair. To some extent these features may have been rendered according to a fixed formula regardless of the natural aspect of the model. This is true of the spiraling curls as well as of the S-shaped curve of the upper eyelid which is characteristic of Hemmel's later style. The textural characterization of such materials as the fur of the cap is as such also quite usual with him. However, this fur cap is the so-called *shtreimel* which became a characteristic part of Jewish costume at the end of the Middle Ages. According to R. Straus[6] it appears in the sixteenth century, but this stained glass proves that it was worn by Jews earlier. The fact that the pictured man has his head covered and wears a beard, both in accordance with Jewish religious precepts, may permit us to identify the man as a rabbi.

Hemmel lived in Strasbourg. All his works were produced there and then shipped to such cities as wanted to own his masterpieces: not only Munich, but also Tübingen, Augsburg, Nuremberg, Salzburg, *etc.* His models were of course selected in Strasbourg. Hence, at first, we are induced to assume that the window in Munich contains a portrait of the rabbi of the Jewish community in Strasbourg. But the Jews were driven out of this city in 1349 after two thousand had been burned alive. A few years later some Jews were allowed to settle there again, but were driven out once more in 1388.

[5] Max Lehrs, *Martin Schongauer, Nachbildungen seiner Kupferstiche* (Berlin, 1914), Plate XIII. The usual marking of etchings (here B. 14) refers to Adam Bartsch, *Le Peintre Graveur*, Vol. VI (Vienne, 1808), p. 126.

[6] Raphael Straus, "The 'Jewish Hat' as an Aspect of Social History," *Jewish Social Studies*, IV, (1942), 69.

They were not permitted to return until after the French Revolution, in 1793. There is no proof that any Jew lived in Strasbourg at the time when Hemmel painted his stained glass. But Alsace had many Jewish communities in the neighborhood of Strasbourg,[7] so that Hemmel had opportunity to choose the models needed for his work. From the existence of the portrait one must not conclude that the rabbi wished to be represented in a Christian church; he probably did not even know that it was Hemmel's intention to immortalize his features in this way.

If the conclusion is accepted that this is a portrait and probably the portrait of a rabbi living in Alsace at about 1490, what does it mean?

The heads of Joseph and the High Priest show the traditional types common to the main characters in sacred stories at the time. In spite of their long noses, it may be repeated, they are not Jewish. Not one of the women has a Jewish face and the main actor of the whole, the Child, is neutral as to nationality. When Hemmel chose to include Jews as mutes in his play he revealed a tendency towards historical faithfulness. In portraying the rabbi he showed himself a man of tolerance and objectivity. The rabbi is looked upon without hate. He is depicted with the same interest in the variety of mankind as is evidenced in the many other portraits in the lower section of the window. It may be presumed that Hemmel knew the rabbi very well; perhaps they were friends. One will immediately think of Rembrandt who lived in the ghetto of Amsterdam. But the portraits painted by Rembrandt (usually called rabbis, although there have not been so many in Amsterdam) were made about 140 years later. It will be difficult to find a real Jewish portrait in the period between the one in Munich and the many by Rembrandt. It will be also difficult to find a Jewish portrait prior to that

[7] *The Jewish Encyclopedia* (New York and London, 1901), under the terms "Alsace" and "Strasbourg"; cf. Carl Theodore Weiss, *Geschichte und rechtliche Stellung der Juden im Fürstbistum Strassburg*, (Bonn, 1896).

in Munich. Of course, numerous representations of Jews existed before and after the head here published. But the question is whether or not these representations deserve to be called portraits.[8] If not, our portrait has in fact an exceptional place in Jewish history.

Animosity against Jews was widespread in the Middle Ages. Only a short time after Hemmel's portrait of the rabbi was painted, this terrible psychosis flared up in Spain and Portugal. This animosity made itself felt also in medieval sculpture and painting. Their products of intolerance have been collected and studied by Jewish historians. The artistic level of these documents is in the most cases as low as their ethical one and they are not cited in books on the history of art. But those which have artistic value should be studied in such a manner as to do justice to their artistic significance. Works of malignity without artistic value, manufactured for the benefit of the illiterate, bear witness against the Gentiles and not against the Jews. But more emphasis should be placed on those which testify in favor of the Jews as well as the Gentiles. And one of these is our portrait by Peter Hemmel from Andlau. If the whole problem of the representaiton of Jews in medieval art were examined by art historians capable of thinking objectively, some current opinions might be corrected.

To give one instance only, it may be permitted to refer to an article by Joseph Reider,[9] which certainly contains much valuable information but has to be supplemented in one fundamental respect. What Reider says about the literary treatment of the contrast between Church and Synagogue is in general correct. But he ends with the sentence:[10] "As to the Church, she actually was at the peak of her triumph and the

[8] *E.g.*, the Jews in the *Mocking of Christ* by Hieronymus Bosch (about 1515) in the Princeton Museum are types and almost caricatures, but certainly not portraits.

[9] Joseph Reider, "Jews in Mediaeval Art," in *Essays on Antisemitism*, ed. by K. S. Pinson (New York, 1942), pp. 45-56.

[10] Reider, *l.c.*, p. 48.

zenith of her glory, hence she was rightfully panoplied in coruscating garb and defiant splendor, looking down nonchalantly or insolently on her hapless rival." And he goes on to cite representations of the "Church and Synagogue" in "Paris, Bordeaux, Strasbourg, Bamberg, Worms, *etc.*" The reader who does not know these works must imagine that in all these cases the Church looks down nonchalantly or insolently on the Synagogue as her hapless rival.

This is not so. I wish to limit myself to the pair in Strasbourg.[11] The statue of the Synagogue is blindfolded and holds a broken banner in her hand. True, these symbols express the Christian belief that the Church sees the light whereas the Synagogue is blind, that she is victorious whereas the Synagogue is vanquished. This belief of Christians was not meant as an offense to the Jews, just as the belief of the Jews was not intended to offend the Christians. But this is not quite the point. It is not sufficient to say that medieval Christianity believed in the victory of the Church over the Synagogue. It is necessary to ask what the sculptor expressed when formulating this belief in a work of art. Of course he conformed to the accepted doctrine in using the traditional symbols of blindness and enlightenment, defeat and victory. But there is no nonchalance, no insolence, no hate in the face of this Church. She looks at the Synagogue with radiant face, noble and chivalrous as a Greek Athene. And this Synagogue is a virgin as full of well-bred charm and aristocratic nobility as the Church herself. Her face shows not a trace of Jewish characteristics. As a Christian the Strasbourg sculptor believed that the Synagogue was blind and broken, but as an artist he made it perfectly clear that he knew no hate. He remained noble and high-minded himself.

[11] The figures of the Church and the Synagogue at the Cathedral in Paris are of the nineteenth century, but even at this time display no sign of antisemitism. The figures in Saint-Seurin in Bordeaux are of the thirteenth century, but no proof for Reider's thesis. In Worms there is only the figure of the Church riding on the tetramorph, from about 1315. There was never a Synagogue to look upon nonchalantly. Illustration in Rudolph Kautsch, *Der Dom zu Worms* (Berlin, 1938), plate 105.

Peter Hemmel saw these statues every day and being an artist he could not fail to understand the language of their forms. In the same way we have to understand the language of forms in Peter Hemmel's portrait of the rabbi as an expression of tolerance and freedom from prejudice.



Peter Hemmel's Scharfzandt Window in Munich of *ca.* 1485
Presentation in the Temple



Detail from P. Hemmel's Scharfzandt Window:
Two Jewish Heads



Detail from P. Hemmel's Scharfzandt Window:
Portrait of a Rabbi

JEWISH NAMES IN THE ERA OF ENLIGHTENMENT

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I

THE NAME-LAWS[1]

THE legislation concerning Jewish names in Central and Western Europe, which was related to the vital matter of adjusting the Jews to the state, is an important episode in the history of Jewish Emancipation. It was initiated by Emperor Joseph II on July 23, 1787. In order to avoid confusion in political and judicial registration as well as in private matters, it was generally ordered that the Jews had to select definite family names, and German first names. From the first of January, 1788, Jews in all Austrian provinces had to assume family names, every father in behalf of his family, every guardian for his ward, and every unmarried male beyond parental responsibility or guardian-

[1] BIBLIOGRAPHY.
Robert Anchel, *Napoléon et les Juifs* (Paris, 1928), cit. Anchel.—L. Bär, "Die Judennamen im Wandel der Zeiten, aus einer oberpfälzischen Gemeinde nachgewissen," *Heimat und Volkstum*, XVII (1939), pp. 33-46.—Erwin Manuel Dreifuss, *Die Familiennamen der Juden unter besonderer Berücksichtigung der Verhältnisse in Baden zu Anfang des 19. Jahrhunderts* (Frankfort a.M., 1921), cit. Dreifuss.—*Encyclopedia Judaica*, Vols. I-X (Berlin, 1928-1934).—Peter Gansen, *Familiennamen und Bürgerrecht der Juden, mit besonderer Berücksichtigung des Siegkreises*, IV (1928), Heft 2-3, cit. Gansen.—Theodor H. Gaster, "Names of the Jews," *The Universal Jewish Encyclopedia*, Vol. VIII (1942), pp. 90-98, cit. Gaster.—Gerhard Kessler, *Die Familiennamen der Juden in Deutschland (Mitteilungen der Zentralstelle für deutsche Personen- und Familiengeschichte*, Heft 53 (Leipzig, 1935), cit. Kessler; cf. also *ZGJD.*, VI (1935), 37 f.—Bruno Kisch, "Änderung der Judennamen in Grevenbroich und Wickrath (Rhineland) im Jahre 1808," *Jüdische Familienforschung*, Heft 27 (September, 1931), cit. Kisch.—Adolf Kober, *Das Grundbuch des Kölner Judenviertels 1135-1425* (Bonn, 1920), pp. 191-198, cit. Kober, *Grundbuch.*—A. Kober, "Aus der Geschichte der Juden im Rheinland," in *Publikationen des Rheinischen Vereins für Denkmalspflege und Heimatkunde* (Düsseldorf, 1931),

ship. Women, if unmarried, had to adopt the father's name; if married, the name of the husband. Every person had to adopt a German first name. From the same date on, the records of birth and circumcision were to be written in German only, and every birth, death, and marriage record had to mention the German first names and surnames. An alphabetical list of the German (male and female) names permitted to Jews was appended.[2]

The second important law of this type was the decree of Emperor Napoleon, dated July 20, 1808. It commanded those subjects of the French Empire, who were affiliated with the Jewish Synagogue and had not yet assumed family and first names, to adopt such identification within three months from the publication of the decree, and to register these names with the officials of the *État Civil* of their residence. Aliens who desired to live in the empire had to do likewise. The Jews were forbidden to assume family names derived from the Old Testament or from a city. They were permitted only such first names as the law of Germinal 11 of the year XI (April 1, 1803) allowed them. Jews of the French Empire or aliens living there, who had always borne

cit. Kober, *Rheinland.*—A. Kober, "Das Namensverzeichnis der Kölner Juden von 1808, "*Mitteilungen des Gesamtarchivs der deutschen Juden,* VI (Berlin, 1926), cit. Kober, *Namensverzeichnis.*—Alfred Levy, *Aus Bonner Archiven* (Bonn, 1929), cit. Alfred Levy.—Max Levy, *Der Napoleonische Erlass von* 1808 *wegen der Vornamen und Zunamen der Juden und seine Ausführung in Worms* (1914), cit. Levy, *Worms.*—August Menninger, *Das Napoleonische Dekret vom Jahre* 1808 *wegen der Vornamen und Zunamen der Juden* (Mainz, 1928), cit. Menninger.—Siegmund Salfeld, *Bilder aus der Vergangenheit der jüd. Gemeinde Mainz* (Mainz, 1903), cit. Salfeld.—Gustav Samuel, "Die Namensgebung der westfälischen Landjudenschaft," *ZGJD.,* VI (1935), pp. 47-51, cit. Samuel.—Adelheid Schiff, *Die Namen der Frankfurter Juden zu Anfang des* 19. *Jahrhunderts* (Freiburg, 1917), cit. Schiff.—Siegfried Silberstein, "Die Familiennamen der Juden unter besonderer Berücksichtigung der gesetzlichen Festlegung in Mecklenburg, in *Festschrift zum* 75 *jährigen Bestehen des Jüdisch-Theologischen Seminars Fränckelscher Stiftung,* Vol. II (Breslau, 1929), pp. 303-366, cit. Silberstein.—A. Tänzer, *Die Geschichte der Juden in Jebenhausen und Göppingen* (Stuttgart, 1927), pp. 39-43, cit. Tänzer.—Leopold Zunz, "Namen der Juden," in *Gesammelte Schriften,* Vol. II (Berlin, 1876), pp. 1-82, cit. Zunz.

[2] Cf. A. F. Pribram, *Urkunden und Akten zur Geschichte der Juden in Wien,* I 1 (*Quellen und Forschungen zur Geschichte der Juden in Deutsch-Österreich*) (Vienna, 1918), pp. LXXXI, 582-586.

family and personal names, were exempted from this decree even if these names were derived from the Old Testament or from cities. Such Jews were, however, also required to register their names. This law further specified that only such names as were customary in the various calendars, or names of great men of ancient history may be used as first names in the birth records of the civil office (*État Civil*). Public officials were forbidden to enter other names into the records.[3]

On September 8, 1808, the French Minister of Justice issued further instructions concerning the decree. He ordered the introduction, in every community where Jews lived, of special records to be kept *in duplo* and sealed by the president of the lower court. The head of the family had to declare the change of name for minor children; separate declarations were to be written for each individual.[4] So long as one parent was alive, children who had come of age were obliged to assume his or her family name; if neither parent was living, they were to come to an understanding with each other about a common name.

These laws served as models for the decrees promulgated in the European and in particular the German states which were occupied by France.[5] Penalties were set for disobedience; those guilty in Prussia, for instance, were treated as aliens. In the Grand Duchy of Hesse they were punished by a fine or by corporal punishment. The French law of 1808 required expulsion from the country and regarded a wilful change of name as forgery. In Russia the Jew who

[3] Halphen, *Recueil des lois, décrets et ordonnances concernant les Israélites depuis la Révolution de* 1789 (Paris, 1851; sec. ed., 1887), p. 48.—Bormann-Daniels, *Gesetze und Verordnungen aus der Zeit der Fremdherrschaft,* V (1837), pp. 193, 376, 377; Anchel, pp. 433-446.

[4] Bormann-Daniels, *op. cit.,* IV (1836), pp. 441 f.; cf. Menninger, p. 11.

[5] The acceptance of family names was also included in suggestions for the emancipation of the Jews in Prussia in 1789, cf. Dreifus, p. 22; in Russia, in 1800 (Dershawin-project), cf. Dubnow, *Weltgeschichte des jüdischen Volkes,* VIII, p. 359; in Württemberg, in 1808 (*Entwurf einer Ordnung für die Juden in den Königlichen Staaten,* § 19); cf. Paul Tänzer, *Die Rechtsgeschichte der Juden in Württemberg,* 1806-1828 (Stuttgart, 1922), pp. 40 f.

failed to adopt a family name within two years, was to be expelled from the country.[6, 6a]

II

THE NAMES OF THE JEWS UNTIL ABOUT 1800

What was the reason for these laws? What were the names of the Jews at the end of the eighteenth century?

Since the time of the Second Temple it was customary among the Jews to bear Greek or Aramaic names, beside their Hebrew names taken from the Bible.[7] In the Hellenistic period children in Palestine were named after their grandparents, as was generally the custom among the Greeks and among the Jews in Egypt two centuries earlier. This custom was maintained in the talmudic period and was supported by a rabbi of the second century C.E. as a means of securing the genealogical connection within families.[7a] The custom

[6] Here follows a chronological list of decrees concerning the names of the Jews found in the emancipation-laws or in special statutes. The laws cited by Dreifuss, pp. 26 f., 125 f., and by Silberstein, pp. 323 f., are herewith supplemented.

Galicia (Poland), May 7, 1789.— Breslau (Silesia), 1790.—South and New-East Prussia, April 17, 1797.—Dominion of Schaumburg (Western Germany), 1801, cf. A. Kober, *Festschrift für Martin Philippson* (1917), p. 279.—Russia, December 9, 1804.—Frankfort-on-the-Main, Nov. 30, 1807, cf. Schiff, pp. 60-66.—Kingdom Westfalia, March 31, 1808.—Grand Duchy of Hesse, December 15, 1808.—Grand Duchy of Baden, January 13, 1809, cf. Dreifuss, pp. 25 f.—Lippe, December 16, 1809.—Holland, August 18, 1811.—Grand Duchy of Frankfort, November 26, 1811, cf. Schiff, pp. 67-73.—Prussia, March 11, 1812.—Bouches-de-l'Elbe, Bouches du Weser, Ems Supérieur, January 12, 1813, cf. Anchel, p. 443, note.—Mecklenburg-Schwerin, February 22, 1813, cf. Silberstein, pp. 325, 350 f.—Bavaria, June 10, 1813.—Denmark, March 29, 1814.—Mecklenburg-Strelitz, June 1814, cf. Silberstein, *l.c.*—Anhalt-Dessau, 1822.—Saxe-Weimar, 1823.—Kingdom of Württemberg, April 25, 1828.—Grand Duchy of Posen, 1833.—Saxony, Nov. 26, 1834.—Duchy of Nassau, 1841, cf. *Herzoglich Nassauische Landesregierung an die Ämter, die Annahme bestimmter Familiennamen von Seiten der sämtlichen Juden des Herzogtums betr.*, March 16, 1842, in the State Archives at Wiesbaden.—Governmental districts of Cologne, Düsseldorf, Coblentz on the right bank of the Rhine, October 31, 1845, cf. Gansen, pp. 4 f.—Duchy of Oldenburg, 1852.

[6a] Concerning the penalties, see Silberstein, p. 351.

[7] Cf., in general, *Jüdisches Lexikon*, IV (1930), 383-395 (Heinrich Loewe); *Jewish Encyclopedia*, IX (1905), 152-160 (Joseph Jacobs); *Encyclopaedia of Religion and Ethics*, IX (1917), 169 f. (I. Abrahams); Gaster; bibliography in Dreifuss, pp. VII-IX; Silberstein, pp. 303-305.

[7a] Cf. I. Abrahams, *Encyclopaedia of Religion and Ethics*, IX, 169.

of naming the eldest son after the grandfather became popular also in Europe with the growth of the Jewish community. As a result of the relations with the Christian and Mohammedan world, the Hebrew names were here retained with an occasional change of form and the addition of a corresponding vernacular name. Thus two names came to be used, the one called by Leopold Zunz the "church name", in the Jewish community and synagogue, the other, called by Zunz the surname (*kinui*), in the world of business and civic affairs. The names developed differently in the various countries inhabited by Jews.[8] In Arabic speaking countries the Jews adopted family names. The Spanish Jew and his Christian countryman bore similar names. After their expulsion from Spain and Portugal the Jews, like the Marranos, kept their family names and brought them to their new homes. Sometimes they adapted them to the custom of their new homeland, *e.g.*, in the eighteenth century the Jews of Bordeaux frenchified their names.[9]

The development of names was different among the Ashkenazic and Polish Jews. In Germany the adoption of family names in general had taken place only gradually since the eleventh and twelfth centuries. The inhabitants of the cities assumed family names during the Reformation period. This process was completed by the Frisians through administrative decree in the nineteenth century. In Germany the Jews borrowed names from their surroundings. In the Latin and German documents of the Middle Ages the names of the Jews assumed a Latin or German form,[10] and the place of origin or former residence was frequently added as a surname. From the sixteenth century on names of houses

[8] On the names of the Jews in Paris in 1292, 1296, 1297, see *REJ.*, I (1880), 66-70; in Christian Spain, cf. Fritz Baer, *Die Juden im christlichen Spanien*, I (Berlin, 1929), pp. 1092-1141; II (1936), pp. 547-571; in the Provence in 1486, see Raoul Busquest, *Études sur l'ancienne Provence, institutions et points d'histoire* (Paris, 1930), pp. 194 f., 197-199; on Florence in the Renaissance, cf. Umberto Cassuto, *Gli Ebrei a Firenze nell' età del Rinascimento* (Florence, 1918), pp. 231, 244.

[9] Cf. G. Cirot, "Les Juifs de Bordeaux," *Revue historique de Bordeaux*, XXXI (1938), p. 124.

[10] Cf. Kober, *Grundbuch*, pp. 191 ff.

were used as family names *e.g.*, in Frankfurt-on-the Main Rothschild or Schwarzschild, being added to the first name. Such surnames became family names but slowly. The majority of the Jewish population was accustomed to the Jewish name combined with the father's name, *e.g.*, Jacob son of Moses, or Jacob Moses'. The Hebrew names were often adapted to the German language, *e.g.*, Jehuda--Arje--Loeb--Leib; Benjamin--Zeeb--Wolf. This was the state of names of German and Polish Jews at the end of the eighteenth century.

It must be added that among the Jews there was a general lack of commercial records as well as of birth, death, and marriage records in the vernacular, Hebrew or Hebrew characters being used exclusively. Practical considerations of administration, jurisdiction, and taxation were thus, in part, responsible for the enactment of special name-laws for the Jews.

III

CONNECTION BETWEEN THE NAME-LAWS AND EMANCIPATION

The name-laws for Jews were directly connected with the process of emancipation. They reflected the attitude of the respective governments to the Jews. Upon the demand of the Cortes in 1268, 1313, 1351, and 1371, the Jews were forbidden in medieval Castile to use Christian names,[11] whereby their influence should be curtailed. Similarly, after 1815 the governments in some of the German states, where Jews wanted to adopt family names, postponed legal regulation until article 16 of the Federal Constitution (*Bundesakte*) would be put into effect.[12] But the government of

[11] Cf. Fritz Baer, *Die Juden im christlichen Spanien*, II, pp. 60, 133, 173, 206; Abraham A. Neuman, *The Jews in Spain*, II (Philadelphia, 1942), pp. 257, 320.

[12] Cf. the remark in 1820 by David Fraenkel, editor of *Sulamith*, which clearly shows the connection between emancipation and family names, in *Sulamith*, Vol. VI, Part I (Dessau, 1819-21), p. 81, note, quoted by Silberstein, p. 314.

the Kingdom of Württemberg consented when individual Jews or a whole Jewish community—*e.g.* in Jebenhausen, in 1818—adopted family names of their own free will.[13]

However, the era of reaction gave clear expression to anti-Jewish feelings. On November 30, 1828, by a decree of King Frederick William III the Jews of Prussia were forbidden to use Christian first names. In 1836 all local governments in Prussia were ordered to see to it that this measure was strictly observed. This prohibition provided the impulse for the magnificent scholarly work, *The Names of the Jews,* published in 1837 by Leopold Zunz.[14] By the listing of 1400 names from a period extending over 2000 years, he produced evidence for the fact that the Jews had borne the names of their surrounding world wherever they lived. Because of difficulties arising in the provinces of Posen and on the Rhine the aforementioned decree was amended in 1841, so that only names of distinct Christian character were forbidden to Jews.

A similar situation arose in Russia, in 1890 and 1893.[15] The governor of St. Petersburg, who made a regular sport of taunting the Jews, prescribed in an ordinance of November 17, 1890, that signs should be placed on Jewish-owned stores and workshops indicating not only the family names of the owners but also their full first names and their fathers' names in the exact form as they were spelled in their passports. The aim of this ordinance was to enable the Christian public to boycott Jewish stores, and in addition to poke fun at the names of the owners. For in the Russian registers and passports these names, as a rule, were mutilated to the point of ridiculousness, due to the semi-literacy of the clerks. The Russian law of 1893, "Concern-

[13] Cf. Paul Tänzer, *Die Rechtsgeschichte der Juden in Württemberg,* 1806-1828, p. 41; A. Tänzer, pp. 37-39.

[14] Zunz, *Namen der Juden,* reprinted in L. Zunz, *Gesammelte Schriften,* II (1876), pp. 1-82; cf. David Kaufmann, *Gesammelte Schriften,* I (Frankfurt a.M., 1908), pp. 373 ff.

[15] S. M. Dubnow, *History of the Jews in Russia and Poland from the Earliest Times until the Present Day,* transl. by I. Friedländer, II (Philadelphia, 1918), pp. 379 f., 427.

ing Names," threatened criminal prosecution for those Jews who in private life used names differing in form from those recorded in the official registers. In several cities the police took severe measures against Jews for having adopted Christian names in newspaper advertisements, in writing cards, or in door signs. It is well known that, in 1938, the National-Socialist government introduced in Germany, characteristically enough, a regulation requiring Jews to add the names Israel or Sara to their first names.[16]

IV

EXECUTION OF THE NAME-LAWS

In Austria the prescribed change of name was to be recorded at the municipal offices, before November 30, 1787. The Napoleonic decree of 1808 ordered the Jews to register their names within three months with the officials of the *État Civil.* According to the other laws mentioned, Jewish names also had to be recorded. Some laws ordered the Jews to submit the proposed change of name to the government for acceptance. Mecklenburg-Strelitz was an exception.[17] Here the Jews had to notify the board of the Jewish community of their chosen names. The latter was obligated to inform the ducal government which then published the names. Joseph II's and Napoleon's decrees permitted Jews to choose names themselves. In some cases they had adopted family names before the laws were enacted; in others more or less enforced persuasion was necessary to have them comply with the legal requirements.[18] In an interesting essay "Studies on Names" (*Namensstudien*) the renowned novelist Karl Emil Franzos[19] vividly pictured how the Austrian officials in Western Galicia and Bukowina gave the Jews names such as Wohlgeruch, Geldschrank, Pulverbestandteil,

[16] Cf. Gaster, pp. 97 f.
[17] Cf. Silberstein, p. 350.
[18] Cf. Anchel, pp. 447 ff., 457 ff.
[19] *Kulturbilder aus Halbasien* (first ed. Berlin, 1880; third ed. 1888); cf. Silberstein, p. 351.

Taschengreifer, Wanzenknicker, Finkelscherer, Beutelschneider. Only by bribing the officials could the Jews obtain a better-sounding name. In France, on the other hand, the name-laws were correctly executed except for a few cases in which the Jews were mocked. The same applies to the German states. In France some Jews chose even classical and heroic-sounding names, obviously with no official objection.[20] In general, one can accept Gerhard Kessler's classification of the names adopted by Jews:[21]

1. Names of origin, taken from towns, villages, rivers, mountains, countries, neighborhoods, or ethnic background.
2. Paternal names (unchanged in the genitive form, or with the addition of "sohn" or "son"), or of Jewish caste origin (Kohen, Levi).
3. Names of profession; proper names; mock names.
4. Fancy names.

V

WESTERN GERMANY

Illustrations of the entire subject under consideration may be taken from Western Germany. In addition to the literature on Jewish names and published name-lists[22] the present writer used unpublished material from the State Archives in Coblentz, especially from Bonn and some small communities in the Rhine-Moselle *Département.*[23] These sources concern chiefly the region on the left bank of the Rhine, which was united with France by the law of November 4, 1797, and completely incorporated in the French state through the peace of Luneville in 1801;[24] and further-

[20] Cf. Anchel, pp. 450 ff. (Kuttolsheim, Bas-Rhin).

[21] Kessler, pp. 30 ff., 54 ff. 57 ff., 60 ff., 65 ff., 77 ff.

[22] Gansen; Kisch; Kober, *Namensverzeichnis;* Alfred Levy; Max Levy, Menninger; Salfeld.

[23] Abt. 256, Nr. IV 1129, fol. 17-18; Abt. 256, Nr. IV 1130, fol. 5-14, 20-25, 35; Abt. 256, Nr. II 5363 (Bonn); Abt. 256, Nr. II 53 c 1,2 (Mairie d'Andernach, Mairie de Boppard).

[24] Cf. Kober, *Rheinland,* pp. 90 ff.; Kober, Namensverzeichnis, p. 3.

more, the Grand Duchy of Berg which was founded by France in 1808, and extended over a great part of the region on the right bank of the Rhine.[25] The first-named region included Mayence, Worms, Speyer, Treves, Bonn, Cologne, all seats of an old and high Jewish culture in the Middle Ages. Mayence and Bonn, as capitals of the electorates Mayence and Cologne, also had important Jewish communities in the eighteenth century. The splendor of the electoral residences reflected on the Jewish communities in these cities, with their Jewish court-factors and physicians.[26] The paraphernalia of their synagogues and welfare societies, dating from the seventeenth and eighteenth centuries, and including Torah-curtains, Torah-silver, silver cups, existed until November 10, 1938, the day of the burning of the synagogues in Germany, and testified to the wealth of these Jewish communities as well as to the joy with which their members had made these valuable gifts.

In the Rhineland the age of Enlightenment had affected the Jews, if but only a small number of them. Karl Joseph von Ertal (1774-1802), Elector and Archbishop of Mayence, tried to place the Jews on the same level as the Christians in matters of education (1782-1787). He reopened the University of Mayence with great ceremony, making this seat of learning accessible also to Jews. The bestowal of a doctorate of medicine on the Jew, Josef Hamburg, in 1787, is an interesting sign of the new era which was then dawning in the Archbishopric of Mayence. A similarity of conditions can be noticed in Bonn, the capital of the Archbishopric and Electorate of Cologne. In 1777 Elector Maximilian Franz established and dedicated the new academy in Bonn, where

[25] Cf. Kober, *Rheinland*, p. 79.

[26] Cf., in general, Kober, *Rheinland*, pp. 73-79; 90-98; moreover, Kober, in *Monatsschrift für Geschichte und Wissenschaft des Judentums*, LXXX (1936), pp. 397 f.; for Mayence, cf. Salfeld, pp. 64 ff.; *Magenza, Ein Sammelheft über das jüdische Mainz im 500. Todesjahre des Mainzer Gelehrten Maharil*, ed. by Sali Levi (1929), pp. 71 ff.; for Cologne, cf. G. Hoffmann, *Die Juden im Erzstift Köln im 18. Jahrhundert* (University of Munich Ph. D. Thesis, 1927), p. 17; J. Hansen, *Quellen zur Geschichte des Rheinlandes im Zeitalter der französischen Revolution*, 1780-1801, Vol. I, 1780-1791 (Bonn, 1931), pp. 797, 1002.

Jews were also allowed to study, though not to be graduated. According to French pattern on January 23, 1798, the territory on the left bank of the Rhine was divided into four *Départements,* Roer, Rhine-Moselle, Saar, Donnersberg. In the years 1806-1808 the Jewish population of the area amounted to 23,100 souls, in 1809 to 24,956[27] among 77,465 Jews of the thirteen French *Départements,* thus including one third of French Jewry.[28] In 1808 nearly 3,200 Jews lived in the Grand Duchy of Berg.[29] The Jews of the four *Départements* had become French citizens. Their representatives took part in the Assembly of Jewish Notables of 1806 and in the Great Sanhedrin of 1807 in Paris. The consistorial constitution of 1808 had been established in these *Departments,* too. Four consistories were founded in Mayence, Treves, Krefeld, and Coblentz (later in Bonn).[30] In these territories the Jews had to submit to all French laws, also to Napoleon's "Infamous Decree" of March 17, 1808. Mayence and Bonn maintained their old position and importance for the Jews. The process of Jewish assimilation to French citizenship, their participation in trade, agriculture, art, and officialdom made great progress.[31]

The name-law of July 20, 1808, was also put into effect in these *Départements.* In Bonn the adoption of names took place between November 2, 1808, and January 3, 1809, of which registries are extant, one copy in the Municipal Archives of Bonn, another in the State Archives of Coblentz.[32] The register contains 394 names; in 1808-1809, 421 Jews lived in Bonn. These are the family names: Abraham, Andrea, Anschel, Bär, Baruch, Bass, Benedict, Berlin, Bingen, Bingemann, Bonnem, Cahen, Cahn, Carlburg, Cohen, Coppenhagen, Copper, Davidt, Feist, Feust, Frank, Frenkel, Fridberger, Frohn, Gumpertz, Goldfinger, Goldschmidt, Gottschalk, Haymann, Heymann, Hersel, Herz, Hess, Hirsch,

[27] Cf. Kober, *Rheinland,* pp. 90-98.
[28] State Archives in Coblentz, Abt. 256, IV 1127.
[29] Cf. Kober, *Rheinland,* pp. 98 f.
[30] See *ibid.,* p. 78.
[31] See *ibid.,* pp. 76, 77; Salfeld, pp. 76, 77.
[32] Abt. 256, Nr. II 53 b 3; cf. Alfred Levy, p. 30.

Hirz, Kauffmann, Keizer, Landau, Leib, Levi, Manasses, Marx, Meyer, Moises, Nathan, Oppenheim, Oppenheimer, Pohl, Pollack, Salomon, Samson, Samuel, Schimmel, Schlesinger, Selig, Seligman, Sulzbach, Treudel, Ungar, Wallenstein, Wallich, Wetzlar, Wolff, Zime.

In Frankfort-on-the-Main, the number of names changed by law in 1808 was very small,[33] the reason being that the Jews had here assumed family names even before this year. The same is true of the Jews in Karlsruhe and Mannheim.[34] In Worms and Mayence the great majority already bore family names, perhaps adopted in the interval between the French occupation in the Eighteen-Nineties and the enacting of the name-law in 1808. In the list for Mayence 45 among 159 persons appear with new family names.[35] In Bonn, too, the majority of Jews had family names before the law of 1808 went into effect. In Cologne,[36] where the Jews had returned in 1798, 33 among 133 Jews assumed new family names for themselves and the members of their families. The situation was different in new Jewish settlements or in small places. Here the majority of Jews had to adopt family names afresh. In the list of Nickenich (Département de Rhin et Moselle, Arrondissement de Coblenz, Mairie d'Andernach) the following family names assumed in 1808 are listed: Burggraf, Hartmann, Kauffmann, Klee, Lambert, Süssmann, Wolf; in Boppard and Hirzenich (Mairie de Boppard): Abraham, Angel, Benedit, Cahn, Davidt, Frank, Geisel, Goetz, Hertz, Hirsch, Isaac, Jacobs, Feist, Kahn, Lemele, Liebmann, Loeb, Mayer, Sabel, Wolf. Frequently the first name developed into a family name: in Mayence the name Beer was transformed into Bernays, Henoch into Honig, Markus into Marx;[37] in Worms, Seligmann into Ney.[38] The name Burggraf, recorded in Nicken-

[33] Schiff, pp. 59, 15.
[34] Dreifuss, p. 113.
[35] Salfeld, pp. 72-75.
[36] Cf. Kober, *Namensverzeichnis.*
[37] Cf. Salfeld, pp. 72 ff.
[38] Cf. Max Levy, p. 7.

ich, is supposed to refer to the master of an old Rhine castle; the names Klarwasser and Steinwasser mentioned in Grevenbroich are supposedly fancyful names.[39] The overwhelming majority of Jews in the four *Départements* made use of the permission of Napoleon's decree and retained their old names. Only in the first name did they make a change and very often tried to adapt them to the French pattern. Thus Jacob became Jacques, Bär Bernard, Hayem Henri, Loeb Lion, Nathan Nicolas, *etc.* The old ghetto pet names of women in particular were changed, whereby first names such as Antoinette, Babette, Brigit, Caroline, Francoise, Jeanne, Madeleine, Margarit, Rosine were introduced.

In the territories of the former Grand Duchy of Berg neither the French nor the Prussian legislation regarding the adoption of family names by Jews had come into effect. In 1845 a law ordered the Jews of these territories to submit their chosen family names for approval to the Prussian government.[40] Selection of names used by well-known Christian families was prohibited. Due to this law, 330 heads of families—with their members 1316 persons—chose 119 new names in the governmental districts of Cologne on the right bank of the Rhine. In the governmental district of Düsseldorf on the right bank of the Rhine, 837 heads of families—with their family members 2664 persons—chose 17 new names; in the governmental district of Coblentz 601 heads of families chose 104 new names. These persons received special confirmatory documents from the government. The new names in this territory correspond generally with the aforementioned classification. In contrast to the limitation imposed by the French law of 1808 six brothers in Siegburg chose six different family names: Bock, Fröhlich, Leven, Levison, Stern, Wolf.[41]

These name-lists are interesting also from a sociological point of view; first with regard to the number of children.

[39] Kisch, pp. 394, 396.

[40] Gansen, pp. 4 ff.

[41] Cf. Gansen, p. 5, n. 13; another instance is found in the Kingdom of Westfalia, cf. Samuel, p. 49, n. 4; p. 50.

In Worms, one couple had 8 children, 3 couples 7 children each, many couples 5 children;[42] in Cologne, 2 families had 7 children each, one family 6 children, 2 families 5 children;[43] in Bonn, 2 families had 9 children, 4 families 7 children, 2 families 6 children, 8 families 5 children, 10 families 4 children, 7 families 3 children, 2 families 2 children; in Boppard, one family had 10 children; in Nickenich, one family 7 children, one family 4 children, one family 3 children.

The lists also disclose important information concerning the educational status of the Jews. In Worms, 58 of 139 men signed their names in German, 46 in Latin, 33 in Hebrew characters; 30 of 149 women signed in German, 13 in Latin, 31 in Hebrew characters; and 75 were illiterate. In Cologne, among 74 people who signed for themselves and their minor children, 45 signed in Latin or German characters, 19 in Hebrew, while 11 could not write at all, among them 7 women. In Bonn, 39 fathers signed the declaration of names for themselves and their minor children; 81 independent persons, the majority women, could not sign at all; one person only signed in Hebrew. In Nickenich, only one woman could sign her name, and that in Hebrew. From this, one could draw a conclusion as to the general educational status of the Jews in Western Germany in 1808. A distinction must be made between city and country. But the low educational status of the women is noticeable also in the cities and towns. This was changed in the Rhine provinces by the establishment of schools under French rule, and especially in Nineteen-Twenties under the Prussian school legislation.[44] Moreover, the migration of Jews from villages to towns and cities set in at about this time.

In these name-lists one meets many Jewish families who gained great prominence far beyond their home towns; for instance, the bearers of the name Wallich in the Cologne and Bonn lists. This name probably refers to the name

[42] Cf. Max Levy, p. 14.
[43] Cf. Kober, *Namensverzeichnis*, pp. 6 ff.
[44] Cf. Kober, *Rheinland*, pp. 82 ff.

Welsch; the origin of the Wallichs thus is supposed to be in the Roman West.[45] The Wallich family was represented in the medical profession almost continuously from the fourteenth to the twentieth century. In the Bonn list the name Gumpertz occurs several times. This name has its origin in the old German name Gundbert. It was first applied in abbreviated form by the Jew Solomon ben Mordecai Gumpel who was admitted to Emmerich by the Duke Jean William of Jülich-Cleve in 1600. Descendants of this family spread far; they were not only the founders of the then newly-established Jewish communities of Emmerich, Wesel, and Cleve on the lower Rhine, but also outstanding as merchants, court-factors and, in the nineteenth century, as celebrated scholars bearing the name Gompertz.[46] Samuel Gompers (1850-1924), the renowned American labor leader, descended from the English branch of the Gompertz family.[47] Among the well-known families in Worms these may be listed: Adler, Gernsheim, Guggenheim.[48] From the *Dayyan* Isaac Adler of Worms (died 1828) descended Samuel Adler,[49] born in Worms 1809, rabbi of Temple Emanu-El in New York (died 1891); the latter was the father of Felix Adler, the founder of the Ethical Culture movement. From the family Gernsheim of Worms came the composer Frederick Gernsheim (1839-1916).[50] From the families Bernays, Derenburg, Hallgarten, Reinach, too, sprang prominent descendants. Isaac Bernays (born in Mayence in 1792), known as *Haham* Bernays, became the founder of modern orthodoxy (died in Hamburg in 1849).[51] The renowned orientalist Joseph Naphtali Derenbourg (1811-1895) was the son of

[45] See H. Schultze, "Geschichte der Familie Wallich," *Monatsschrift für Geschichte und Wissenschaft des Judentums*, XLIX (1905), pp. 57-77, 183-192, 272-285, 450-458, 571-580.

[46] See David Kaufmann and Max Freudenthal, *Die Familie Gomperz* (Frankfurt a.M., 1907); *Enc. Jud.*, VII, pp. 518-520.

[47] *EJ.* VII, 516.

[48] *EJ.* VII, 715.

[49] *EJ.* I, 889.

[50] *EJ.* VII, 297-298.

[51] *EJ.* IV, 289, 290.

the author Zvi Hirsh Derenbourg of Mayence.[52] The orientalist Hartwig Derenbourg (1844-1908), born in Paris, was the son of J. N. Derenbourg. Another line of the Dernburgs is represented by Jacob Dernburg who was president of the Jewish community of Mayence in 1831.[53] His sons were the eminent lawyer Heinrich Dernburg (1829-1907) and Friedrich Dernburg (1833-1911), both born in Mayence. The latter's son Bernard became Secretary of State in Germany. From the family Hallgarten descended the great philantropist, Charles Hallgarten, born 1838 in Mayence. A member of the Reinach family, Jacob Reinach,[58] moved from Mayence to Frankfort-on-the-Main in 1804, and his grandsons were Solomon and Theodore Reinach, the great scholars and most renowned bearers of this name.

In 1767 the *Hoffaktor* Baruch, son of Simon of Mergentheim,[56] moved to Bonn from Neckarsulm, where he had been a financial agent of the Order of Teutonic Knights. It was he who administered the finances of the electorate of Cologne under the Electors Maximilian and Max Franz, and his name was mentioned to King Frederick William III by the Prussian ambassador at the court of Bonn, Baron von Stein, in a letter of March 30, 1791, "*presque ministre des finances à Bonn.*" His elder son, the very influential Simon Baruch or Simon of Mergentheim, born in 1757, was councillor of the *arrondissement* Bonn, and also president of the Jewish community of Bonn. His younger son Jacob Baruch (1763-1827), electoral *Hoffaktor* under Max Franz, moved to Frankfort-on-the-Main and became the champion of the rights of the Frankfort Jews at the Congress of Vienna.[57]

[52] *EJ.* V, 942-945.

[53] *Magenza* (*supra*, note 26), p. 62; *Jüd. Lex.*, II, 87 f.

[54] *EJ.* VII, 878 f.; Salfeld, p. 73.

[55] Alexander Dietz, *Stammbuch der Frankfurter Juden* (Franfurt a.M., 1907), pp. 230, 231; *Jüd. Lex.*, IV, 1311-1314.

[56] *Bonner Memorbuch* (unpublished manuscript, formerly in possession of the Jewish Community in Bonn, now probably in the British Museum in London), fol. 20[b]; A. Noss, *Die Münzen der Erzbischöfe von Köln*, 1547-1794 (Cologne, 1925), p. 429, Index *s. v.*; Hoffman (*supra*, note 26), *passim*; Hansen, *Quellen zur Geschichte des Rheinlandes*, I, pp. 797, 1002.

[57] Cf. *EJ.*, III, 1110 f.

Jacob Baruch's son was Löeb Baruch, that is Ludwig Boerne, the renowned German author.

In the namelist of Bonn, moreover, the name of Nathan David Hess is found. He was the son of the rabbi of Mannheim, David Tewele Hess,[58] whose son, David Hess, born in Bonn in 1790, was the father of Moses Hess (1812-1875), author of *Rome and Jerusalem,* founder of philosophical Socialism, and father of political Zionism.[59] From the Bonn list the industrialist S. I. Coppenhagen should also be mentioned. He belonged to the family of the author of the books, *Or Hayashar* (Amsterdam, 1769) and *Sippur Beki Neharoth* which described the Rhine floods of 1784. He owned, after 1805, a cotton mill employing 70 workers, thus being a leading manufacturer of the time.[60]

The family of Solomon Oppenheim, found in the Cologne list, also originated in Bonn; they moved to Cologne at the end of the eighteenth century. Their banking house, founded by Solomon Oppenheim Junior, was one of the most important in the Rhineland up to the twentieth century. Two generations of this family, especially Baron Abraham Oppenheim, have been of great service to the Jewish community.[61] Solomon Oppenheim, through his daughter Bertha,[62] was the great-grandfather of the famous physicist, Heinrich Hertz (1857-1894), who discovered the electro-magnetic rays, the so-called *Hertzsche Wellen,* thus laying the foundation for wireless telegraphy and broadcasting over the air.[63]

[58] Cf. Leopold Löwenstein, *Geschichte der Juden in der Kurpfalz* (Frankfurt a.M., 1895), pp. 226 f.; *Bonner Memorbuch* (*supra,* n. 56), fol. 28 a.

[59] *EJ.,* VII, 1230-1232; A. Kober, *Cologne* (Philadelphia, 1940), pp. 203, 249, 302 ff.

[60] Cf. *Handbuch des Rhein-und Mosel-Départements von* 1808 (Bonn, 1809); Carl Brisch, *Geschichte der Juden in Coeln und Umgebung,* II (Cologne, 1879-1882), pp. 137 ff.; *Bonner Memorbuch,* fol. 25 a, on Aharon Simon ben Jacob Abraham Copenhagen of Bonn, the son-in-law of R. Juda Mehler; cf. Kober, *Cologne,* pp. 162 f.; M. Steinschneider, *Die Geschichtsliteratur der Juden,* I (Frankfort a.M., 1905), p. 154, n. 269; p. 151, n. 261.

[61] See Kober, *Cologne, passim.*

[62] See Kober, *Namensliste,* p. 12, n. 95.

[63] *EJ.,* VII, 1213.

All told, the regulation of Jewish names by law and the history of Jewish family names are an important and interesting segment in the cultural history of the Jews. According to Leopold Zunz, the name acquires the breath of life through language, but its significance comes from the history, its attraction from custom. These names, therefore, convey a hidden story; they are annals in cipher to which research has to find the key.[64] Gerhard Kessler[65] arrives at the conclusion that the major part of German Jewish names is full of meaning, and worthy of respect as a cultural possession. We agree with him that each name contains a rich history. It reflects a sorrowful, but great and rich past.

[64] Zunz, p. 2.
[65] Pp. 107 ff.

ISIDOR BUSH, AMERICAN PATRIOT AND ABOLITIONIST

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EUROPEAN BACKGROUND AND EMIGRATION TO AMERICA

THE MAN whose civic and political activities are the subject of this essay has earned a place in American history, and in American Jewish history in particular, because of his devotion to his fellow Jews, and his loyalty to his American fellow-citizens. Isidor Bush,[1] "American patriot and abolitionist, deserves a separate biographical treatment on the basis of the historical source material hitherto unexhausted, to supplement the several essays which previously attempted either a general biography or were devoted to particular phases in the life of this champion of liberty and human rights.

Isidor Bush, born in Prague, Bohemia, on January 15, 1822, was the son of Jacob Busch and great-grandchild of Israel Hönig Edler von Hönigsberg, the first Jew raised to nobility in Austria.[2] As a child he was pampered by his father (his mother died when he was three years of age), and enjoyed a pleasant childhood. Educated by private teachers, he spent his youth in the home of a cousin where he met some of the outstanding Jewish thinkers and leaders

[1] The name is spelled both Busch and Bush; the former spelling was used in Europe, the latter in the United States. For biblography on Isidor Bush, see *Jewish Encyclopedia* (New York and London, 1902) III, 442 f.,; IV, 1227; *Universal Jewish Encyclopedia* (New York, 1940), II, 607; Guido Kisch, "*Israels Herold*: The First Jewish Weekly in New York", in *Historia Judaica*, II, (1940), p. 68, note 8.

[2] B. F. Peixotto, "Israel Edler von Hönigsberg," *The Menorah*, Vol IX, No. 3, (Sept. 1890), p. 123.

of those days, among them Leopold Zunz and Michael Sachs.[3] His father moved to Vienna in 1837 and became a partner in "Schmid's Oriental Printing Establishment." Isidor, though only a lad of fifteen years, became engrossed in the intellectual aspect of his father's new business venture, and zealously turned to the study of Hebrew. Within a short time, the firm of Schmid and Busch became one of the largest Hebrew publishing houses, printing Bibles, prayer books, widely disseminated editions of the *Talmud,* Rambam, and other works of Hebrew literature. From 1842 to 1847, Isidor edited and published the *Kalender und Jahrbuch für Israeliten,* the first popular annual of scholarly articles printed in the German language in Austria,[4] among the contributors to which were some of the leaders of the *Wissenschaft des Judentums.* In 1848 Bush founded the *Oesterreichisches Zentralorgan für Glaubensfreiheit, Kultur, Geschichte und Literatur der Juden,* which appeared weekly for seven months.

The failure of the revolution in 1848 brought an end to Bush's career in Vienna, and he was compelled to seek safety in America. He left Austria with his wife, the former Teresa Taussig, and a small son, and landed in New York on January 8, 1849, with little or no financial resources. Soon he opened a small book store in New York City, intended only, it seems, to yield him sufficient income until he could get established in the work he loved. Three months after his arrival in America, on March 30, Bush issued the first number of a German-Jewish weekly, *Israels Herold,* a paper similar to those published in Europe. Apparently it was impossible to reproduce European journalism in America, and publication was suspended after three months. The history and failure of this journalistic enterprise have been recently traced and thoroughly described.[5] Having failed as a journalist Bush left New York in July, 1849, for St. Louis where his wife's family had settled.

[3] B. F. Peixotto, "Isidor Bush", *The Menorah,* Vol. IX, No. 4 (Oct. 1890), p. 190, also with reference to the biographical data to follow hereafter.

[4] See Kisch, *loc. cit.,* p. 68.

[5] G. Kisch, *Historia Judaica,* II, (1940), pp. 65-84.

Bush's Commercial and Jewish Activities in St. Louis

Bush's business career in St. Louis began with the opening of a general store in partnership with his brother-in-law, Charles Taussig, in Carondelet. This business was carried on with fair results for about six years. In 1853, after Bush's father, Jacob, came to St. Louis with several thousand dollars, the firm of Bush and Taussig acquired the grocery business of Abeles and Taussig. In all probability, this firm did not survive after 1860, when Bush lost his wealth due to the adverse business conditions in the country.

As early as 1851 Bush acquired a hundred acres of land in Jefferson County, Missouri,[6] at a place later called Bushberg, where he was engaged in the raising of grapes. With the passing of time, he acquired more space in which to carry on this work. He developed a keen interest in viticulture and came to be recognized as a leading authority in this field. In 1868 he published the Bushberg Catalogue, a grape manual, which was translated into many languages and enjoyed international circulation. Bush also established a wine and liquor business. In 1870 he organized the firm of Isidor Bush and Company, which continued in existence even after his death. This business seems to have been more or less successful and served as Bush's most reliable and constant source of income. His success in this venture may have been due to the business experience he acquired while serving as an officer of the Bluffton Wine Company, which was organized by foreign-born Germans of Hermann, Missouri, in August, 1866, and discontinued in 1870, the same year that Bush organized his company.

Bush's interests were not confined exclusively to viticulture and the wine and liquor business. For a few years he was engaged in the real estate and banking business, and served as president of the Peoples' Saving Institution, of which he was an incorporator in 1857. During part of the

[6] Isidor Bush, Last Will and Testament, written Oct. 1, 1897.

decade, 1850-1860, he was employed by the St. Louis and Iron Mountain Railroad Company, in the capacity of General Freight and Passenger Agent. Some years later, in 1866, Bush held the position of president of the Mechanics Saving Institution. In 1882, he was in the service of the German Mutual Life Insurance Company as an actuary.

Bush's business activities and experiences were varied and manifold. From grocery store to vineyard; from hardware store to bank director. In none of his business enterprizes did he earn large sums of money or amass any great wealth. When he died his estate was valued at $27,391.57, of which only $38.70 was in cash. There is reason to believe that he suffered many financial reverses. On May 1, 1895, he sold part of his Bushberg property. What prompted the sale of this property cannot of course be determined, though it may have been the need of funds.

Though Bush was actively engaged in many business ventures throughout his life, he was not too engrossed nor too pre-occupied to give of his time and means to the welfare of his co-religionists. Soon after he came to this country he was befriended by Jewish leaders and always felt a deep sense of obligation to the B'nai B'rith Order, with which he affiliated in July, 1849, when he joined Zion Lodge, No. 2, in New York. After he moved to St. Louis he helped organize the Missouri Lodge, No. 22, the first chapter in the Mississippi Valley, founded in 1855. Eight years later, in October 1863, he and nine other men founded the Ebn Ezra Lodge, No. 47, the chapter to which he belonged the remainder of his life, and which he represented almost without interruption in the District Grand Lodge. Bush served as President of his District Grand Lodge; as a delegate to the Constitutional Grand Lodge; and as a member of its Executive Committee.[7]

As early as 1863 plans were being made to establish an orphan home and Bush was made a member of a Board of Commissioners from Grand Lodge, No. 2, to "select a

[7] B. F. Peixotto, "Isidor Bush," *The Menorah*, Vol. IX, No. 4 (Oct. 1890), p. 193.

place for the location of the asylum and to collect funds from the treasuries of the various subordinate lodges, with four other members." The home was established five years later, in 1868. Bush was a member of the Executive Board of Trustees of the Cleveland Orphan Asylum from 1868 until 1870, and served on the committee for drafting a constitution and by-laws for the organization. As one of the founders Bush participated in its administration for many years as an honorary life member.

His efforts in B'nai B'rith were not confined to the establishment of the orphan asylum. In 1878, he wrote "A Treatise on Co-Operative Life Insurance," and in 1885 he prepared an endowment plan under the title, "Our Widows and Orphans Endowment" dedicated to B'nai B'rith. He framed the Covenant Endowment Fund of District No. 2, which was adopted in 1874. His loyalty and devotion to the order were recognized and appreciated and he was tendered a testimonial reception by the leaders of B'nai B'rith at Philadelphia, Pa., in June, 1890.

Bush was also devoted to the religious aspect of Judaism. He was one of the founders of B'nai El Temple, St. Louis, and for many years served as its secretary. Much concerned about the Jewish people of St. Louis, he wrote a brief history of St. Louis Jewry which was published in the *Jewish Tribune*.[8] Though not a man of great wealth, he bequeathed part of his estate to various Jewish organizations.

Bush's faithfulness to Judaism and his loyalty to Americanism are well illustrated by an incident mentioned by his friend and biographer, Samuel Bowman: "I recall in 1863, when things looked darkest for the Union forces, attending a service at Temple B'nai El and listening to a patriotic sermon delivered by Isidor Bush from its pulpit, exhorting the members to stand loyally by and give their full support to the Government of Lincoln."[9]

[8] The date of publication could not be ascertained. This author is in possession of a copy of that article.

[9] Samuel Bowman, "Isidor Bush," *The Modern View*, Vol. 49, No. 4 (Sept. 19, 1924), p. 17.

Bush as a Citizen

Bush appreciated the freedom and liberty of the United States and utilized his citizenship for the welfare of his adopted country.[1] He championed the cause of liberty and defended the principles of the Republic.

Many of the biographical sketches of Bush allude to his military experiences under General Fremont. Most of these articles insist that Bush held the rank of Captain,[2] while one article[3] indicates that he was a private, second class, on the staff of General Fremont. The authoritative sources, however, do not indicate that Bush served in the Union Army at all. Wolf, in his roster of Jews who served in the Civil War, does not mention him as holding any position.[4] According to a communication from the Department of War to this writer,[5] "the name of Isidor Bush has not been found on the rolls on file in this office of any Missouri organization that was mustered into the military service of the United States during the period of the Civil War, nor on the record of enlistments in the regular army covering that period." Two St. Louis newspaper obituaries refer to his position as secretary to General Fremont, in a civilian and not a military capacity.[6] Bush suffered certain physical disabilities as a child in a fire[7] and probably was physically unfit to engage in military activities. It is, therefore, plausible that he served on General Fremont's staff only in a civilian capacity.

Though Bush may not have contributed as a military

[1] He was naturalized on March 30, 1854; cf. Records in the Circuit Court of St. Louis, Vol. I, p. 80. Witnesses were Adolph Abeles and Charles Taussig.

[2] Markens, *The Hebrews in America* (New York, 1888), p. 202; *Universal Jewish Encyclopedia*, II, 607; Furth, "Sketch of Isidor Bush", p. 305.

[3] Robert J. Rombauer, *The Union Cause in St. Louis in* 1861 (St. Louis, 1909), opposite p. 168.

[4] Simon Wolf, *The American Jew as Patriot, Soldier and Citizen* (Philadelphia, 1895), pp. 220-223.

[5] Dated Washington, D. C., December 10, 1942.

[6] *St. Louis Globe-Democrat*, August 6, 1897, p. 16; *St. Louis Post-Dispatch*, August 5, 1898, p. 7.

[7] Peixotto, "Isidor Bush", p. 190.

man to his country's welfare, he did serve the community in which he resided as an alderman from the first district during the year 1866.[8] Records are not available which would indicate the extent of his participation in the deliberations. One newspaper remarks that Bush and August Kriekhaus were the only Republicans in the Council in 1866 and that "all the measures they introduced were passed."[9] The source of this statement is not given; it may be based on a reporter's memory.

Bush also served St. Louis as a member of the Board of Education. His incumbency extended from December 1881 until October 1884.[10] He was continuously on the Teacher's Committee;[11] on the Library Committee during two years of his term;[12] and on the Course of Study and Ways and Means Committees for one year.[13] What part he played in the lay administration of the St. Louis schools is difficult to establish with accuracy. He attended most of the meetings until the second half of his term[14] when he was often absent because of poor health.[15]

Membership in the City Council and on the Board of Education were the only municipal public offices which Bush held. It is said that he was tendered the position of City Comptroller and State Treasurer, but he declined both offers.[16] He submitted to Salmon P. Chase, then Secretary of the Treasury, a plan for a popular Government loan, which while favorably reported by the department, failed to receive the sanction and endorsement of Secretary Chase.[17] Bush also submitted to Governor Fletcher of Missouri a plan for re-establishing the credit of the State, but it too

[8] *The Revised Ordinances of the City of St. Louis,* 1871, p. 681.
[9] *St. Louis Post-Dispatch,* August 5, 1898, p. 7.
[10] *St. Louis Public Schools,* Vol. IV, (Dec. 13, 1881), p. 235.
[11] *Op. cit.,* IV. pp. 235, 408, 426; V, p. 71.
[12] *Op. cit.,* IV, p. 235; V, p. 71.
[13] *Op. cit.* IV, pp. 235, 426.
[14] *Op. cit., passim.*
[15] *Op. cit.,* V, p. 246; letter by Bush to the President of the Board of Education.
[16] Peixotto, "Isidor Bush", p. 197.
[17] Furth, pp. 305 f.

was not adopted.[18] It would be beyond the scope of this study to treat either plan even briefly. Though Bush's suggestions were not utilized, there can be no doubt that he possessed an excellent knowledge of public finance.

Bush accepted only one appointment in the State Administration, that of Secretary of the State Board of Immigration, which was established by the State Legislature on February 16, 1865. He was tendered this position "because he was then engaged in work of a similar character, having been for nearly twelve years president of the German Immigrant Aid Society of St. Louis,"[19] an experience which especially qualified him for such an office. He was in deep sympathy with the purpose of the Board and pleaded for generous hospitality to immigrants. In a report which he submitted to the Board he wrote:

"States and countries that have, in a Catholic spirit, and with wise forethought, fostered and favored the cultivation of their sparsely populated domains by a thrifty and industrious class of settlers, have invariably reaped a rich harvest of prosperity in reward of their liberality; while others which, either from want of adaptation of proper means to the desired end, and in a spirit of narrow-minded selfishness, have failed to attract or have shut out from their borders that ever-flowing migratory tide, have regularly receded in prosperity, and even retrograded in civilization."[20]

In the same report Bush pointed out the material and cultural advantages which accrue from a liberal immigration policy and urged that new-comers be treated with understanding and without prejudice.

"Our habits change and improve by those imported from foreign countries. Everyone of us remembers that the time when Dutch "lager beer" and "sour krout" were used as terms of reproach and ridicule; now they form most important articles of our manufacture and trade, sources of wealth, and are used more or less by almost every American in this State. Our German vintners will prove still greater apostles of temperance and reforms; they will be great promoters of immigration,

[18] A copy of this plan may be found at the St. Louis Public Library.

[19] Furth, p. 306; see also Hyde and Conrad, *Encyclopedia of St. Louis History*, II, p. 888.

[20] *State Board of Immigration of the State of Missouri*, Report of Secretary, 1867, pp. 9 f.

but to invite them we must not impose on all a puritan observance of the Sunday, we must not attempt to banish music and dance; but should grant to all the social enjoyments of life, each according to his own fashion."[21]

Governor Fletcher's purpose in establishing the Board was to "repair as readily as possible, the losses of population sustained through the desolations of war." This purpose was in part achieved during Bush's incumbency. In 1864 only 104,428 citizens voted in the Presidential election, while in 1876, 351,604 citizens exercised this prerogative.[22] This increase in population well may have been due to the efforts of the State Immigration Board.

Bush tendered his resignation after six years "with a view to obviate any doubts about his duration of office as a member of the Board—the law being, in his opinion, indefinite on this point."[23] His resignation, however, was not accepted and his tenure lasted twelve years. It is significant that when he resigned, Frederick Muench, a close friend of his, also resigned from the Board.

Bush as a Patriot and Abolitionist

Bush's greatest contribution to the state was made in the state conventions held at various times between 1861 and 1863. The importance of these conventions in the history of Missouri justifies an extended summary of his activities.

In January 1861, Missouri was in a state of turmoil and unrest. Events throughout the nation pushed into the foreground the question of whether to remain in the Union or to secede and join the Southern Confederacy. This problem, of grave importance in itself, was further aggravated by partisan politics and by the political ambitions of leading citizens. Amidst the general unrest there was a change in the state administration. The membership of the legislative branch of the government was helplessly and hopelessly

[21] *Op. cit.*, p. 25.
[22] Peixotto, p. 198.
[23] *Report of the Board of Immigration of the State of Missouri*, 1873, p. 16.

divided, rendering impossible the solution of any important problem. Realizing the futility of the situation, the Senate and House enacted, on January 17 and 18 respectively, and Governor Claiborne F. Jackson signed, on January 21, the so-called Convention Bill.[1] This provided for "a convention of the people of the State of Missouri . . . to consider the then existing relations between the Government of the United States, the people and the governments of the different states, and the Government and the people of the State of Missouri; and to adopt such measures for vindicating the sovereignty of the State, and the protection of its institutions, as shall appear to them to be demanded." This bill, inspired by the secessionists, who hoped to commit Missouri to the Southern cause by the time of Lincoln's inauguration,[2] was accompanied by an amendment which required that acts of the convention be approved by the people. Despite this limitation of authority, the convention became the most important policy-making institution in the state during this critical period.

The selection of the delegates occupied the attention of most citizens and particularly of the politicians. Meetings and rallies were held throughout the state. Under the astute and determined leadership of Frank Blair, Jr., a Union party was formed. At a meeting on February 6, 1861, at Verandah Hall in St. Louis, "the names of fifteen men . . . thought suitable to be placed on the Union party ticket for the State Convention" were submitted, among them the name of Isidor Bush.[3] This slate "was approved amid great enthusiasm."[4]

The campaign, which lasted slightly less than a month, culminated in the overwhelming victory of the Union party over the secessionist group. Those elected as delegates were "usually men of known ability and leadership, coming large-

[1] *Missouri Assembly, Journal of the House,* 1861, p. 106 f.; *Journal of the Senate,* 1861, p. 96.

[2] Walter H. Ryle, *Missouri: Union or Secession* (Nashville, 1931), p. 183.

[3] Thomas J. Scharf, *History of St. Louis City and County,* I, (Philadelphia, 1883), p. 394.

[4] Ryle, p. 206.

ly from the propertied and professional classes. Many were selected with great care in secret caucuses and later ratified by mass meetings. This was apparently an effort to secure men who could be depended upon in a crisis to fight for their convictions." Ryle believes "the convention was perhaps composed of the ablest men ever assembled in the history of the state."[5]

It was therefore an undoubted distinction for Bush to have been chosen a member of this body. Perhaps no finer tribute could have been paid and no higher honor could have been bestowed upon a citizen of the state. Bush's record in the convention vindicates the confidence of those who made possible his membership in this august and historic body. Though he played no very prominent part in the earlier meetings, which began on February 28, 1861, the voting record reveals that he consistently supported the Union cause. At the session of March 8, 1861, he introduced the following resolution:

Resolved, that the history of all nations, from ancient to modern times, has proven that the dismemberment of one nation into several governments or confederacies, has resulted in anarchy, despotism and ruin; and that, as 'In union there is strength, so in disunion there is destruction.'[6]

This resolution, referred to the all-important Committee on Federal Relations, was evidently not submitted to the convention for a vote, since there is no record of its having been acted upon. Nevertheless, this statement is a clear expression of Bush's strong Union loyalty.

Several days later, in explaining his vote against a motion calling upon the Federal government to withdraw its troops from the secession states in order to avoid military conflict, Bush delivered what Ryle and Laughlin consider "the outstanding unconditional Union speech of the convention."[7] Ryle in commenting upon a speech by Sample Orr says, "he probably made one of the two best speeches of the

[5] Ryle, p. 207.

[6] *Proceedings of the Missouri State Convention*, 1861, p. 45 f.

[7] Ryle, p. 225; S. B. Laughlin, "Missouri Politics during the Civil War", *The Missouri Historical Review*, XXIII, No. 4, p. 598.

convention,"[8] the other apparently being the address of Bush. Bush's remarks on this occasion admirably express his spirit and principles. They also illuminate the problems confronting Missouri in 1861.

"Mr. President: I desire to make a few remarks in explanation of my vote—I deem it due to myself and the thousands of German citizens whom I have the honor to represent, and who have been assailed again and again as coercionists. I have to ask your indulgence, as I am quite unaccustomed to speak and to speak in language that is not the idiom of my native country. But, Sir, while I confess myself wanting in *love of peace;* I am not wanting in anxiety for the peace and welfare of Missouri. And more than this, while you, Mr. President, and all the members of this convention, I believe, only imagine the horrors of war and fancy the evils of revolution, I *know* them; my eyes have seen what you cannot imagine, what I cannot describe—the terrors of civil war, of bloodshed and revolution. But while I know all this, I still cannot for the sake of peace, go any further than is expressed in this fifth resolution. I can earnestly entreat the Federal Government, and may ask, in brotherly spirit, our erring sister states to withhold, to stay the arm of military power; but I cannot go any further, and must oppose the amendment. I consider it not only the duty of the Government to maintain itself in those ports, and that it has no right to give up the property of the United States to the seceding states; but even if the President had the right, and should consider it his policy to do so, it would not secure peace. I go so far as to say, that if the Federal Government should even choose to waive the collection of revenue in those ports, as was proposed by the gentleman from Buchanan (Mr. Donnell), it would be far from securing peace. I ask him, as a merchant and a banker, (as I perceive he is, from the list before me) does he believe that New York *could* peacefully look on? Are her great commercial interests less dear to her than the cotton interest is to the South? You know, better than I do, that at the time of the first confederation, a war nearly ensued between Massachusetts and Rhode Island on account of unequal duties of import; and what was that trade then to the magnitude of the commerce of our day? I cannot, therefore, look on this amendment as a peace measure, and have to vote against it. I hope, however, that the present administration is for peace, and will not bring war upon us. I trust the seceding states will reflect and return, but should a conflict be inevitable, I pledge myself that your German fellow citizens will stand by the Government and the Union. They love peace. While they have left their native land, sweet home, to enjoy the blessings

[8] Ryle, p. 227.

of peace and liberty, the history of their own thirty-four confederate states of distracted Germany teaches them that there is no peace and no liberty without union; and this convention, composed as it is to a large extent of sons of Kentucky, will certainly forgive them if they think with Kentucky's greatest son, Henry Clay, that *'we owe a paramount allegiance to the whole Union—a subordinate one to our own state.'* I therefore, vote agaainst the amendment."[9]

The convention adjourned on March 22, 1861, subject to call by the executive committee at any time prior to the next scheduled meeting in December 1861. Exactly three months later, July 22, 1861, the delegates, upon summons of the executive committee, reconvened. During the interval between the sessions much had transpired. Governor Jackson had abandoned the capital, Jefferson City, for actual warfare had begun and Missouri was involved in the military conflict. Sterling Price, who was president of the first convention, had assumed leadership of the state guards, now battling for the Southern cause. In addition to Price, about twenty members of the convention had joined the Confederate army.[10] It was, therefore, necessary to reorganize the convention and to elect new officers.

As soon as the organization of the convention was perfected, the delegates addressed themselves to the problems of the state. They believed that no state government existed by virtue of the conduct of the incumbents and they voted to declare vacant the offices of Governor, Lieutenant-Governor and Secretary of State. The members of the state legislature were also deposed by the convention,[11] which proceeded to elect new officers of the state and then adjourned. Though Bush played no great part in this session either, it is significant that he voted with the majority on this perplexing and unique problem confronting Missouri. He thus shared in one of the rarest political experiences in the state and helped mold its history.

The convention was reassembled for the third time

[9] *Proceedings of the Missouri State Convention*, 1861, p. 244.
[10] Eugene M. Violette, *A History of Missouri* (New York, 1918), p. 393.
[11] *Proceedings of the Missouri State Convention*, July 1861, p. 131.

on October 10, 1861, upon the call of the new Governor, H. R. Gamble. During this session, too, Bush introduced no resolutions and made no speeches. He did, however, attend most of the meetings, listened to the deliberations, and in the same spirit of Union loyalty voted on the important resolutions which were introduced.[12]

In June, 1862, the convention reassembled for the fourth time and remained in session from June 2nd to June 14th. During this brief meeting Bush participated in the deliberations, but made no noteworthy contribution to them.[13] He signed a report of the Committee on Finance, but when he was appointed to this committee, and how long he served, cannot be determined from the records.

Bush did, however, occupy a very important position in the fifth and final meeting of the convention. This session, which began June 15, 1863,[14] concerned itself with the problem of emancipating the slaves. A committee on Emancipation with nine members was elected to study this problem. Bush was nominated from the second district. The balloting gave him 45 votes, Eitzen, for whom Bush voted, 1 vote, and Pomeroy, 17 votes. He was thus chosen by a large majority to serve on the most important committee of the convention.

When the question arose of retaining Governor Gamble, who had offered to resign, Bush took the occasion to make a strong plea for the right of the people to decide such matters.

" 'On the long list of champions of human freedom there is not one name dimmed by the reproach of advocating the extension of executive authority. On the contrary, the uniform and steady purpose of all such champions has been to limit and retain it.' If this is not your purpose, it shall be mine at least; if it sounds radical in your ears, I will name the radical who said it—it is your great Daniel Webster . . .

Now when the people loudly express the demand to give them back the right to choose their own rulers, and ask you to act in the spirit of constitutional liberty, will you refuse it? The Governor may or may not

[12] See *Journal of the Missouri State Convention*, October, 1861, pp. 7 f., 16, 21.

[13] *Journal of Missouri State Convention*, 1862, pp. 13, 16 f.

[14] *Journal of Missouri State Convention*, 1863, p. 13, and *passim*.

have committed any of the acts charged upon him by many of his friends and constituents; he may or may not have deserved their displeasure or disapproval, it matters not. I do not join in the clamor of the press, but I do join them in their just demand to return to the people their legitimate right—the right of selecting their executive officers themselves."[15]

When on June 23, the Committee on Emancipation submitted its report, Bush, the sole dissenter, submitted a minority report, representing his own views. To his great credit, Bush here proved himself to be a champion of real and speedy emancipation, as well as of democratic processes.

Mr. President: The undersigned feels it to be due to this honorable body, to himself, and above all, to the true emancipationists whom he desires to represent, that he should explain the reasons which have made it impossible for him to agree with the majority report of the Committee. He has earnestly desired to unite with *all emancipationists*, to yield his preferences, to sacrifice his favorite plans and ideas, to submit to a great extent, to the views of other members of the Committee, in what they would regard as a better policy; but it is most difficult to compromise *principles*. And it is on principle also, that the majority of the Committee unfortunately differ with him. The undersigned will state only the principle points of difference:

1. The position of our national affairs, the preservation of the Union, the prosperity of this State, its future peace and security, and the interest of the slave-owner, as well as humanity to the slaves, imperatively demand *speedy* emancipation, followed by apprenticeship for a limited period. It is this system which alone could temporarily secure to the present slave-owner that labor, to secure which all laws against fugitives from labor are now inefficient, and which, at the same time, would gradually prepare the slave for full freedom. But as this point may be regarded by some as one of policy, and not of principle, this point might be yielded, provided the time adopted for the continuance of slavery were short, and the conditions attached thereto not in conflict with the principles of humanity.

2. The Committee, however, have agreed not only on a time which the undersigned considers far too remote, but they have also refused to attach to this long extension of the present system, the humane principle of prohibiting the sale of slaves and their children out of this state; thus continuing to consider slaves as herds of animals, rather than as human beings.

[15] *Proceedings of the Missouri State Convention*, 1863, pp. 164 f.

3. The ordinance reported by the Committee does not provide for submitting it first to the vote of the people. This is another essential point of difference. Unlimited as the powers of the convention are, an ordinance of emancipation passed by this convention would have no vitality, or at least, no sufficient guarantee for the future, without a ratification by the people; especially in view of the fact that the majority of this convention did, on the 14th day of June 1862, adopt the resolution declaring that they have not felt authorized to take action with respect to the grave and delicate questions of private right and public policy, presented by the joint resolution of Congress, respecting the gradual abolishment of slavery. Having thus briefly stated the reasons from which he has been unable to agree to the report presented by the committee, the undersigned desires to present for the consideration of the Convention, an ordinance which, while it entrusts to future legislation the passing of such laws as the change of system will require, is to go into effect immediately after the people have given full force by their vote, and which he believes would receive the sanction of a great majority of the loyal people of Missouri, would cement the Union, and would result in great and mutual advantages to your state.[16]

Bush's proposal was not accepted, and the convention postponed for "complete emancipation within the state" to July 4, 1870.[17]

Bush's longest and perhaps finest speech during the five sessions of the convention shows his attitude toward many contemporary problems. Since it particularly reveals the spirit of the speaker and displays his literary style it is reproduced in full in the *Appendix*.[18]

In January, 1865, after Lincoln had been re-elected and the radicals gained control of the state government, a state convention was held in St. Louis for the purpose of drafting a new state constitution. Bush was elected a member from the 29th senatorial district, and participated very actively in the sessions, though his views frequently represented the minority opinion. He was appointed to the committee of three in charge of arrangements for the Convention, a rather important assignment. He also served on the

[16] *Ibid.*, pp. 135 f.

[17] Cf. Frederick A. Culmer, *A New History of Missouri* (Mexico, Mo., 1938), p. 431.

[18] *Journal*, pp. 326 ff.

standing committee on banking and on the committe of five created to consider a resolution which called upon the United States to make no peace with any confederates until every rebel acknowledged the supremacy of the Constitution. What action this last committee took does not appear in the records.

One of the most significant acts of the convention was the adoption of the emancipation ordinance, abolishing slavery in Missouri immediately and without compensation. Bush voted for this resolution and signed the ordinance.[20]

On the final vote on the adoption of the constitution, which was the main purpose of the convention, Bush voted against the proposed constitution, and was one of the thirteen men who did not sign it.[21] His opposition was rather a credit to him. The new constitution was narrow in spirit and stringent in its requirements. Countless citizens were disfranchised because of their sympathy for the Southern cause. Anyone "who has ever" taken part in the rebellion was disqualified from exercising the complete rights of citizenship. Bush felt that these stipulations were unfair and that the requirements for citizenship were unjust. The constitutional validity of some parts of the document was later successfully challenged in the courts. The successs of the constitution as an effective legal instrument can be variously evaluated. It is significant that another constitutional convention was called into being only ten years later, in 1875, to draft a new constitution, which for all practical purposes, repudiated the constitution of 1865. Thus, the document which Bush disapproved of was rejected by the state a decade later, a complete vindication of the position he had taken.

Bush cherished the ideals of the United States and sought always to preserve the Union. He resented the institution of slavery, and battled for its abolition. He protested against political manipulation which retarded social progress and

[19] *Journal*, 1865, pp. 1, 7 f., 9, 15 f., 42 f.
[20] *Ibid.*, p. 281
[21] *Ibid.*, p. 247.

detracted from the common welfare. His was a life rich in varied experience and public service.

Bush died on August 5, 1898. His will remain an honorable place in the annals of American history and of the Jews in America.

APPENDIX

Bush's Address on Complete Abolition of Slavery

Delivered in 1863

Mr. President: I have listened for days to the gentlemen speaking on the subject of emancipation, and I now bespeak their attention for a few minutes. The one said "slavery" and the other "anti-slavery" is the cause of this war. I say it is part of that everlasting war between Ormuzd and Ariman, between light and darkness, between right and wrong. It is that irrepressible conflict between free labor and slave labor. The South wanted to put down abolitionism with fire and sword, establishing and extending a great empire of slave aristocracy. The North will now and must, in self-defense, put down slavery. It matters not whether the President of the United States, much less whether you or I, have any such desire and intention or not. It is the inevitable logic, the necessary consequence of events stronger than the will of the President, the decrees of the courts or the acts of Congress. The people of this state have to take a stand on one side or the other. To place ourselves on the middle ground between the contending parties is to be destroyed by both fires. When they decided to stay in the Union, to fight with the North in this struggle to maintain our national existence, this question was virtually decided. You had only to draft the deed and acknowledge it. You ought to have declared simply that we will cheerfully sacrifice the institution of slavery, whose value has already been destroyed by this rebellion to our country, and the people would execute the deed, thus showing to the South as well as to the North, on which side Missouri will forever stand. The great majority of people are in favor of emancipation. Most of those even who were opposed to it a short time ago, acknowledge that we cannot avoid it even if we would, that emancipation is an unavoidable necessity of this war. I might almost say in the Lincolnian style that, 'As we cannot remove anti-slavery, we must remove slavery.' Still you hesitate. Much has been said about the right and power of this convention to pass an ordinance of emancipation, and whether it should be submitted to the people for its ratification or rejection. Many of you and among these, some learned

jurists and judges, have argued that we have the right, and that even without the sanction of the people, it would have a full force. They argue, indeed, that we should not submit it to them. While I have no pretention of such learning, I am but expressing the unmistaken and unmistakable voice of the people in saying that if you refuse to submit your action on this subject to the popular vote, you would exercise a doubtful and unjust and a very improper authority, the more so as you assume to exercise it twenty-eight months after you were elected, and elected on no such issue; after you have once declared to the people and to Congress that you do not feel authorized to act at all on this subject; after a new legislature has come duly into existence, fresh from the people. With the same propriety you could perpetuate yourselves, and if a majority of this body were in opposition to a majority of the legislature, might nullify every act passed by that legislature. And yet, gentlemen, undertake to say, 'we must take the responsibility'. And why? To avoid agitation. Now gentlemen, the let-alone policy, to use a common but expressive phrase, the let-alone policy is played out. The very call of this convention for purposes which one year ago you decided to let alone by an overwhelming majority, is but one of the many proofs of the fallacy of your system. An early decision by the people at the ballot box is the only way to close agitation, is the only means to give any action of yours force and stability. But while many of you boldly assume that we have the unlimited right and power to pass an ordinance of emancipation, and care little about the consent of the sovereign people, some of you have yet one serious objection, namely, that emancipation without compensation to loyal owners is unjust. Some call it robbery. This objection is not without weight to me. I would favor any reasonable and practicable plan of compensation, and I am opposed only to such plans as would have no practical results except to defeat any emancipation ordinance. Members of the committee and some other gentlemen here are aware that I myself suggested a plan of compensation, that the various railroad companies issue stock to the amount of aid received from the state (over $20,000,000.00) which stock might be used for the purpose of such compensation without increasing the state debt, thus giving to the slave owners an interest in one of the great institutions (railroads) in exchange for the other (slavery), and exchange by which, in my opinion, all parties would gain. I soon found out, however, that all slave owners scorn such a compensation. On the other hand, I find from the admission of loyal slave-holders themselves that the value of slaves has been destroyed by the rebels, and while they are chargeable with the loss, it is not for the loyal people, who did nothing to damage it, to compensate the others for the same. If another throws down this tumbler (the glass of water from this desk), breaking it to pieces, and I afterwards remove the worthless, injurious

fragments, am I to pay you for the damage? Moreover, it has not been proposed by anyone that the slave owner should lose the right to his labor of his servant for some years. I voted, all the friends of speedy emancipation voted, for long terms of continued servitude, depriving you only of the right to sell a human being, a right which you never had under the Constitution of the United States, as you contend. But whether you have it or not, which you cannot exercise as there is no market, and God grant never will be, for this traffic any more. It is further a fact established by proof and experience which cannot be denied, that the wealth and general prosperity of the state would be so increased that it is not only proper that the interest of the individual should give way to the interest of the whole, but that it must also benefit the former slave owner. He, the slave owner, is at the same time almost without exception, also a land owner. And it is admitted that the plus value of lands cultivated by free labor exceeds the capital represented by slaves. The gentleman from Pike himself calculated the difference in the increased value of personal property and real estate in Missouri at the ratio of the last ten years, and here in Illinois, would amount, during ten years, to come to $200,000,000.00 and singularly enough, he is still in favor of keeping Missouri ten years longer a slave state. Now Sir, as the abolition of slavery in Missouri cannot be avoided as you believe the right and power to do it, and as it would be to the great advantage of Missouri in general, while it would prove but a small loss to the slave-holder, the question seems to be now only whether slavery shall cease in 1876 or in 1866. But even this is by no means in reality a question. Does any gentleman on this floor really believe that in the present state of our national affairs, slavery can escape until 1876 or 1870? The gentleman from Livingston (Mr. Woolfolk), pro-slavery man as he is, has well and honestly stated that every plan of emancipation in 1870 or any prospective period will only invite and offer a premium to the negroes to run away from their owners. You will admit, Mr. President, that slavery is rapidly disappearing, and no one will deny, I think, that it is now in fact, though not in law, a mere voluntary servitude. Such is the present. Now look to the future. Look to history as it will be transmitted to your children and your children's children. On the one hand, the humiliation that we could not consent to free ourselves from the institution of slavery until the slave freed himself, that worthless as the institution has become, we would not sacrifice the peculiar institution to the maintenance of our Union, to the peace and safety of the state. On the other hand, the proud and glorious record that this was the first state, that by free and voluntary action of its own people, and without compensation, nobly sacrificed and blotted out that peculiar institution. Which are you inclined to choose? The majority report of your select committee on emancipation

shows it. Your vote on the amendment for 1864 and then on the amendment for 1866 shows it. Your vote on the amendment for 1868 shows it. For even if I and twelve others, true friends of emancipatoin, the radicals as you call them, have voted for it, it would still have failed, but above all, your vote on submitting your ordinance to the people in November 1863, shows it. I think it is enough. You voted them all down. Let us go home. Do not deceive yourselves and do not believe you can settle this matter for the people. They do not want us. Mr. President, I desire to notice but one point more before I close. Some of the gentlemen, members of this convention, have drawn so honorable a picture of the evils resulting from emancipating the negroes, and leaving them afterwards free among us, that they and their emancipation without deportation would ruin this state. They tell us that the negroes would be but one great band of idlers and vagabonds, robbers, murderers and thieves. If this be true, I ask these gentlemen, 'are these the boasted blessings of Christianity which you, the advocates of slavery have ever and always claimed to have given to these poor Africans in return for their freedom?' But it is not true and you cannot help knowing it to be false . . . I have no words for such slanders against poor human beings, so much sinned against. It is not enough that you hold them in bondage, toys of your whim and your lust. But you must charge them with crimes they never committed and never dreamed of. I pray you have pity for yourselves, not for the negroes. Slavery demboralizes, slavery fanaticism blinds you. It has arrayed brother against brother, son against father. It has destroyed God's noblest work—a free and happy people. I am done, Mr. President, and I renew the motion of the gentleman from Buchanan, resolved that the convention now adjourn *sine die.*

BOOK REVIEWS

THE JEW IN ENGLISH DRAMA: AN ANNOTATED BIBLIOGRAPHY. Compiled by *Edward D. Coleman;* with a Preface by Joshua Bloch. The New York Public Library. New York, 1943. Pp. xx + 237.

IN a prefatory note Dr. Bloch indicates that the present bibliography is a companion volume to the earlier work on the Bible in English Drama (1931), by its compiler, the late Mr. Coleman, Librarian of the American Jewish Historical Society. It consists of a reprint in book form, with many additions and revisions, of the bibliography which appeared originally in serial form over a period of two years in the *Bulletin* of the New York Public Library. Mr. Coleman had apparently hoped to follow up these two lists with other lists on the Jew in English fiction and poetry, the whole intended as a full bibliography on the general theme of the Jew in literature. Many of the items on these lists came, we are told, from Mr. Coleman's own remarkable collection, which included among other things, manuscripts, photostats, prompter's copies, and rare first editions. Incidentally, it is good to know that the collection is still intact and that it may "before long" find a permanent place in a great reference library.

The volume begins with a concise historical account of the treatment of the Jew in English secular drama from the sixteenth century to the twentieth, and proceeds to the bibliography proper—190 pages of carefully annotated lists of plays, sketches, pageants, monologues, and related dramatic compositions in which one or more of the characters is designated as a Jew. The earliest item is R. W.'s *The Three Ladies of London* (1584), and the most recent are the works of living contemporaries. The compiler's range is wide enough to include plays of permanent and general literary and historical interest, like Marlowe's *The Jew of Malta* (written 1588-1592?) and Cumberland's *The Jew* (1794), as well as playlets, skits, and other ephemera of a more limited appeal, the product of the "mimeograph press" of various educational organizations. The bibliography is arranged alphabetically accodring to author or title within the framework of three chronological periods (from the earliest times to 1837, from 1837 to 1914, and from 1915 to 1938), and is followed by author and title indexes. "Mention plays,"

that is, plays in which no Jewish character appears, but in which Jews or things Jewish are mentioned or referred to, have not been included, although it seems that Mr. Coleman had worked on such a compilation at some time and had apparently expected to publish it.

The bibliographical comment is extraordinary in its variety and detail. Individual articles on some titles run to many hundreds of words, and, in the case of some of the less known plays, contain, in addition to the usual bibliographical apparatus (editions, collations, reviews, stage notices), synopsis of the play, hints as to the source of the Jewish element, observations on the dialect used, and brief expositions on the significance of the Jewish characterization. The breadth of interest shown in these items is enormous. The only notable exception to this full bibliographical treatment is the omission of *The Merchant of Venice* (1596), the literature of which is so vast as to require a book at least as large as the present volume for treatment in similar fashion. In the opinion of this reviewer, Mr. Coleman did well to omit consideration of this play because of the adequate attention it has received—and is still receiving—elsewhere.

The work under consideration, like the earlier volume on the Bible, constitutes the most complete bibliography in the English language on a subject of Jewish interest in English literature. No other bibliography approaches it in inclusiveness and thoroughness. With its companion volume it will permanently enrich the reference shelf of the research worker in literature or history, and with it will remain an enduring memorial to the lifework of its modest and scholarly compiler. For both books, moreover, we owe a debt of gratitude to Dr. Bloch, who, as Mr. Coleman indicated in the earlier work, "fathered and nursed" the very idea of these bibliographies.

Brooklyn College JOSHUA H. NEUMANN

JEWISH PIONEERS AND PATRIOTS. By *Lee M. Friedman.* With a Preface by A. S. W. Rosenbach. The Jewish Publication Society of America. Philadelphia, 1942. Pp. XVIII + 430.

STUDIES of minority groups in America have far too generally been surcharged with hyperbole and filio-pietism. A thorough and objective investigation of the origins and contributions of the Jewish people to the making of America remains to be undertaken, although Anita L. Lebeson's *Jewish Pioneers in America* was a step in the right direction. One of the most indefatigable students of Jewish history in this country has been Lee M. Friedman, a Boston attorney and collector of Judaica,

who has previously published a number of studies dealing with early American Jewish history. Somewhat more comprehensive than its predecessors, *Jewish Pioneers and Patriots*, his latest contribution, has both the merits and defects of the earlier works.

Mr. Friedman's study is not a history of the Jews in America, but rather a series of sketches of individual "pioneers" and of incidents relating to individual Jews reflecting the attitude of the authorities to the Jewish community. Our principal quarrel with Mr. Friedman is in his selection of subjects, often jejune, presenting biographical accounts of eccentric characters in no way reflecting the main currents of Jewish life in America. The author devotes a number of pages to show that the Campernells and the New England Campbells are from one and the same family tree. The story of the Jewish girl who masqueraded as a sailor and was, upon discovery, deported from Quebec in the first half of the eighteenth century, has absolutely no relation to Jewish community life. Even the prominent Lady Rebecca Johnson, née Franks, who withdrew from the Jewish community and whose eldest son married into the wealthy Philipse family, has little relation to American Jewish life, although Mr. Friedman takes pains to repeat General Winfield Scott's annecdote of her expression of regret for her Tory stand during the American Revolution. The tale of Joshua Abraham Norton, a Jewish forty-niner, who quickly made and lost several fortunes and for years was known as a harmless lunatic, Norton I, self-proclaimed Emperor of the United States, could have made way for studies of more significant Jewish contributors to the building of California.

Other chapters deal with well-known, in some cases highly controversial, incidents in American Jewish history, upon which the author sheds little new light. The positions of Washington, Jefferson, Lincoln, and Theodore Roosevelt on the Jewish question are well known, but significant enough to be re-stated at this time. Mr. Friedman endorses the plausible, if circumstantial, theory of Columbus's alleged Jewish origin, following Madariaga and Cecil Roth, and confines to a footnote the dissenting view of Samuel Eliot Morison, who expresses little patience with "Madariaga's fairy tale of the Enterprise of the Indies being a sort of Zionist movement." Morison, however, admitted that he had not attempted "to check up on these racial questions."

Perhaps the most fertile and thought-provoking section in Mr. Friedman's volume deals with the Jews in the economic life of America, including a survey of the activities of the Gideon-Abudiente family in the West Indies, England, and Massachusetts. The chapter called "Pirates and Trinkets" merely suggests possibilities of further study

of the relation of Jews to privateering and the triangular trade. Dorothy S. Towle's edition of the records of the Rhode Island Court of Vice-Admiralty (*American Legal Records*, Vol. III) reveals a number of significant instances. Mr. Friedman has drawn upon the sources for his valuable and suggestive section dealing with the spermaceti candle combine initiated by the Jewish merchants of Rhode Island, the first notable American trust. This is the type of study that is badly needed. Historians should know the role that Jewish capitalists played in America of the seventeenth and eighteenth centuries in the expansion of maritime enterprises, the triangular trade, real estate, and the heavy industries; in more modern times, in such fields as the clothing industry (one of the most useful and provocative of Mr. Friedman's chapters), merchandising, motion pictures, and other economic enterprises in which Jewish initiative has been notably effective, as well as in the transition in this country from the stage of industrial to finance capitalism. These are subjects which should test the mettle of the serious scholar. Mr. Friedman has thrown out a good many leads. Let us hope that in the not too distant future these leads will be run down and a realistic history of the Jew in America will be the result.

The College of the City of New York RICHARD B. MORRIS

THE AMERICAN JEW—A COMPOSITE PORTRAIT. Edited by O. *I. Janowsky*. Harper & Brothers, New York, 1943. Pp. XIV + 304.

THE paucity of historical material on the adjustment of immigrant groups to the American scene makes this collection of essays of interest to the student of social history. The rôle of the immigrant in American life has in earlier years engaged the attention, principally, of writers in economics and sociology. These regarded the immigrant as a "problem," and viewed his impact with the American scene apprehensively. Thus they approached immigration from the point of view of interested groups, and often wrote to influence governmental policy. The emphasis on the problems of "Americanization" tended to neglect the subtle influences of the immigrant heritage on American life.

With the stopping of immigration, the "problem" of the immigrant disappeared. Second generation Americans, regarding themselves as fully "Americanized," declared complete independence of an immigrant past. Historical societies tended to glorify the contributions of their particular groups to the cultural possessions of America, and to proclaim the national origin of illustrious countrymen. Such glorification naturally

resulted in filio-pietistic "histories": forms of special pleading for a particular group, attempting to secure for it a "due place in history" even at the expense of other groups.

The aim of this volume is neither self-laudation nor self-justification. When the editor states that "a Jewish thread runs through the entire history of America," and "not jewels but Jews were the real financial basis of the first expedition of Columbus"—(a phrase from H. B. Adams' reference to the legend of Isabella's crown jewels), he is undoubtedly slipping into filio-pietism. The main purpose, however, is to describe the reaction of Jewish institutions to the American environment, and to attempt an assessment of the results. The contributors speak of an American-Jewish orthodoxy "in which distinctive American standards of orthodoxy are emerging;" of an American-Jewish community "properly related to the American community of which it is a part;" of an American-Jewish school "integrated with the general education received in the American Public School;" and of an emerging American-Jewish literature "which carries with it the surest promise of a rich, full American future." The observer of the economic scene sees no specific Jewish occupational abnormalities, and the writer on anti-Semitism regards it mainly as an economic phenomenon which, he thinks, will disappear in a better ordered economic life. If as can be claimed, the writers' views are colored by overoptimism, their confidence springs from faith in Democracy and in the promise of American life. The major premise is that Jewish life is "a segment of American civilization—an inseparable part or ingredient in the totality we call America," and that "Jewish institutions and the conceptions which render them meaningful are an integral part of America."

This "composite portrait" of the American Jew is plainly that of an ideal type, despite the authors' asserted aim to "describe Jewish group life in all its complexity and variety." The individual, his family, his community are submerged in an analysis of the more normal and stable institutional forms. Many facets of Jewish living, as for example the Yiddish-speaking groups, have been omitted or given a secondary rôle, as when it is declared that "Yiddish is not the vernacular of American Jews." Nevertheless this is a genuine attempt to interpret Jewish group life in terms of the large American community of which it is a part, and to indicate discernible directions of development. What the authors have done and what they hope to convey will make more intelligible the varied and complex influences that are shaping American society.

Yeshiva College ALEXANDER BRODY

CRUMBS AND CHARACTER, SERMONS, ADDRESSES AND ESSAYS. By *Leo Jung*, M. A. (Cantab.); Ph. D. (London). The Night and Day Press. New York, 5702-1942. Pp. 315 and Index.

THE title of this interesting collection of sermons, addresses and essays, is well chosen. It is not only the title of one of the best sermons in the volume, but explains what the author had in mind in all his preaching. He pleads for character—saintly character—in the spirit of the *Musar* books of generations ago. And he fervently believes that a strict adherence to all the precepts of our faith—ritual and ceremonial, as well as ethical—is bound to lead to such perfection in character. Even crumbs become important and may be all embracing in their influence.

Dr. Jung practises the precept which he enunciates: "A preacher who takes his task seriously is but a teacher in dynamic action" (p. 5). He is the teacher of Jewish religiosity. His sermons are spiritual in essence and devotional in character. There is many a passage that rises to heights of religious fervor, and must have made a deep impression upon his congregation, most of whom are followers of what Dr. Jung terms "Torah-true Judaism." Of this type of sermon, resembling the classic *Musar* preachments, we would especially point to: "These Are the Things Without Measure" (p. 59), "Towards Moral Security" (p. 101), "Concerning Teshuvah" (p. 114), "Our Reproach" (p. 126), and "Rite and Right" (p. 267).

His essays and addresses, too, deal with the spiritual aspects of Jewish life. Whether it be a discussion of "The Jewish Way to Married Happiness" or "The Rights of Majorities," there is always the emphasis on the detail that dare not be neglected: that human happiness is, after all, the result of all the kindly, noble, sympathethic, just and lovable acts and thoughts which mark our lives. The author often presents fine observations, which are very effective in giving strength to his argument. His analysis of the English word "prayer," derived from the Latin *precare* "to beg," in contrast to the Hebrew word *tefillah*, derived from *pallel* "self-judgment" (p. 50), goes to the heart of the Jewish conception of prayer. The essays on general themes do not call for discussion in this review.

A discussion of such a work has a place in a Journal dedicated to Jewish historical study. We know that the *Responsa* literature of the rabbis in the past ages forms much of the source material for the historian seeking knowledge of the social, economic, communal and religious life of the people of that day and place. It seems to this reviewer that the historian could find much to help also in the sermonic literature of those rabbis. For just as the *Haggadah* can give us a picture, as Bialik

so well put it, "of what the soul of the people meditated, what it yearned for, and to what it aspired," so, too, can the classic Jewish sermon, which is a continuation of the aim and method of the *Haggadah,* also reveal to us these thoughts and aspirations. (Cf. B. Dinaburg, "The Beginnings of Hassidism and its Social and Messianic Elements," in *Zion,* VIII (1943), p. 111, where he complains that Jewish writers of history have neglected important sources for the history of Hassidism, namely the *Safrut ha-Musar v'ha-Drush shel Hador,* "the *Musar* and the sermonic literatures of that generation").

In this sense, the future historian may learn much of the thought-life of American Jewry in this day from just such a volume. First of all, there are in this volume a number of eulogies of men who were prominent in orthodox Jewish life in New York. These men have helped to fashion great institutions of learning and charity, which were dedicated to the promotion and strengthening of orthodox Judaism. The future historian can find here interesting facts that will help him to understand the development of that aspect of Jewish life in this country.

But from the sermons themselves much can be learned of the transformation that is taking place in the minds and thoughts of the Jews of our day. The congregation before whom Dr. Jung ministers—the Jewish Center of New York—is a strictly orthodox congregation. Many of the congregants still remember the Jewish life of the East European lands, or are children of those who still cherish that tradition. The sermons, however, are of a different mould and character from those in vogue in such synagogues in the European lands and even in America a generation ago. While the aim may be the same, the technique, the method of approach, is altogether different. It is not the *Drush,* as developed by the classic rabbinic preachers either in the Middle Ages or in recent times in East European lands, or even in Germany in the days of Jellinek. The *Drush* or sermon then was based—just as in the *Halakah*—on the element of *Hiddush*—the discovery of a new thought, or shall we say new revelation, in the old biblical or rabbinic text. From that *Hiddush,* the preacher would proceed to develop the thought he had in mind. It was not enough just to quote a rabbinic text; out of that text the preacher would reveal something new that won the heart and mind of the listener. Chief Rabbi Hertz aptly characterized this gift that marked the great Jewish preacher as the "midrashic eye," that enabled the preacher to perceive the homiletic possibilities of even "uninteresting" passages. ("Opening and Concluding Addresses,"—Conferences of Anglo-Jewish Preachers, 1927—; by the Chief Rabbi Dr. J. H. Hertz—London, 1927—, p. 27).

The Jew of those days craved that *Hiddush* from the lips of his preacher. A rabbi in the *Midrash* emphasized this truth in homely fashion: "Just as the fish, though living all the time in the waters, nevertheless rush after a drop of fresh water poured from above as though they had never tasted water before, so, too, the Jews, though raised on the waters of the Torah, nevertheless thirstily accept *Davar Hadash,* a new word from the Torah, as though they had never heard of the Torah in all their days." (*Genesis Rabbah 97.5*).

Unfortunately, in the modern Temple, this method is no longer in vogue. The interesting fact to note, however, is that even in the traditional or Torah-true Synagogue, this old method is also disappearing. The sermons in these synagogues are more along the pattern of the sermons of the British Jewish preachers. They are more in the nature of religious essays. True, Dr. Jung does at times make good use of a rabbinic homily or anecdote. As an example of such telling use, we may refer to his reference to the tannaitic description of the ceremonial that had to do with the proclamation of the new moon in Palestine (p. 23). But such use of the *Aggadata* is not the distinguishing characteristic of most of the sermons.

Despite the criticism, the volume can be highly recommended for its earnest plea in behalf of a greater devotion to our historic faith. The reader instantly senses that these are "words that come from the heart" and therefore "go directly to the heart." The book is a welcome addition to the all-too-limited number of Jewish homiletic works in the English language.

Brooklyn Jewish Center ISRAEL H. LEVINTHAL

A NEW WORLD IS BORN, SERMONS AND ADDRESSES. By *Israel H. Levinthal.* Funk & Wagnalls Company. New York, 1943. Pp. XIII+305.

THERE are as many styles in preaching as there are great preachers. Each develops his own method of interpreting the treasures of the past, of analyzing the needs of the present, and of relating the two one to the other. Some will be concerned primarily with the problems of the individual human being in his relations to himself and to God. Others will dwell chiefly upon the difficulties besetting the group, and upon the individual's duties as a member of the group. One will depend almost wholly upon his own insights or those of his contemporaries for his message. Another will strive to find in the teachings of the ancient sages a message for today so that he stands before his audience not as an expounder of his own wisdom, but merely as the medium through

which his contemporaries may benefit from the wisdom of the forefathers. Dr. Levinthal's inherent humility led him into this latter group. To be sure, what Dr. Levinthal chooses out of the vast treasure of Jewish lore as an appropriate message for his audiences is a reflection of his own sound thinking, and his own keen understanding of the contemporary scene and of the needs of his listeners. For while he is at home, as few men are, in the "ocean of rabbinic literature," his eye and ear and heart are ever attuned to the scenes and sounds, to the sufferings and aspirations of the present. He searches rabbinic sources not for their own sake, but because his subtle mind finds in them an inexhaustible message of surpassing significance to Jews living in a Nazi-dominated decade, to a generation driven to the depths of despair by the seemingly endless and constantly mounting tragedies.

It is Dr. Levinthal's extraordinary mastery of midrashic literature, and the unique manner in which he can bring it to bear upon the most pressing problem of the day, which primarily distinguish him from among the handful of other great preachers of our generation. There are those who violently oppose the very essence of his method and approach to the *Midrash*. Not every one can or will agree with all of his interpretations. Some of them appear particularly forced. But none will deny that as a whole his interpretations and applications of the *Midrash* are ingenious, inspiring, and exalting.

Everyone of the forty-two addresses included in this collection is replete with the insights, and the reflections of the saints and sages of the distant past. At the same time it pulsates with the tears and hopes, the tragedies and aspirations of the thoughtful Jew and man of today. Indeed, these addresses can well serve as a source for a future historian interested in gauging the inner reactions and the profounder emotions which stirred the hearts and souls of sensitive American Jews during this most tragic decade of Jewish history.

Jewish Theological Seminary of America SIMON GREENBERG

NOTICES OF RECENT PUBLICATIONS

E. A. Back, *Book Worms*. Smithsonian Institution, Washington, 1940. 12 pp. and 18 plates.

Joseph L. Baron, *Stars and Sand, Jewish Notes by Non-Jewish Notables*. The Jewish Publication Society of America. Philadelphia, 1943. XVIII+555 pp.

Bibliography of the Publications of the Yiddish Scientific Institute—Yivo 1925-1941. Yiddish Scientific Institute. New York, 1943. 210 pp. (Yiddish).

Czechoslovak Sources and Documents. No. 1: Speeches of Jan Masaryk in America; No. 2: Struggle for Freedom; No. 3: Democracy in Czechoslovakia. The Czechoslovak Information Service. New York, 1943. 77, 138, 96 pp.

J. George Fredman and Louis A. Falk, *Jews in American Wars*. Jewish War Veterans of the U. S. New York, 1943. 112 pp.

Bernard Heller, *With Malice Toward None*. The Synagogue Council of America. New York, 1943. 15 pp.

Mitchell M. Kaplan, *Panorama of Ancient Letters, Four and a Half Centuries of Hebraica and Judaica*. Published by the author. New York, 1942. 316 pp. 4°.

Joseph Klausner, *From Jesus to Paul*. Translated from the Hebrew by William F. Stinespring. The Macmillan Company. New York, 1943. XVI+624 pp.

Eugene M. Kulischer, *Jewish Migrations, Past Experiences and Post-War Prospects*. The American Jewish Committee. New York, 1943. 51 pp.

Stephen P. Mizva, *Nicholas Copernicus*, 1543-1943. The Kosciusko Foundation. New York, 1943. 87 pp.

Zevi Scharfstein, *Haheder B'Hayye Amenu* (The Heder in the Life of the Jewish People). Shilo Publishing House. New York, 1943. XIII+301 pp. (Hebrew).

Francis Rue Steele, *Nuzi Real Estate Transactions*. American Oriental Society. New Haven, Conn., 1943. 83 pp.

E. Tcherikower, *History of the Jewish Labor Movement in the United States*. Vol. I. Yiddish Scientific Institute. New York, 1943. 414 pp.

Z. Warhaftig and Boris Shub, *Starvation Over Europe Made in Germany*. A Documented Record. The Institute of Jewish Affairs. New York, 1943, 110 pp.

CONTENTS

ARTICLES

BARON, Salo W.: Moses Cohen Belinfante: A Leader of Dutch-Jewish Enlightenment 1-26
FRANKL, Paul: The Earliest Jewish Portrait (with three plates) 154-164
GALLINER, Helmuth: A Selected Bibliography of Sigmund Seeligman 84-85
HAILPERIN, Herman: The Hebrew Heritage of Mediaeval Christian Biblical Scholarship 133-154
HATFIELD, George B.: The Bible in Mediaeval Civilization: The Saxon Code of Law in Illustration 63-72
KISCH, Guido: Magdeburg Jury Court Decisions as Sources of Jewry-Law 27-34
KISCH, Guido: The "Jewish Execution" in Mediaeval Germany (with three plates) 103-132
KOBER, Adolf: Jewish Names in the Era of Enlightenment 165-182
LICHTENSTADTER, Ilse: The Distinctive Dress of Non-Muslims in Islamic Countries 35-52
LIEBERMAN, Saul: Raymund Martini and his Alleged Forgeries 87-102
NEUMANN, Joshua H.: The Hebrew Passages in Boorde's *Fyrst Boke of Knowledge* (1547) 53-57
ROSENTHAL, Jehuda: Ashkenaz, Sefarad, and Zarefat 58-62
WAX, James A.: Isidor Bush, American Patriot and Abolitionist 183-204

BOOK REVIEWS

American Jewish Yearbook 5703 (G. Kisch) 80
Coleman, Edward D., *The Jew in English Drama* (J. H. Neumann) 204-205
Friedman, Lee M., *Jewish Pioneers and Patriots* (R. B. Morris) 205-207
Janowsky, O. I., *The American Jew — A Composite Portrait* (A. Brody) 207-208
Jung, Leo, *Crumbs and Character, Sermons, Addresses, Essays,* (I. H. Levinthal) 209-211
Kisch, Guido, *Sachsenspiegel and Bible* (G. B. Hatfield) 63-72
Kleiman, Saul, *Anthology of Rashi* (H. Hailperin) 79-80
Levinthal, H.: *A New World is Born, Sermons and Addresses* (S. Greenberg 211-212
Lieberman, Saul, *Greek in Jewish Palestine* (R. Marcus) 73-76
Scholem, Gershom, *Major Trends in Jewish Mysticism* (M. Wiener) 76-79

List of Abbreviations, see Volume I 1-2
Notices of Recent Publications 81, 213
Bibliography of Periodical Literature 82-83
Personal Notes 84-85

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IN JEWISH HISTORY ESPECIALLY IN
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GUIDO KISCH

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The Table of Contents will appear at the end of the volume.

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Historia Judaica

THE JEWS' FUNCTION IN THE MEDIAEVAL EVOLUTION OF ECONOMIC LIFE

IN COMMEMORATION OF THE ANNIVERSARY OF A CELEBRATED SCHOLAR AND HIS THEORY

By GUIDO KISCH
Jewish Institute of Religion, and University of Notre Dame
New York

THE YEAR 1944 will mark a series of anniversaries connected with the life and work of an outstanding scholar of the nineteenth century. This writer takes the liberty of assuming that those dates would pass unnoticed among Jewish historians, if they would not be mentioned in the following pages.

In 1944 one century will be completed since Wilhelm Roscher's appointment as Professor Ordinarius of Political Economy at the University of Göttingen, Germany. Also in 1944 it will be seventy years since Roscher conceived his interesting and influential theory of the Jews' function in mediaeval economy, later published in an essay entitled, "Die Stellung der Juden im Mittelalter, betrachtet vom Standpunkte der allgemeinen Handelspolitik." June 4, 1944, will, finally mark the fiftieth anniversary of the death of this doctrine's unforgotten author.

In commemoration of all these memorable dates it is deemed fit briefly to call to mind Wilhelm Roscher's scholarly personality and his part in the development of the science of political economy in the nineteenth century. Thereafter, his theory of the Jews' economic function and its bearing on mediaeval Jewish history will be presented in detail and submitted to scholastic scrutiny.

Wilhelm Roscher[1] is commonly linked with his contemporaries, Karl Knies and Bruno Hildebrand, as founder of the "old historical school" of German economists. But the peculiar method of his economic research ought rather to be traced to the historical training he received in Göttingen under Friedrich Christoph Dahlmann, Georg Gottfried Gervinus, and Karl Otfried Müller, and later in Berlin under Böckh, Ritter and Ranke. Roscher had absorbed the "objectivist" spirit of Ranke, conceiving of economic development as a great "physiological" phenomenon and believing that practical conflicts could be solved by a closer, especially a historical and statistical, knowledge of facts. He is to be considered as the original founder of historical methodology in the science of political economy. He designated his method of research as "historical or physiological." Under the term "Nationalökonomik" (as he called political economy), he comprehended the laws of the historical development of political economy, of the economic life of a people, which could be grasped only if linked to the other spheres of folk-life, namely, language, religion, art, science, law, and political organization. Roscher's comprehensive and fundamental works went through numerous editions, were also translated into English, and retained to a great extent their basic value up to our day. Their author was recognized as a forerunner of modern institutionalism, largely due to the many American economists who were trained in his school.

From the scholastic background described, it is easily comprehensible that the immortal figure of the Jew recurring through the ages and met among all peoples on earth, as a phenomenon of economic history and theory also attracted Roscher's attention. His theory of the Jews' function in mediaeval economy was first propounded in an article

[1] Cf. Carl Brinkmann, Article "Wilhelm Georg Friedrich Roscher," in *Encyclopaedia of the Social Sciences*, XIII (1937), pp. 437 f., including a full bibliography; Max Weber, "Roscher's historische Methode," in his *Gesammelte Aufsätze zur Wissenschaftslehre* (Tübingen, 1922), pp. 3-42; Karl Bücher, "Wilhelm Roscher," in *Preusssiche Jahrbücher*, LXXVII (1894), pp. 104-123; Bücher, "Wilhelm Roscher," in *Allgemeine Deutsche Biographie*, supplem. vol. LIII (Leipzig, 1907), pp. 486-492.

published in the *Zeitschrift für die gesamte Staatswissenschaft,*[2] and later incorporated in the third edition of his *Ansichten der Volkswirtschaft aus dem geschichtlichen Standpunkte,* volume two.[3]

For a better understanding a few more preliminary remarks are necessary.

When Roscher conceived his theory of the Jews' economic mission and function,[4] only a few years had elapsed since the publication of Otto Stobbe's book, *Die Juden in Deutschland während des Mittelalters in politischer, sozialer und rechtlicher Beziehung,*[5] which was to become the standard work on the subject, indispensable for the student and unsurpassed up to this very day. It was as early as 1859 (when Stobbe published a lecture, the nucleus of his later book[6]), that this great historian and unbiased jurist—a faithful Christian, as was Roscher—fully grasped the historical complexity of the Jewish problem. Decades before Jewish history was approached from the sociological angle, Stobbe recognized with the deep insight characteristic of this genuine scholar that several factors were determinative of the Jewish status in the Middle Ages besides that of religion, namely, political, social, and legal motives, all of them almost inextricably interwoven. To disentangle them by discovering their chronological sequence, and unravelling the func-

[2] Vol. XXXI (1875), pp. 503-526.

[3] (Leipzig, 1878), pp. 321-354. For the first time translated into English by Solomon Grayzel, in *Historia Judaica,* VI (1944), pp. 13-26.

[4] Roscher, in *Zeitschrift für die gesamte Staatswissenschaft,* XXXI (1875), p. 511, note 1, designates as his predecessor the German historian Karl Dietrich Hüllman: "Ein Keim der von uns hier entwickelten Ansicht findet sich bereits in Hüllmanns *Geschichte des Ursprungs der Regalien* [*in Deutschland,* Frankfurt a. O., 1806], S. 54." The passage reads: "Von mehreren der berüchtigten Judenverfolgungen waren keineswegs blinder Religionseifer oder gewisse Verbrechen, die man den Juden andichtete, z.B. Vergiftung der Brunnen, die Ursache, sondern Verdruss über die Schuldenlast, von der sich der Haufe durch Vertreibung oder Ermordung der Gläubiger auf einmal befreien konnte. *Chronicon S. Petri Erfurtense, a.* 1349, *apud* Menken, *Scriptores Rerum Germanicarum,* T. III, col. 341: 'Credo, fuisse exordium eorum magnam et infinitam pecuniam, quam barones cum militibus, cives cum rusticis, ipsis solvere tenebantur.' "

[5] Braunschweig, 1866; cf. Guido Kisch, "Otto Stobbe und die Rechtsgeschichte der Juden," in *Jahrbuch der Gesellschaft für die Geschichte der Juden in der Tschechoslovakischen Republik,* IX (1938), pp. 1-41.

[6] *Die Grenzboten,* 1859, No. 17; see Stobbe, *op. cit.,* p. V.

tional relationships in their interplay, this was (and still is) the arduous task the historian has before him.

On the basis of an unusually rich and manifold source material, Stobbe had exposed the fact that, in the second half of the Middle Ages, as compared with the preceding period, the actual condition of the Jews had considerably deteriorated and their legal treatment had become much less favorable than previously. He considered as the motivating cause, above all, religious fanaticism, aroused in an unprecedented intensity among the general populace due to the crusading spirit which permeated the whole of Europe. Through Stobbe's classical work, however, scholarly curiosity with regard to the varied problems involved was rather stimulated than satisfied. There were the same questions which even today confront the historian, sociologist, and lawyer with undiminished intensity and no less perplexing intricacy: How is it that about the middle of the fourteenth century the Jews suffered from cruel persecution in all German cities and elsewhere, in spite of their favorable treatment in judicial practice and legal doctrine? How is it that after the second half of the fourteenth century their social and legal status turned decidedly to the worse? How is it that secular Jewry legislation in the late Middle Ages changed its traditional attitude toward the Jews? Had religious fanaticism, temporarily aroused during the Crusades with their disastrous consequences for the Jewish community, then become a permanent feature of European society? How was this effected despite the legal and political security extended to the Jews even after those catastrophes?

Stobbe's friend and colleague at the University of Leipzig, Wilhelm Roscher, searched for and found an answer of his own to all these questions. To his mind, the key to a solution of all the complicated problems involved seemed to lie in the function which destiny had allotted to the Jews in mediaeval economy. Roscher's doctrine, now to be presented, discussed and expounded, in its original or some modified version has since become almost a common possession in numerous branches of modern science. It has only recently

been successfully applied to the economic history of the Jews in Central Europe, and its validity proved also for the eighteenth and nineteenth centuries.[7] Roscher above all sought for an explanation of the fact that

> "in the first and cruder half of the Middle Ages the Jews, as a rule, were better treated than in the second and otherwise more refined period."

His solution summarized in his own words reads as follows:[8]

> "In those days the Jews satisfied a great economic need which, for a long time, could not be done by anyone else, namely, the need for carrying on a professional trade. Mediaeval policy toward the Jews may be said to have followed a direction almost inverse to the general economic trend. As soon as peoples become mature enough to perform that function themselves, they try to emancipate themselves from such guardianship over their trade, often in bitter conflict. The persecutions of the Jews in the later Middle Ages are thus, to a great extent, a product of commercial jealousy. They are connected with the rise of a national merchant class."

This theory suggests several implications, political, national, social, and thus is open to different interpretations. It was soon combined with the conception of the Jews as foreign nationals and strangers ethnically (although not considered as aliens politically).[9] Widely accepted, even by authors of outspoken antisemitic inclination,[10] it was conjoined with racial theories.[11] Modern racial anti-Semites, however, had to forsake their former adherence to Roscher's

[7] Cf. Raphael Straus, "The Jews in the Economic Evolution of Central Europe," in *Jewish Social Studies*, III (1941), pp. 15-40.

[8] Roscher (*supra*, note 2), pp. 504, 506, 516, 511.

[9] Andreas Heusler, *Institutionen des deutschen Privatrechts*, I, pp. 149 f.; cf. Otto Gierke, *Deutsches Privatrecht*, I, p. 438, note 2.

[10] Emanuel Forchhammer, "Beiträge zur Geschichte der deutschen Juden mit besonderer Beziehung auf Magdeburg und die benachbarte Gegend," in *Geschichtsblätter für Stadt und Land Magdeburg*, XLVI (1911), pp. 122 ff., 132; Georg Liebe, "Die rechtlichen und wirtschaftlichen Zustände der Juden im Erzstift Trier," *Westdeutsche Zeitschrift für Geschichte und Kunst*, XII (1893), pp. 316, 334; Liebe, "Die wirtschaftliche Bedeutung der Juden in der deutschen Vergangenheit," separate edition from *Jahrbücher der königlichen Akademie gemeinnütziger Wissenschaften zu Erfurt*, New Series, Heft XXVI (Erfurt, 1900), pp. 4 ff. Cf. also L. Erler, "Historisch-kritische Übersicht der nationalökonomischen und sozialpolitischen Literatur," *Archiv für katholisches Kirchenrecht*, XLII (1879), pp. 35 ff., 73 ff.

[11] Forchhammer, *loc. cit.*, pp. 122 ff., 132, lays particular emphasis on commercial competition and jealousy. He considers the religious motives only of secondary import.

doctrine since it did not fit in their scheme anymore.[12] It was opposed by Jewish scholars because of its emphasis on the rise of nationalism as the foremost cause of the rise of hatred for the Jews, and for other reasons.[13] One prominent Christian author objected to that theory for methodological reasons and because of his claim that usury by Jews (besides religious fanaticism and national antipathy) was the outstanding factor of anti-Jewish effect, while a German "national commerce," in his opinion, is traceable far earlier than the Crusades.[14]

All controversies among scholars notwithstanding, the kernel of Roscher's doctrine received support through sub-

[12] *E.g.*, Rudolf Ruth, "Wucher und Wucherrecht der Juden im Mittelalter," in *Deutsche Rechtswissenschaft*, II (1937), pp. 111-157; for criticism, cf. G. Kisch, *Historia Judaica*, I (1938), p. 69.

[13] Georg Caro, "Die Juden des Mittelalters in ihrer wirtschaftlichen Betätigung," *Monatschrift für Geschichte und Wissenschaft des Judentums*, XLVIII (1904), pp. 587 f., 592 f., especially stressing the organization of handicraft in guilds "in which Jews participated as little as the patricians;" also Caro, *Sozial- und Wirtschaftsgeschichte der Juden im Mittelalter und der Neuzeit*, I (Leipzig, 1908), pp. 198, 429 ff.; cf., however, Caro, *MGWJ.*, XLVIII (1904), pp. 597, 603, where some aspects of Roscher's theory are nevertheless accepted.—Ignaz Schipper, "Anfänge des Kapitalismus bei den abendländischen Juden im früheren Mittelalter bis zum Ausgang des XII. Jahrhunderts," reprinted from *Zeitschrift für Volkswirtschaft, Sozialpolitik und Verwaltung*, XV (1906) [Vienna, 1907], p. 3, finds fault in Roscher's methodology, particularly in the adducing of evidence *per analogiam*, but none the less accepts some of his views (pp. 26, 38).—Julius Guttmann, "Die wirtschaftliche und soziale Bedeutung der Juden im Mittelalter," *MGWJ.*, LI (1907), pp. 280-284, propounds a whole series of interesting counter-arguments of a diverse nature.—Eugen Täubler, "Zur Handelsbedeutung der Juden in Deutschland vor Beginn des Städtewesens," in *Beiträge zur Geschichte der deutschen Juden, Festschrift zum siebzigsten Geburtstage Martin Philippsons* (Leipzig, 1916), pp. 370-381, assembles all negative criteria against Roscher from the field of general economic history, maintaining that Roscher's theory was invalidated by the researches of Alfons Dopsch, *Die Wirtschaftsentwicklung der Karolingerzeit* (Weimar, 1913; second edition, 1921). According to Täubler, new detailed investigations are required to prepare a basis suitable for a reconsideration of the entire problem. Täubler's own contribution was confined to early Jewish slave trade; the further studies promised in this field unfortunately remained unpublished. Täubler's criticism of Roscher and Stobbe could not prevail, however; cf. Straus, (*supra*, n. 7), p. 34.—Salo Baron, "Nationalism and Intolerance," *Menorah Journal*, XVI (1929), p. 504, reprint, p. 2, rejected Roscher's theory for its failure to explain the relation between the national structure of the State and the treatment accorded Jews throughout Diaspora history.

[14] Karl Bücher, *Die Bevölkerung von Frankfurt am Main im XIV. und XV. Jahrhundert*, I (Tübingen, 1886), pp. 572 f., 589 ff.; cf. Täubler, *l. c.*, pp. 371, 377. Cf. *contra* also Georg Below, Article "Juden," in Johannes Hoops's *Reallexikon der Germanischen Altertumskunde*, II (Strasbourg, 1913-15), p. 618.

sequent Jewish research[15] and the recent researches in the general field of economic history.[16] It cannot be expected, however, in the present author's opinion, to offer a direct explanation for the phenomena of hatred and persecution or the deterioration of the legal status of the Jews in the Middle Ages. The essential core of Roscher's theory, not brought out with full emphasis in his own formulation, can be apprehended only through our better insight gained from modern research into the historic-economic developments. It is the observation of an economic phenomenon recurring from the early Middle Ages up to this very day. The Jews, through their talents and activities, have in every age and in every type of economy fulfilled a certain economic function. They were needed and used for certain pioneering functions (trade, moneylending, pawnbroking, etc). This need existed as long as the majority of the population had either no interest in or no ability for such economic services. As soon as they learned to satisfy this need themselves, the mission of the Jew was finished. Displacement from his economic position followed sooner or later; he had to look for other opportunities to perform pioneering functions in new fields, but again only until the majority group would once more move into them. This is an endlessly recurring process. In contradistinction to Roscher, I would call it an economic phenomenon rather than a law of history, similar economic conditions, events, and developments producing similar effects. It serves to explain only the Jews' function in mediaeval economy. And this was but one among several factors,

[15] Cf. Robert Hoeniger, "Zur Geschichte der Juden Deutschlands im frühern Mittelalter," in Geiger's *Zeitschrift für die Geschichte der Juden in Deutschland*, I (1887), pp. 78 f., 86 ff., 90 f., 93 f. (for criticism, see Täubler, *l.c.*, pp. 373 f., 377); Solomon Grayzel, "Christian-Jewish Relations in the First Millennium," in *Essays on Antisemitism*, ed. by K. S. Pinson (New York, 1942), p. 43; Salo W. Baron, "The Jewish Factor in Mediaeval Civilization," in *Proceedings of the American Academy for Jewish Research*, XII (1942), pp. 19 ff.; Straus (*supra*, n. 7), pp. 21 ff., 30, 32 ff., and *passim*.

[16] Cf. A. Oncken, *Geschichte der Nationalökonomie*, second ed. (Leipzig, 1920), p. 131; Horst Jecht, "Studien zur gesellschaftlichen Struktur der mittelalterlichen Städte," in *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte*, XIX (1926), pp. 57 ff., 82 f.; also Georg Brodnitz, *Englische Wirtschaftsgeschichte* (Jena, 1918), p. 327.

though a key-factor, behind the fundamental change in the legal status of the Jews in the late Middle Ages.

Within this somewhat restricted scope as outlined here, Roscher's "historical law" concerning the Jews' function in the development of economic life can be observed in operation in mediaeval as well as modern economy. Its functioning during the Middle Ages is borne out by a group of mediaeval law sources which have not heretofore been employed for a pertinent investigation. The German law-books and decisions of the Magdeburg Jury Court[17] offer unquestionable confirmation of the soundness of the basic elements in Roscher's theory. A brief summary of economic development in Germany, and a survey of the facts and observations concerning the economic activities of the Jews, derived from these legal sources, will best demonstrate Roscher's doctrine and the correctness of the assertion set forth here.

It was, no doubt, as itinerant merchants that many of the Jewish pioneers penetrated Germany in the early centuries. In the Carolingian era 'Jew' and 'merchant' were used as almost interchangeable terms. The economic structure of the early mediaeval town, still markedly agrarian in complexion, did not allow any considerable place for commerce.[18] According to St. Thomas' teachings, the ideal was a self-sufficient city. Only when this ideal was not attainable, and the city had an abundance of wares, should merchants be admitted. Here was the opportunity for Jews to perform a function of economic necessity. Indeed they developed a kind of "guardianship" over trade and laid the foundations of settlements which later assumed a permanent character. The growth of the mercantile spirit and enterprise in Europe, particularly in the cities, from the period of the Crusades onward tended to displace the Jews from their favorable position. Another factor which accelerated this development

[17] Cf. Guido Kisch, "The Jewry-Law of the Medieval German Law-Books," Part I, in *Proceedings of the American Academy for Jewish Research*, VII (1935-36), pp. 89 ff.; G. Kisch, "Magdeburg Jury Court Decisions as Sources of Jewry-Law," in *Historia Judaica* V (1943), pp. 27 ff.

[18] Cf., also with reference to the two sentences to follow hereafter, *supra*, note 16; moreover, John A. Ryan, "The Economic Philosophy of St. Thomas," in *Essays in Thomism*, ed. by Robert E. Brennan (New York, 1942), pp. 252 ff.

was that the Merchant Guilds, permeated by Christian ideas in their economic and social activities, did not admit Jews who were thus excluded from the privileges these mercantile corporations enjoyed. The new field of activity and the new economic function, which offered itself to the Jews in the twelfth and thirteenth centuries, was the credit business. In the precapitalistic era the Jew was again a pioneer, whose financial operations were needed and welcome in spite or, better, because of ecclesiastical condemnation and the Canon law restriction of usury by Christians. From money lending upon interest and on the security of articles of personal property, automatically developed pawnbroking. This, in turn, led to second hand trade, which had to become the Jews' main occupation in the course of the fifteenth century, after their displacement from the credit business by early capitalism.

It is the role of moneylender and pawnbroker in which the Jew is chiefly active in the period of the law-books. True, he was not yet entirely excluded from ownership of real property. Law-books and court decisions, however, are particularly concerned with regulating his trade in money and pawned goods. Its usefulness in mediaeval economic life was fully recognized by law.[19]

Turning from the general to the specific,[20] again, certain developments in the field of commercial technique are observable, which were originally initiated by Jews, only

[19] The Jews' inclusion in the king's peace, according to the foremost German law-book of the Middle Ages, the *Sachsenspiegel* (*ca.* 1221-1224), is surely due not only to political but also to economic causes. If, in *Sachsenspiegel*, II, 66, 1, the Jews, together with the clerics and the peasants' tools, mills and public highways, are placed under special protection, then assuredly consideration of the Jews' economic utility had not been without weight — — acknowledgment of it is still explicit in *Sachsenspiegel*, III, 7, 4. According to its regulation, everything pertaining to the maintenance of productive economic life was placed under a special dispensation of the king's peace. G. Kisch, "The Jewry-Law of the Mediaeval German Law-Books," Part II, *Proceedings of the American Academy for Jewish Research*, X (1940), p. 126.

[20] All facts now to be presented here and all the conclusions derived from them, are based on extensive researches in the mediaeval law sources mentioned in the text and described *supra*, note 17. Full documentation will be found in this author's forthcoming book, *Jewry-Law in Mediaeval Germany in the Light of Law-Books and Jury Court Decisions*, to be published in 1945.

later to become a common practice in economic life.. We refer, in particular, to the old trade privilege of the Jews, of lawful acquisition of property from non-owners, and to the extension of the underlying principle to the law of pledge,[21] universally operative to this very day in the traffic with and law of pawned goods. Another example, from the law of contracts, of no less importance for economic and legal technique, is the promotion by Jews of the use of promissory notes and the insertion in them of the "clause of attorney," a noteworthy stage in their development into negotiable securities. True, the mediaeval mind was not always cognizant of the progressive character and economic usefulness of such trends and developments in economic and legal life, as one may see from the stand of the Magdeburg *Oberhof* against free transfer of contractual claims by means of negotiable promissory notes. On the other hand, the *Schöffen* of Magdeburg showed a full grasp of the growing demand for money in the national economy and thus of the social need for professional money-lending. It was due to this insight and foresight that the Jews could avail themselves of all possible means for the legal enforcement of their money claims against tardy debtors, even of such drastic methods as the *Schelmenschelten* or issuance of invective letters, that is, publicly impugning the defaulter's honor in lampoons and defamatory caricatures. In fact, the Jews were often compelled by the authorities to lend their money against adequate security, or officially recommended for and supported in their loan business.

Such activities, recognized as economically needed and useful, could not fail to integrate the Jews into the economic and legal community in their places of residence. This process occurred automatically. The liability of Jews for municipal debt offers a good illustration of the way it worked. The foreign creditors of a city took its Jewish inhabitants for citizens in order to subject them or their property to

[21] Cf., for the present, G. Kisch, "The 'Jewish Law of Concealment'," in *Historia Judaica*, I (1938), pp. 3-30; Boaz Cohen, "The So-Called *Jüdisches Hehlerrecht* in the Light of Jewish Law," *ibidem*, IV (1942), pp. 145-153.

seizure in reprisal for outstanding claims. This, in turn, had a reaction on the legal status of the Jews in their home town. Since they were exposed to liability for municipal debt, they could not but be included in letters of privilege or intercommunity treaties concerning safe-conduct and exemption from arrest in reprisal. In other words, they had to be recognized as members of the local economic community for which they might have to suffer.

The strength of the Jewish position was, however, instantly shaken or paralyzed when Christian elements appeared ready to share or take over their function in economic life. In such competition the Jew had to suffer from obvious disadvantages. For this phenomenon, too, a striking example is found in the judicature of the Magdeburg High Court. When for the enforcement of money obligations the stipulation of *Schadennehmen* was to be executed, Christian moneylenders were officially given preference under the law. The creditor was legally bound, under pain of legal disadvantages, first to turn to Christian moneylenders for recovery. Only in the absence of Christian creditors were Jews permitted to function as their substitutes. The manifest tendency was first to repress the Jewish moneylender and, *in fine*, to displace him entirely from this specific trade.

All told, Roscher's "law" was operative in all spheres of mediaeval economy, generally and automatically, as well as in specific economic-legal situations, in which its application indicates deliberate intent.

It was owing to Stobbe's book on the Jews in the Middle Ages and to Roscher's doctrine in its original formulation that, for long, two opposing schools of opinion engaged in the attempt to analyze and lay bare the ultimate causes of mediaeval hatred and persecution of the Jews. The one stressed religious hatred as the true motive, which culminated in the era of the Crusades; the other emphasized economic jealousy, which reached its peak in the later period and directly produced the expulsions of the fifteenth century. In his re-evaluation of facts and opinions, James Parkes took

a mediatory stand;[22] and this in spite of his conviction that the only difference between the Jews and the other groups was an exclusively religious one.[23] As to the Crusades, he maintains that "the mob fell upon the Jewries and massacred, burnt and pillaged with a mixture of religious and economic fury .... It is only by an artificial separation of inextricably interwoven motives that it is possible for a historian to say that the hatred of the Jew was *exclusively* religious or *exclusively* economic. As complete explanation either is untrue by itself."[25]

One can fully agree with this view. The proposed synthesis of religious and economic hatred alone, however, offers no deeper insight into the process of the decline in the legal status of the Jews from the second half of the fourteenth century onward. One must rather be cognizant of the fact that *several* causative factors were intertwined in the history of mediaeval "antisemitism" in the same way as in almost every historical development. Among them, the psychological and social factors and their interaction with the religious, economic, legal, and political factors must be given careful consideration. The psychical attitude of the masses toward the Jews deserves particular attention in the search for an explanation of the origin and growth of popular hatred of the Jew in the Middle Ages.[26] These tasks are, however, outside the scope of the present essay.

[22] James Parkes, in his book, *The Jew in the Medieval Community* (London, 1938), did not enter into a critical discussion of Roscher's theory, unless the brief remarks on pp. 326 f. should be regarded as such. Cf., however, Parkes, "Christian Influence on the Status of the Jews in Europe," in *Historia Judaica*, I (1938), pp. 34 ff., where Roscher's theory is tacitly implied.

[23] Parkes, *op. cit.*, pp. 40, 66, 205 f., 221.

[24] Parkes, *op. cit.*, p. 237.

[25] Parkes, *op. cit.*, p. 266. The italics are those of Parkes.

[26] Investigation of the psychic behavior of the masses as a general postulate for modern research in legal history was rightfully emphasized by Hans Fehr, "Mehr Geistesgeschichte in der Rechtsgeschichte," in *Deutsche Vierteljahrschrift für Literaturwissenschaft und Geistesgeschichte*, V (1927), pp. 7 f.

THE STATUS OF THE JEWS IN THE MIDDLE AGES CONSIDERED FROM THE STANDPOINT OF COMMERCIAL POLICY

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I

THE HEAVY oppressions and the persecutions of the Jews, which have sullied many a page of history, especially during the later Middle Ages, are usually ascribed to two factors: the intolerance of a hierarchy grown despotic, and the brutality of a semi-barbarous population.

No one will deny the presence of these two factors. It is nevertheless certain that the Popes did more to restrain than to give free rein to Jewish persecutors. This seems clear from the excellent decretals of Alexander III at the Lateran Council of 1179, repeated by Clement III and Innocent III and included in V,6,9 of Gregory's *Decretals*. The well-known Jewish historian Graetz freely admits this (V,p.41; VI, p. 281), although generally his judgment of those he considers enemies of the Jews is anything but mild, as, for example, when because of his attitude he calls Luther weak-minded and accuses him of occasionally suspending Old Testament laws, even such as the prohibition of theft and adultery (IX,p.333). Emperor Frederick II, on the other

* EDITOR'S NOTE. The translation of Roscher's essay is by Dr. SOLOMON GRAYZEL, Jewish Publication Society of America, Philadelphia, Pa. The German original was first published in *Zeitschrift für die gesamte Staatswissenschaft*, XXXI (1875), pp. 503-526, and was reprinted in Roscher's *Ansichten der Volkswirtschaft aus dem geschichtlichen Standpunkte*, II (Leipzig, 1878), pp. 321-354; cf. *Historia Judaica*, VI (1944), pp. 1-12. The translation follows the original faithfully in text and notes. Comments were intentionally omitted in order to preserve the original form of this historical essay. The discerning reader will easily recognize those of Roscher's assertions which have been outdated by subsequent research.

hand, that great and in many respects modern opponent of the Papacy, categorically declared that imperial authority had imposed perpetual servitude upon the Jews "as an everlasting punishment for the Jewish crime" (*ad perpetuam judaici sceleris ultionem*).[1] Another fact is, however, even more important, namely, that the Jews were better treated during the first, cruder half of the Middle Ages, than in the second and otherwise more civilized one. It might well be said that medieval policy toward the Jews is almost the reverse of the general economic trend.

Charlemagne's friendliness to the Jews, for example, receives Graetz's praise and he ascribes it particularly to economic motives (V,p.217 f). The least that can be said about the oft-repeated Church laws against the Jews' marrying Christians, against their having Christian servants in their homes, and against the Jews' sharing a meal with Christians, is that they indicate the absence of national hatred among the population. Agobard's famous work, *De Insolentia Judaeorum*, proves this much: that under Louis the Pious the Jews received the emperor's mighty aid against local manifestations of intolerance. The prohibition against the purchase of Christian slaves for sale in foreign parts, or against interference with Christian servants in their observance of Sundays and fastdays must at least have been difficult of enforcement.[2] The rest of Agobard's anti-Jewish books indicate that his anxiety to keep Christians from contact with Jews was prompted by the fear that simple-minded Christians might be misled by Jewish pride in their descent from Abraham and the prophets, in their favor at Court, in their wealth and the like. Yet Agobard himself asks that financial restitution be made to the Jewish master compelled to free a slave who had been baptized (p.101). The Pistensian Edict of 864 (ch. 23), issued under Charles the Bald, prescribes flogging as punishment for the sale of impure gold

[1] In a document of 1227; Huillard-Bréholles, V, 1, p. 57.

[2] Agobard, *Opera*, ed. Baluze, pp. 62 f.

or silver if the culprit is a serf or a slave, but a money fine if he is a free man or a Jew. The following is even more revealing. During the reign of Emperor Henry II (the saintly!), Wecelin, the chaplain of a certain Duke Conrad, adopted Judaism. The emperor was greatly incensed, but imposed no severer punishment than a learned refutation.[3] Hrabanus Maurus tells of a similar case under Louis the Pious (*Contra Judaeos,* ch. 42). Such a convert would certainly have been burned in later centuries.

As late as the period of Henry IV, just before the First Crusade, the imperial authorities were well disposed toward the Jews. An imperial Privilege to the city of Worms, in 1074, speaks of "Jews and other people of Worms," (*Judaei et caeteri Wormatienses*) and this in a document which holds the people of Worms up as an example for all others. Henry IV's Speyer Privilege of the year 1090 sets a higher fine (*Wergeld*) as punishment for the wounding of a Jew (one pound of gold), than the *Sachsenspiegel* sets for the wounding of a man of noble birth (nine pounds of silver pennies). Six years earlier the Bishop of Speyer had declared it even an honor to have Jewish fellow-citizens: *cum ex Spirensi villa urbem facerem, putavi milies amplificare honorem loci nostri si et Judaeos colligerem.* This privilege explicitly permits the Jews to acquire land of various kinds, to have Christian servants, nurses and slaves; and it grants them unrestricted commercial rights as well as freedom from tolls and the possession of their own courts of law.[4] Jews are mentioned as property owners already in the days of Louis the Pious[5] and for a long time thereafter they owned half of Paris.[6] As to their freedom of movement, it was not abolished in Northern France till the time of Philip Augutus. Similarly in Frankfort on the Main where, between 1404 and 1616, there was a fundamen-

[3] Pertz, *Monumenta Histor. Germ., Scriptores,* VI, pp. 704, 720 ff.

[4] Würdtwein, *Nova Subsidia Diplomatica,* I, pp. 135 ff.

[5] De Rozière, *Recueil général des formules,* I, nos. 27 ff.

[6] Bouquet, *Scriptores,* XII, p. 215.

tal rule that Jews be granted rights of residence for an indefinite period only, the majority of the houses which they inhabited during the Middle Ages were their own property.[7]

In setting forth the above, I do not mean to imply that individual Jews were free from mistreatment during the first half of the Middle Ages. Injustice, unfortunately, existed at all times. What I maintain is merely this: among the Germanic peoples the Jews were better treated during the earlier than the later Middle Ages. This is easily explained. The fact is that the Jews of the earlier period filled a great need in the general economy which for a long time could not be filled by anyone else, namely the need for carrying on a professional trade in goods. The Germanic peoples, and to some extent also the Latins, felt this need without themselves being capable of filling it, whereas the Jews were already then excellently fitted for it.

II

The Jewish people, second to no people in the world in wealth of spiritual gifts, had permitted itself, during the period of its political independence, to be limited by the strict discipline of Mosaic law to a one-sided economic activity: agriculture and cattle breeding. The more the Jews feared absorption by their pagan neighbors the more they disdained commerce. The course of development among the closely related Phoenicians proves that a great natural propensity was thereby permitted to lie untapped.

The loss of political independence, with which, as is well known, the scattering of the Jews over distant lands was connected, brought about a change in the attitude of the people toward commerce. Ewald drew the conclusion, from such references as Tobit I.13, Isaiah 58.3 ff., Ezra 2.65, that the Jews had already entered commerce and similar activity during their Assyrian exile. Many of them, following the

[7] Kriegk, *Frankfurter Bürgerzwiste*, p. 447.

example of the Phoenicians, may soon thereafter have gone westward, as certain passages in Jeremiah (31.10; 26.21f.) and the later portions of Isaiah seem to indicate by their frequent reference to islands and coastlands. Under the successors of Alexander the Great, Jewish colonies existed in the most important mercantile centers of Asia Minor and Greece; it is related, in particular, that the Jews of Asia transferred their property to Kos because of the threat of invasion by Mithridates.[8] Philo estimated the Jews in Egypt at no less than a million; thus, two of the five districts into which Alexandria was divided were Jewish. This would of itself indicate that the Egyptian Jews were occupied not only with agriculture but also with commerce and industry, a fact which is also explicitly asserted by Philo (*Adversus Flaccum,* II, p. 523 ff.). Josephus even asserts that they had supervision of the Nile transport, a task transferred to them by the State (*Contra Apionem,* II, 5). The Roman Jewish community surely had its origin before the triumph of Pompey. It would otherwise be difficult to understand how Cicero could assume that in 59 B.C. the Jews had so great an influence on popular gatherings, though, to be sure, it was exerted not merely through their number but also through the close unity among them (*Pro Flacco,* 28: *Quanta sit manus, quanta concordia, quantum valeat in concionibus*). Nor could one otherwise understand how Herod's embassy to Augustus could have been accompanied by 8,000 Jewish residents of Rome (*Josephus, Antiquitates,* XVII,11,1). Emperor Claudius considered it dangerous, because of their large number,[9] to carry out the decision to expel them from Rome. According to Strabo it was not easy to discover a place in the entire world (*oikumene*) where Jews were not to be found; and Josephus asked: Is there a people on earth among whom Jews have not settled? (*Ant.,* XIV,7,3; *Bell. Jud.,* II,16,4). Students of national economy have no doubt that the majority of these depended on commerce and industry for their livelihood.

[8] Josephus, *Antiquitates,* XIV, 7.2; cf. XIV, 10.8.

[9] Dio Cassius, LX, 6; cf. Suetonius, *Claudius,* 25.

The scattering was, in a certain sense, bound up with a magnificent concentration. In Jerusalem, whither their racial and religious fellows streamed in countless numbers,[10] 380 synagogues existed for foreign Jews. Cicero's complaint in the aforementioned speech about the gold which annually went from Italy and the other provinces to Jerusalem is thus significant for the mercantilistic side of the national unity among all the Jews.

The national migrations (barbarian invasions) have often been compared with the flood: the Christian Church is thus equated with Noah's Ark in that it saved a twig from every branch of ancient culture which could afterwards be transplanted. True as this may be of the higher strata of life, bridges of a different kind were still needed for the middle and lower sections in order to transfer the cultural elements of antiquity to the newer peoples. I count foremost among these bridges the Byzantine Empire which preserved its continuity throughout the Middle Ages and was not extinguished until the so-called Renaissance. One need but think in this connection of the fact that the chief gold coin, the Byzantine *solidus,* remained unchanged in its content—1/72 of a pound of pure gold—from the days of Constantine the Great to the destruction of the Empire. It is even more astonishing that in the case of Judaism an entire people was able, through its remarkable combination of stubborness and flexibility, to retain its total culture—nationality, religion, language and law—almost unchanged through all the storms of the Middle Ages. What tremendous changes took place among all the other inhabitants of Italy, Gaul, Spain, Britain, as well as the districts of the Alps and the Rhineland during the national migrations! They were, indeed, freshened, rejuvenated, by these experiences; but to an even greater extent set back in every respect which we

[10] Josephus' generous estimate (*Bell. Jud.*, VI,9.3) of 2,700,000 is certainly an enormous exaggeration; it nevertheless presupposes a considerable grain of truth.

might designate as cultural. So, for example, the whole of the period of the early Middle Ages was immeasurably behind late Antiquity, which bears a much closer resemblance to our own day, in respect to means of communication and transport. The services of the Jews in matters of trade must have been all the more welcome to the new peoples. It is certainly no accident that in Lower Saxony, for example, as Schaumann has proved, the first appearance of commerce was contemporaneous with the first appearance of Jews. They had the advantage, not alone in possessing a monopoly of the knowledge needed for commerce, of habits and capital, but also in their close and magnificent unity throughout the Christian and Mohammedan kingdoms of the earth. It was an advantage which one may find, to a lesser extent, among all the other religious minorities and upon which largely rested the commercial success of the Huguenots in France and of the Quakers in England.[11]

Specifically, the new nations have the Jews of the Middle Ages to thank for three important steps of economic progress:

1. The introduction of interest on capital, without which further development of credit, or even the accumulation of capital or the division of labor would be inconceivable.

2. The protection of the possessor of an object illegally

[11] Christian Syrians in large numbers are described by Salvian (*De gubernatione Dei,* IV) as merchants in Marseilles in the fifth century. The same holds for the sixth century especially in Gaul, where they obtained, by gift, the episcopal See of Paris and could advance their ethnic fellows to many other ecclesiastical offices (Löbell, *Gregor von Tours,* p. 196). Greek merchants likewise, as late as the seventh century, to some extent, played an important role in Spain (cf. *Corpus Inscriptionum Hisp., s.v.* "Hispalis" and "Malacca," also Dahn in Goldschmidt's *Zeitschrift für Handelsrecht,* XVI, p. 388). Yet all of these could not compare with the Jews in the breadth, depth and continuity of their influence. This state of affairs derives from the lack of religious distinctiveness among the former, which prevented them from being firmly united with each other or with their foreign fellows.

alienated but taken into possession in good faith by the receiver. Although this seems to have made its appearance in the first place in the Privilege of Speyer of 1090, it rests in a deeper sense upon talmudic prescription.[12] It is obvious that this principle is an indispensable foundation for the higher grades of commerce, for example, for promissory notes payable to the bearer. The legal system of the Talmud shows itself even in this point to be comparatively modern and resting upon mercantile law as against the mediaeval and agrarain spirit of the Mosaic legal system.

3. If these two steps forward were in part merely a repetition of what was already well known during the highly developed Greek and Roman periods, the invention of bills of exchange must be designated as a novelty of worldwide importance historically. These were an instrument which had more or less the same significance for monetary exchange as the railroad has for transportation and the telegraph for the dissemination of news. It is remarkable that the Talmud already envisions promissory notes payable to the bearer in fairly clear terms; indeed that the very ancient Book of Tobit speaks of notes of indebtedness which play an important role in international commerce among people not personally known to one another.

III

For a number of centuries the Jews remained the commercial guardians of the young nations, to the advantage of the latter and not without open recognition of this advantage. But every tutelage becomes burdensome when it continues longer than the dependency of the ward. Entire nations emancipate themselves from the tutelage of other nations, even as individuals used to, only by means of struggle. The Jewish persecutions of the later Middle Ages are in large measure a product of trade jealousies. These persecutions

[12] Cf. Stobbe, *Die Juden in Deutschland während des Mittelalters*, pp. 120, 242.

are intimatey related to the first flowering of a national merchants' caste.[13]

This development occurred, generally speaking, among most nations at the time of the Crusades; particularly in Germany, where the twelfth and the early thirteenth centuries were a period of tremendous economic progress, connected with the foundation of numerous cities, with colonization, *etc.* As is well known, the first great persecutions of the Jews took place in this part of Europe in the year 1096, especially in those regions where city life and the middle classes were first to appear, as in the Rhineland. Even apart from such outbreaks of violence, cruel intolerance continued for centuries thereafter. An imperial constitutional law, the Golden Bull, mentions the Jewry royalty (*Judenregal*) of the Electors among their royal rights over minerals and tolls (ch.9). But the extent to which the actual root of the trouble lay in the cities is illustrated most significantly by the great inter-city war of 1385. This war was conducted for the purpose of raising the political standing of the cities of the empire, as against the power of the territorial rulers. Not only Nuremberg, but many other cities as well, obtained financial means for conducting the war chiefly from extraordinary confiscations of Jewish debts for the benefit of the city treasury. The famous Humanist(!) Conrad Celtes, speaking of the Jews at the end of the fifteenth century, said in his eulogistic work on Nuremberg: "Surely, that tribe is to be destroyed or relegated to the Caucasus or beyond the land of the Sauromatae in perpetual exile; for, throughout the world it ever stirs against itself the wrath of Divinity, bringing violence and confusion into the society of humankind."

Wherever a middle class and a merchant class developed

[13] Typical in its significance is the fact that the Merchant-Adventurers, the first important organization for commerce outside the realm, was founded in 1296, that is, under the very king who expelled the Jews. A hint of the theory here developed may be found already in Hüllmann's *Geschichte des Ursprungs der Regalien*, p. 54.

and established themselves earlier or later there the persecutions of the Jews regularly took place correspondingly early or late. Graetz, for example, asserts that Byzantium was the starting point for all Jewish oppression during the Middle Ages (VIII,p.213). And, in fact, Byzantium never witnessed any complete interruption of cultural ties with Antiquity, and this city remained the foremost trading center of Christianity throughout the early Middle Ages. Thus, too, from Italy, where the first western people came into existence, a Jewish expulsion is reported as early as 855, five years after the power of tax-gathering or the exercise of judicial authority by Jewish officials over Christians had been prohibited.[14] The Venetians, in 945, forbade their shipowners to carry Jewish passengers,[15] an order which itself offers a clear proof that commercial jealousy was its motive. Southeastern France, which developed earlier than the northern part of that country, was antagonistic to Jews as early as the sixth century; and persecutions of Jews took place there especially early in Béziers and Toulouse. I recall the shameful story about Toulouse where, at Easter, a Jew publicly received a slap on the cheek, so that, in 1018, the fanatical slapper struck with deadly results.[16]

In the eastern part of Germany, on the other hand, medieval commerce had need of the Jews till a later date and for that very reason spared them longer. In 1297, every Jew who possessed a capital of ten silver marks received civic rights in Stendal. In Silesia there were Jewish property owners in 1204.[17] In Schweidnitz and Glogau, at the end of the thirteenth century the oath of a Jew had equal weight at court with the oath of a Christian. No Christian was accepted as a single witness against a Jew. The Jews stood under the immediate jurisdiction of the duke. If one of

[14] *Conv. Ticin.*, I, a. 850; III, a. 855 (Pertz, *Leges*, I, pp. 405, 437).

[15] Cf. the law cited in Depping, *Histoire du commerce entre le Lévant et l'Europe*, II, p. 22.

[16] Bouquet, *Scriptores*, X, p. 154.

[17] Tzschoppe and Stenzel, *Urkundensammlung*, p. 68.

them cried out for help in need, and his Christian neighbors failed to help him, the latter were fined thirty marks. Libelling a Jew by an accusation of murdering a Christian was punished by the same penalty which the Jew would have suffered had the accusation been proved.[18] One may conclude from all this that public opinion had already been infected by the anti-Jewish feelings of western and middle Germany, but that the ruling powers stemmed, as yet, the full outbreak of the disease. The Council of Vienna in 1267 ordered the Jews to pay the tithe from their fields, *etc.*, from which fact one may draw the certain conclusion that they could possess landed property.[19]

Farther east, it is well known, the Polish kings formally invited the Jews into the country so that they might build a sort of middle class between the nobility and the peasantry less dangerous to the State than the German immigrants. We know how late and with what difficulty the Slavic nations in general succeeded in creating a really national middle class. The Jews, indeed, becoming more numerous in Poland than in any other country, could not dissolve themselves into the rest of the population, and this may have been one of the greatest hindrances to the development of a national-political burgher class. In 1264, Boleslav gave them a Privilege, which Casimir the Great ratified in 1334 and which Casimir IV renewed in 1447. The last version specifically granted the Jews, among other things, the right to bathe in the same place with Christians as well as the retention and inheritance of estates of the nobility which fell into their possession. Nor could they ever be brought before an ecclesiastical court. That the German merchants resident in Poland and the craftsmen were among the most zealous op-

[18] Stenzel, *Geschichte des preussischen Staates*, I, pp. 85 ff.

[19] When Maria Theresa, in 1746, wanted to expel the Jews from Bohemia, the local Government (*Statthalterei*) protested on the ground that, among the Christian inhabitants of Prague, there were barely two or three merchants of moderate standing (Schottky, *Prag, wie es war und ist*, I, p. 345).

ponents of this privilege is quite in agreement with our theory set forth above.[20]

The Ottoman Turks treated the Jews very well; they even accepted alien Jews under their diplomatic protection. Bejazet I was very happy to have the Spanish exiles seek shelter with him. All in all, they were for the Turks more trustworthy subjects than the Greeks and Armenians whose place they took.

The Jews of many lands, although they were forced to abandon the trade in goods because of the jealousy of native merchants, for a long time still retained their superiority in the so-called money-trade or banking business. Thus, for example, the Archbishop of Cologne promised them not to permit anyone else to lend on pledge.[21] This fact is understandable: on the one hand, such trade in money always attains maturity later than trade in goods, and, secondly, it demands more extensive international connections. Moreover, almost all highly developed commercial peoples, sensing that they were being outstripped in their mercantile activity by their younger rivals, used to withdraw with their large capital into the business of financing. When the Jews did the like, the inherent evil of the situation soon showed itself in the antagonism of debtor toward creditor, of pauperism toward capitalism. This was added to the other reasons and pretexts for hating the Jews. Many instances of Jewish persecutions in the later Middle Ages were first and foremost efforts to destroy the letters of credit which were in their possession and are, therefore, to be viewed as a barbarous method of meeting a financial crisis, as a medieval form of what we of the present time would call social revolution.

The legend of the Wandering Jew is well known. It puts a vengeful curse for a minor insult in the mouth of Him who, according to the true sources, asked mercy for His murderers even on the cross. The horrible legend ex-

[20] Graetz, IX, pp. 69, 462.

[21] Ennen, *Geschichte von Cöln*, II, p. 327.

presses the fate of the Jewish people since the destruction of Jerusalem, tied up as that fate is with their wandering across the centuries from door to door and with their oppressive homelessness in the later Middle Ages. For this very reason this legend could find general acceptance only during the later Middle Ages; it seems to have been first mentioned by Matthew of Paris in the thirteenth century.

In the end the citizenry of the young nations on the top rung of the cultural ladder has tried generously to make up to the Jews for the injustice done them during the Middle Ages. Two common expressions—"civilization" in the sense of higher education, and "citizenship" in the sense of the fullest legal association in the State—indicate that the bid of the middle class for power in the State goes hand in hand with that other objective, namely, to accept into their ranks all well-to-do and cultured inhabitants of the national territory. This is the reason why the latest emancipation of the Jews found its opponents particularly in those classes of society which, during the Middle Ages, were least concerned in persecuting the Jews, namely, the clergy and the nobility, and why such emancipation had its origin in the middle class. Italy, for example, reached a cultural stage in economics, politics and literature at the end of the Middle Ages such as Holland attained only in the seventeenth century and most other European nations only in the eighteenth and nineteenth centuries. Hence we find that many Italian cities favored banking activity by Jews as early as the fifteenth century, that King Ferdinand of Naples even raised his Jewish physician to noble rank, and that the clergy took practically no umbrage at this.[22] Just as Cromwell permitted the return of the Jews exiled by Edward I (that great friend of the towns), so Holland, in its heyday, was the classic land of toleration for the Jews. The influence exerted by the revolutions of 1789 and 1848, as well as that exerted upon the situation of the Jews by the literary flowering since Lessing and Herder, are too well known to require elaboration.

[22] Cf. Graetz, VIII, p. 246 ff.

The experiences of a great many peoples offer analogies to the historical process which we considered above. They permitted a foreign people of superior cultural standing to provide for their early commercial needs. Then the native peoples, as they matured, sought to free themselves from this tutelage. Their efforts were often accompanied by fierce struggle. One may definitely speak in this connection of a law of history.[23]

[23] TRANSLATOR'S NOTE.—The rest of the article, having no direct bearing on the history of the Jews, does not seem to require translation. Roscher goes on to fortify his theory by producing a great number of historical incidents, from various lands and times, in which an alien people attained commercial supremacy and retained it until the indigenous population learned the ways of commerce, or until the merchants became assimilated or were expelled.

NATIONALISM AND AUTONOMY AMONG EASTERN EUROPEAN JEWRY

ORIGIN AND HISTORICAL DEVELOPMENT UP TO 1939*

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Contents

I. JEWISH AUTONOMISM
1. Basis and Ideology
2. Autonomist Platforms

II. HISTORICAL DEVELOPMENT UP TO THE FIRST WORLD WAR
1. Austria
2. Russia

III. THE INFLUENCE OF THE FIRST WORLD WAR
1. Austria
2. Russia
3. The Succession States of Russia and Austria
A. Autonomist Demands in the Russian Succession States
B. Autonomist Demands in the Austrian Succession States
C. Autonomist Demands at the Peace Conference

IV. FULFILLMENT OF AUTONOMIST DEMANDS
1. Recognition of the Jews as a Nationality
2. Jewish Autonomy
3. Education
4. Language Rights

V. CONCLUDING REMARKS

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EDITOR'S NOTE. Doctor Kurt Stillschweig's article consists of a summary survey, an expansion of, and a supplement to his extensive researches concerned with the minorities rights of the Jews in Eastern Europe before, during, and after the First World War. Some of his studies were previously published in German in a series of articles which appeared in the *Monatsschrift für Geschichte und Wissenschaft des Judentums* and in *Historia Judaica*. His book, *Die Juden Osteuropas in den Minderheitenverträgen* (Berlin, 1936) was devoted to the minorities treaties protecting Eastern European Jewry after the First World War. All these problems, once more, have entered the focus of general interest and public discussion, from a political as well as legal point of view. The present essay should thus be welcome to students of the complex questions involved. For full bibliography and complete documentation the reader is referred to Doctor Stillschweig's previous publications cited in the footnotes.

GUIDO KISCH.

I

JEWISH AUTONOMISM

1. *Basis and Ideology*

THE HISTORY of the Jews in the Diaspora is very closely tied up with the idea of Jewish autonomy. The numerous Jewish communities, many of which had developed in foreign lands long before the destruction of the Jewish state, enjoyed the right to a separate existence and to settle their own "internal affairs" independently. Frequently, organized in communal federations, they exercised civil and sometimes even criminal jurisdiction, had authority over the poor, over trade, professions, aliens, and the public order, collected taxes, and had their own public notaries. They were the recognized representatives of Jewry in its relations with the non-Jewish world. They were in a position to enforce by compulsory measures all their powers. In short, there was hardly a field in the public life of Jews which was not supervised by these autonomous bodies. Membership in the community was compulsory so that the only way to evade its jurisdiction was to secede from the community by embracing Christianity. The Jewish autonomous organization was, to all intents and purposes, a "state within a state."

This political and legal status lasted until the end of the eighteenth century, when the first break in this organizational structure was caused by the development of the centralized, absolutist state. The emancipatory laws, which required the national integration of the Jews into the majority peoples, concluded the process of dissolution. Naturally, they opposed the retention of organizational forms indicative of a separate Jewish nationality. Thus the French Emancipaton Decree of 1791 demanded of the Jews a formal renunciation of their autonomy. Other states followed a similar course, even such states as Russia where emancipation was still an aspiration rather than an achievement.

Other states pursued complex paths of development considerably differing in tempo and form. Ultimately, in the second half of the nineteenth century, the authority of the Jewish communities was restricted to purely religious matters.

With regard to their legal character, the newly created Jewish religious organizations were either private societies, as in Russia, or legal bodies endowed with public-law status and privileges, as in Austria and Prussia where the Jewish religious communities (*Kultusgemeinden*) enjoyed the right to tax their members. In France, such communities were organized under the consistorial system.

The Jews of Western Europe and also, to some degree, those of Central Europe, approved of this legal status. In view of the fact that the majority considered themselves nationals of the state, they had no reason to yearn for the old autonomy which had prevented them from becoming assimilated. But different conditions prevailed in Eastern Europe where Jews lived in compact masses. More than two-thirds of world Jewry lived in this region: at about 1900, *circa* seven and a half million. Of this number, more than five million were in Russia (1897), one and one-quarter million in Austria (1900), and not quite 270,000 in Rumania (1899). The rest was scattered among the other Eastern European states. A considerable number, chiefly in Poland and in the western part of the Hapsburg monarchy like their Western European co-religionists considered themselves nationals of the states in which they lived and whose language they spoke. Their economic life likewise resembled the Western European pattern. But the Jewish masses in Eastern Europe were sharply set off from the surrounding world, in external appearance, in customs, and, above all, in language. They were a separate group not only culturally but even economically. Their urbanization, as the result of a long historical development, had these consequences: First, a proletarianization and pauperization of the lower class, best represented by the type of Jew known as *Luftmensch,* and a disproportionate concentration in middle-class occupations,

such as handicrafts, petty trading, brokerage, and to some extent also the professions.

These ethnic and economic peculiarities created many problems. Yiddish, the vernacular of the Jewish masses, was at best tolerated by the state authorities only as a dialect or jargon, and its use at times prohibited even in private life. Public schools were closed to most Jewish children for whom, in any event, they were hardly suited. The Jewish *hedarim* were even less adequate. The abnormal economic stratification of the Jews led to reactions on the part of the majority peoples, often resulting in pogroms. The pauperization of the Jews grew and frequently assumed terrible proportions. Equal rights were completely disregarded, as far as Jews were concerned, or were at best mere paper rights. Among the peoples of Eastern Europe the Jews formed a special group suffering from a special malady, namely that of being Jews.

How was this disease to be cured? The answer to this question involved *political* considerations. But strangely enough, the Jewish masses, which seemed so unified to the outside world, could not agree on a common answer. The great mass of orthodox Jews, adherents of Rabbinism or Hasidism, was politically disinterested. Their intellectual interests lay exclusively in the religious sphere. Thus they could not be counted upon to contribute to the solution of political problems. The Haskalah or Enlightenment movement, too, was an intellectual-cultural trend. Though it helped pave the way for political movements by a broader, more secular education, it was, like Orthodoxy, unpolitical in nature.

The truly political currents in Eastern European Jewry were of a different sort entirely. They may be divided into three main categories whose bases and followers will be discussed later: the socialist, the Zionist, and the assimilationist movements to which a fourth was later added, the main subject of this essay, namely, the nationalist movement.

The nationalist, or as it is also called, the autonomist movement originated in opposition to assimilationism and

Zionism. According to Simon Dubnow, the well-known Russo-Jewish historian, who was one of the founders of autonomism, assimiliation, if at all feasible, could embrace at best only a small fraction of Jewry. "Zionism," on the other hand, "might be successful in settling at most a million Jews in Palestine, and that only under the most favorable conditions and as a result of many years of concentrated effort." Dubnow proposed his own solution in a series of writings published between 1897 and 1902. His analysis of the concept of nationhood led him to the conclusion that the Jews, too, constitute a nation. However, lacking a land of their own, they must be designated as an "intellectual-historical nation in contradistinction to other nations." The objection that a healthy Jewish life cannot exist in the Diaspora is disproved by history. Further development of Jewish national life depends, therefore, upon the preservation of those conditions which enabled the Jews to develop their own national life in the past. But what was their former source of strength? According to Dubnow, it was the self-government of the Jewish communities, their autonomy. If the Jews are to develop a healthy national life of their own once more their former autonomous institutions must be restored in a modified form adapted to modern needs. First of all, then, the state laws must accord to the Jews the status of a nationality, and the Jewish communities must be transformed into public bodies endowed with national autonomy.

These teachings of Dubnow constitute the theoretical foundation of Jewish autonomism. Before pursuing its historical development, it is necessary to consider the basic concepts underlying all autonomistic programs advanced in Jewish political life.

2. *Autonomist Platforms*

In keeping with Dubnow's theory, all autonomist platforms were based upon the recognition of the Jews as a nationality. Consequently, the autonomists postulated for the Jews the right to lead their own national life. Apart from the religious life developed in their religious communi-

ties, they presupposed a sphere within which the Jews would be able and willing to lead a life different from that of their surrounding world. What, then, was to be the content of this separate national existence and what forms was it to assume?

1. A separate national existence for Jews depended, first, on the right to use their own language. The autonomists were always in agreement on this point. Controversy arose, however, over which language was to be considered the national Jewish tongue. Some insisted on Hebrew, while others preferred Yiddish. The "Hebraists" contended that Yiddish was unfit for the role of a national language because it had originated only in exile, because it was nothing more than a corrupt form of German, and because, in any event, it was already falling into disuse. The "Yiddishists" countered that Hebrew is not used in every-day speech in the Diaspora. Was this not more significant than the fact that Yiddish was only a product of exile? Nor, they stoutly maintained, was Yiddish doomed to extinction. If the Hebraist considers Yiddish merely a corruption of German, he forgets that "many peoples have adopted foreign languages . . . and, furthermore, Yiddish is much more than an adaptation of German."

This viewpoint was mostly emphasized by those autonomists who were close to the labor movement, while the Zionists, who from 1905 on adopted autonomist ideas, preferred Hebrew. Nevertheless, they too, attributed some value to Yiddish. This point was clearly indicated in a report of the "Aktionskomitté" in 1909 which reads as follows:

"From our point of view we never rejected or despised Yiddish . . . It is something completely different from Hebrew and assumes a different position. Hebrew is the ancient spirit, Yiddish is the reality of life; Hebrew is the language of Zion, Yiddish the language of the Galut."

Depending on their attitude on this point, the various autonomist programs demanded language rights for Yiddish or Hebrew or for both. As a rule, it was the right to use Yiddish as the medium of private intercourse that was asserted, as well as for contracts, for keeping business records, and for the Jewish press and theatre. Authorities and public institutions were further requested to show consideration for

the language needs of the Jewish population, and above all, to permit instruction in Jewish schools in the Jews' own language.

2. According to the tenets of autonomism, it was possible for the Jewish minority within any territory to claim national unity and to lead its own national life in absence of its own national language. It was therefore presupposed that, apart from the linguistic and religious spheres, there were matters "which were the sole concern of the Jewish nation." Autonomists were not in agreement as to the nature of such matters. Their views differed from state to state and, sometimes, even within the same state. So much can, nevertheless, be said, that in all lands of Jewish mass settlement the autonomists considered the following cultural fields as matters of "sole concern" to the Jews: lower and higher education, in other words, the Jewish schools, adult education, and its concomitant institutions such as academies, public lectures, theatres, libraries, etc.

3. As has been demonstrated, the Jews differed from their surroundings not only culturally, but frequently in their economic life as well. Whenever this condition prevailed, autonomists made demands of a social and politico-economic nature. There were some groups among them, though, who opposed the inclusion in autonomism of problems of this sort, as for instance, the "Jewish National Council" of Prague which, in 1918, denounced a "special status for Jews in matters of commercial and professional life."

4. Apart from the cultural and economic spheres, which were "the sole concern of the Jews," the autonomists made no other claims for a separate Jewish national life, expecting Jewish life to conform in all other respects with that of the surrounding world. Autonomism never asked, therefore, that Jews be given, as in pre-emancipation times, their own courts or police authority.

5. As an outgrowth of autonomist demands for Jewish cultural and economic institutions came the problem of the organizational structure which such bodies were to assume. It might seem that the most natural thing for the Jews was

to set up the required institutions by themselves. This course, however, would have been "the solution for a people of millionaires." The spokesmen of autonomism were, therefore, prompted by other considerations. Basically, they maintained, it is the duty of the state to provide educational facilities, employment offices and similar institutions. If the Jews of a country desired to lead a separate cultural and economic life, it devolved on the state to permit the Jewish minority to create the necessary facilities. The required funds were to be made available either by assigning the right of taxation to the organized minority or by making adequate allowances out of the public treasury. Should, then, the Jews exercise certain rights of public authority, it would be necessary to create the proper machinery which the champions of autonomism wished to shape in accordance with Dubnow's theories. One point in most autonomist programs, therefore, was the demand that the "Jewish-religious institutions," namely, the Jewish communities, whether private or publicly recognized bodies, be vested with the authority requisite for a separate national existence. This move would change those organizations into "Jewish-national communities" which could be joined into national-communal unions. Sometimes the request was made that a "Ministry for Jewish Affairs" be created.

6. It was the final task of autonomist ideology to determine who was to belong to this autonomistically organized Jewish nationality. Views differed on this point. Dubnow's thought was that no one "could become a member of either this or that nation at will; one had to be born a member." In his opinion, therefore, the Jewish-autonomous bodies were to be regarded as associations of compulsory membership. Dubnow's conception was adopted by some of the platforms with certain modifications; many of them, however, contended that membership in the Jewish nationality must be put on a voluntary basis.

Before the First World War, autonomism affected Jewish national policy in only two countries, Austria and Russia. In Rumania the struggle for equal rights entailed such

efforts on the part of the Jews that the question of national rights was not even raised. The Jewries in the rest of the European countries leaned almost entirely toward assimilation.

II

HISTORICAL DEVELOPMENT UP TO THE FIRST WORLD WAR

1. *Austria*

The Hapsburg state committed one fundamental error in its policy concerning minority nations. In 1867 Hungary was permitted to form an independent state while Austria's other nationalities, the Czechs, Poles, Ruthenians, etc., were granted only limited national rights. The Czechs resented this political misconception most keenly and went farthest in their requests for the amelioration of this disparity. Rallying to the slogan of "Bohemian State Rights," they demanded that the dual state of Austria-Hungary be re-formed into a "trialistic" state, Austria-Hungary-Bohemia. The other nationalities were more modest; all they wanted was autonomy. All of them, however, were rivals.

The Central Government in Vienna attempted to settle these national disputes, which were endangering the unity of the state as a whole, by righting isolated wrongs through administrative measures. In each of the various crown-lands, the policy was to favor the strongest national group. When the others complained of discrimination, they were also given concessions in order to placate them. This, in turn, caused resentment in the group which had been favored originally. In this way, there was created a vicious circle, national-political in nature, which not only failed to solve the national problems, but, on the contrary, intensified and aggravated them.

Within this general political circle, ran a concentric circle—the Jewish question. Constitutionally, the Jews of the Danubian monarchy had not been accorded the status of a "nationality" or *Volksstamm,* which was the term applied to nationalities in the Constitution of 1867, but were

considered only as a religious group (*Religionsgemeinschaft*). It followed, consequently, that the Jews were not granted even the moderate national rights enjoyed by the recognized "nationalities". This was the reason why, to cite an example, Yiddish was not given the official approval ordinarily granted minority languages for use in "schools, office and public life." Furthermore, every Jew was compelled to consider himself as an "Israelite" and to seek his place among one of the non-Jewish "nationalities." Hence, when the recurring population census were taken, only Poles or Germans of "the Mosaic faith" were listed and no members of a Jewish nationality.[1]

Each "nationality" was naturally intent on increasing the number of its nationals. Therefore, each "nationality" initiated a campaign to persuade Jews to join its ranks. If the Jews, then, would join the Polish nationality in Galicia, they would offend the Ruthenians, and vice-versa. Such conditions gave potent impetus to anti-Semitism in the one or the other nationality. Consequently, Austrian Jewry tossed about among the peoples of the monarchy and was, therefore, reproached for political instability and for lack of national reliability. The leaning of the Jews toward different nationalities developed, moreover, an estrangement from their own group or increased it if it was already present.

In view of this general situation, the idea of a national-Jewish policy within state politics soon suggested itself. Its beginnings can be traced back to the Eighteen-eighties when the Viennese Jewish student club, *Kadimah,* was founded (1882) and its leader, Nathan Birnbaum, propounded the thesis: "There can be no doubt as to the present existence of a Jewish nationality." But he made no political demands at the time.

Only from 1905 on did a "*Realpolitik*" in national politics develop from these theories. The reform of the election system gave it final impetus. This reform seemed to pave

[1] For details and sources, see Kurt Stillschweig, "Die nationalitätenrechtliche Stellung der Juden im alten Österreich," in *Monatsschrift für Geschichte und Wissenschaft des Judentums,* LXXXI, (1937), pp. 321-340.

the way for a basic reorganization of the Austro-Hungarian monarchy, and many believed that autonomy for the Poles, Czechs and Ruthenians was on the way. A general national-political crisis arose from which the Jews were not able to stay aloof. It is significant that even Nathan Birnbaum was gripped by this movement and changed from a theorist to a man of action. " . . . We must take our place and present our demands . . . " he urged.

Even non-Jewish circles began to show an interest in Jewish national aspirations, *e.g.*, the Ruthenians. They hoped, aided by this movement, in Galicia to be able to draw away some of the Jews who had declared their allegiance to the Polish group. In 1905, a Ruthenian member of the Austrian parliament declared:

"If . . . Jews want to consider themselves as members of their own Jewish nationality, they may not be denied this right; the Jews should not be forced to adopt another nationality."

The official protocol records that these demands called forth "levity" in parliament. In spite of this, the Jewish representative, Benno Straucher, defended them; and so, pressure was brought to bear on the Austrian Zionists to take a stand in the question. For this purpose, a special conference was called in Cracow in July 1906, at which two questions were to be taken up: whether or not national politics should be pursued and, if it should, what form it was to take.

The first question referred to basic principles of Zionism among which the "negation of the Galut" occupied a prominent place. According to this view a normal Jewish life is impossible, and can be achieved in the Diaspora, only through a homogeneous settlement in a Jewish land with a language of its own. To divert efforts from the Palestine ideal would therefore be to squander them in vain in the Diaspora. It was felt, besides, that political activity in the Diaspora would be a "tactical error" and detrimental to Zionism because of its international aspects.

Within world Zionism there was, however, from the very beginning a minority which saw some value in "present-day-work" for the Diaspora. At the fifth Zionist Congress, in 1901, it became patent that, in the course of time, this

current of thought had "come to the fore first softly and inconsiderably in its intensity but later more ostensibly and penetratingly." But the majority opinion at this congress was not yet ready to adopt this attitude.

This then was the basic question before the Austrian Zionists in Cracow, who were strongly influenced by the contention that continued adherence to the principle of "negating the Diaspora" would prompt the Jews to join other nationalities in the election campaign. As a result of this argument, the decision reached was that Austrian Jewry should participate in national politics from a Jewish-national point of view, but in such a way that the position of Zionism as a world-wide movement should thereby not be affected.

Heated discussions ensued as to the manner in which Jews were to participate in national politics. Should Zionists enter politics as Zionists or should a special Jewish-national party be created? "It is impossible," said one group, "for us to enter national politics as members of an inter-territorial organization without hurting the cause of Zionism." The other group replied, "Why should we play hide-and-seek, why not openly display our colors?" The first group was victorious and succeeded in creating a Jewish National Party.

The platform of the new party contained only casual references to the principle of national autonomy. All the nationalities of Austria "including the Jewish nationality" should be granted the right to constitute political bodies to be recognized by constitutional law. They were to control "cultural activities" and taxation.

The Poale-Zionists, who sought to combine Marxism and Zionist ideals, took the same position, though they declined to join the bourgeois Jewish National Party. They stressed, however, their willingness to cooperate with the Zionists if the latter's politics were to serve a "universal national interest."

Jewish socialists outside the Poale-Zionist group (Viktor Adler, and others) did not share this view. They were members of the Social Democratic Party in Austria, as individuals

and not as a special group, and followed their party's policy on national Jewish problems. The guiding principle of the party embodied the international class concept of the Communist Manifesto, and it was only at the Party Convention in Brno, in 1899, that they adopted a national program for the "nationalities" in Austria. But even then they completely rejected the idea of a "Jewish nationality." Although they did not accept Karl Marx's conception of the "chimeric nationality of the Jews," they were prepared to accept Otto Bauer's opinion that the era of Capitalism would ultimately force the Jews to assimilate. It was therefore pointless, following this view, to recognize the existence of a Jewish nationality.

The assimilated middle and upper classes, which considered themselves Germans, Poles or Czechs "of the Mosaic faith," joined the Socialists in the battle against Jewish nationalism. Their group, small in Galicia, but quite sizeable in Vienna and in the western part of the monarchy (the Jewish nationalists in Galicia referred to them mockingly as "Polish house-Jews") was represented by the "Austrian-Israelitish Union," founded in 1885. Their primary fear was that Jewish autonomy might result in the introduction of *numerus clausus* laws.

"First, the number of their representatives in parliament would be assigned to the Jews on a percentage basis. But then this political yardstick would inevitably be applied also to other fields, particularly to that of economics." Aside from this, autonomy "would mean nothing less than the re-establishment of the ghetto."

The elections to the Austrian parliament in 1907 gave a picture of the numerical strength of the groups. The Jewish National Party gained four seats, the assimilationists ten. Obviously these ten were elected as representatives of the then existing (non-Jewish) nationalities, whereas the four Jewish nationalists constituted a "Jewish Club" of their own whose program represented all the Jewish-national postulates in the demands for "recognition of the Jewish nationality," "national equality" and "national autonomy" for the Jews.

The Jewish nationalists won a victory to some extent in the diet (*Landtag*) of Bukowina. Although they were un-

able to establish their own national electorate (Wahlkörper) in this country due to governmental opposition instigated by the assimilationists, they did succeed, however, in forming their own national body in the diet so that the Bukowina *Landtag* comprised Polish, Rumanian, Ruthenian, German, Jewish, and mixed national *curiae*. Of a total of sixty-three seats, the Jews had ten.

What succeeded in the diet of Bukowina in 1910, was no longer to be achieved in the Austrian parliament (*Reichsrat*) in 1911. The Jewish National Party then won only one seat (representative Benno Straucher). The other Jewish members represented the assimilationists. Hence, Jewish-nationalist demands could not be raised anymore in Austria before the First World War.

2. *Russia*[2]

In Russia, just as in Austria, many nationalities lived side by side: Poles, Lithuanians, Estonians, Latvians, Ukrainians, etc. In Russia, however, the Russians considered themselves *the* state nation, and demanded unconditional assimilation of the other nationalities. To modify a quotation from Pushkin illustrative of this demand, Russia wanted 'all Slavic streams to flow into the Russian sea." For the non-Slavic Jews certain deviations from this priniciple were recognized. They were considered primarily as belonging to a "national faith," or according to an explanation by the Senate, "they constituted a separate part of the population which had never merged with the native Russian populace." The Jews were, moreover, considered "foreign-born subjects" (*inorodcy*) like the Kalmucks, Tartars, etc., in contrast to "native subjects," including Russian nationals and the above-mentioned nationalities in the western and southern parts of the empire.

Their dual status under constitutional law thus forced the Jews into a twofold position. With regard to their religious and economic life, the law introduced certain restrictions intended to isolate the Jews from the Christian

[2] For sources, see Kurt Stillschweig, "Jewish Nationhood as a Factor in Law," in *Historia Judaica*, IV. (1942), pp. 42 ff.

majority. Russian Jewry thus was still far from emancipation. On the other hand, the Jews in their capacity of *inorodcy* were exposed to assimilationist pressure. Tsarist policy toward the Jews, then, shows two diametrically opposed features, tendencies of assimilation as well as of dissimilation.

The situation was somewhat different in Poland. Here, emancipation had been formally granted to the Jews in 1862, but it was only a paper privilege. The Central Government's unsuccessful attempt to russify the Poles served only to intensify Polish nationalism. This, in turn, prompted all Polish parties (except the antisemitic National-Democrats), to demand from the Jews allegiance and full assimilation to Polish nationalism.

Hence the Jews were faced with two basic problems: first, the struggle for emancipation on which all of them were in agreement; second, the national question on which views were divided. To be sure, the opposing ideologies assumed a form and intensity different from those in Austria. The call for Russification found hardly any adherents; the call for Polonization brought forth a sympathetic echo only among a small section of the upper stratum of the Jewish burgher class, which was relatively much smaller than the corresponding group in Austria. As in Austria, there was a trend in the Jewish labor movement which, although not definable as decidedly assimilationist, nevertheless was committed to a renunciation of all Jewish-national separate interests. This was the position, however, not of individual Jewish socialists, as in Austria, but of a distinct group which, because of the peculiar structure of the Russo-Jewish proletariat, made up a section of the Russian Social-Democratic Party.

This group, the "*Bund*"—at its foundation, in 1897, its name was "The General Jewish Labor Bund of Russia and Poland,"—propagated the view that the striking power and unity of the class struggle would be detrimentally affected by Jewish nationalism, which would awaken chauvinism in the Jewish proletariat. In any event, there was time enough,

it was maintained, to take up the nationalist question after emancipation would be achieved. However, when Zionism began to take hold more and more of the Jewish masses in Russia, the *Bund* realized that it had to make some concessions to the idea of Jewish nationalism. This was done only with hesitation and reluctantly. At the fourth party conference, in 1901, the statement was made that "the concept of 'nationalism' is applicable also to the Jewish people." But the Bundists considered the demand for national rights "to be premature under the present conditions."

Only at the time of the revolution, in 1905, did this view undergo a change. In that year, when all the "foreign nations" in Russia, including the Polish Social-Democrats, were demanding national rights, the Bund adopted a resolution favoring national rights for the Jews too. It demanded in particular "guaranty by law of autonomy for the Jews and especially the right to use their own language (Yiddish)." Autonomy was to be limited to "national-cultural issues," and was not to include the details of their economy, since the general economic development in the Marxist sense would embrace the Jews also.

The Jewish labor groups in Russia, not affiliated with the *Bund*, were split up into many parties and groups. The most important of these were the Poale-Zionists. Some of the others also aspired to national autonomy in varying degrees, as for instance, the "Sejmists," who demanded a Jewish-national self-government with a Jewish Sejm at its head. Despite all this variety, however, the party platforms of these individual socialist groups made no new contributions to the basic tenets of nationalism.

The Jewish bourgeoisie in Russia also entered its demands for national rights in 1905. In this year, the "League for the Attainment of Equal Rights for the Jewish People in Russia" was organized. It was composed of four Jewish parties, the Zionists, the Jewish People's group, the National Party, and the Democrats. The theoretician of Jewish autonomism, Simon Dubnow, was one of its leading members. The League worked toward "civil, political, and national

rights" for the Jews. National rights were defined as "the right to decide on all questions of national-cultural significance, autonomy of the community in the broadest sense of the term, free use of language and freedom in education." Twelve Jewish members, all identifying themselves with the platform of the League, were elected to the Duma in 1906. No agreement was reached on whether they should form a Jewish-national faction, or whether they should join the non-Jewish parties. For this reason, the League was disbanded in 1907, and each of these four constituent parties pursued, from then on, its independent program. For the history of Jewish nationalism the platform of the Russian Zionists became most important.

Even before the dissolution of the "League for Equal Rights," the Russian Zionists had attempted to determine independently their position in relation to Jewish-national policy, taking a definite stand at the Party Congress in Helsingfors, in 1906, which may be compared with the convention of Austrian Zionists in Cracow. But the former became much more important for the further developments. The atmosphere of the Russian revolution intensified the feeling that the theory of "negating the Galut" was in need of revision. Hence the question of whether the Zionists should enter the election campaign as Zionists or as a separate party played a subordinate part at Helsingfors. Unlike that in Austria, the decision arrived at here was to work under "their own colors." As a result a general "political platform" was adopted which was later further developed and which went beyond the Cracow generalizations. The point of departure was a proposal for a "Jewish National Assembly" which, in collaboration with the Duma, was to determine the contents of national-Jewish rights in detail. The Zionists in Helsingfors also agreed on a number of "minimum demands" foremost among them autonomous communal organs democratically constituted and with the right of taxation and receiving governmental subvention. Unlike the autonomy program of the *Bund*, this program of self-government included an economic platform along with the cultural one.

Above all, the community was to be empowered to provide for "mutual finance and labor aid" and to regulate emigration. Every Jew was to be a member of the organized Jewish nationality "unless he declared his withdrawal," implying compulsory membership. Furthermore, the right to observe the Sabbath in school and office was demanded "for those who so desired." And finally, in areas where Jews comprised a certain minimum percentage of the population, their vernacular was to be used by the public officials in their dealings with them. The congress took no stand on the conflict between Yiddish and Hebrew as a national language.

The historical significance of the Helsingfors platform lies in that, for the first time, it formulated a comprehensive and detailed plan which later served as a model for other platforms. Jewish national aspirations, however, were as far from realization in Russia as in Austria up to the time of the First World War.

III

THE INFLUENCE OF THE FIRST WORLD WAR

1. *Austria*

The outbreak of the war produced an intensification of nationalist feeling everywhere which, in turn, conditioned political ideology. The concept of the self-determination of nations emerged into public discussion and was soon taken over into politics and later adopted by President Wilson. It comprised two points; first, that each nation should be free to decide its political destiny in accordance with the popular will. Since, however, a number of national groups were spread across political boundary lines political and ethnic boundaries could not always be made to coincide. Therefore, and this is the second idea in the principle of self-determination, all national minorities should be permitted to lead their own national life.

From these principles certain consequences resulted for the Jews of Austria and Russia. At most, they could lay claim to the right expressed in the second of these principles,

the right to lead their own national life; for they could not possibly strive for a state of their own in the Diaspora. But even for such a limited aspiration, they had to qualify as a nationality. Thus, once again during the World War, the Jews of Eastern Europe found themselves confronted with the question, 'Are we a nationality or only a religious entity?'

The Jews of the Danubian monarchy continued to disagree on the answer. In order to bridge the gap between the opposing schools of thought, the Zionists undertook to bind all Jewish forces in the country to a common platform. They proposed the election of a completely representative Congress, which should advance as its basic demand the recognition of the Jews as a nationality or "*Volksstamm*" in the sense of the Austrian constitution. In order to make this proposal more acceptable, the Zionists conceded that membership in the Jewish nationality was to be voluntary and not compulsory, a noteworthy deviation from the platform adopted by the Russian Zionists at Helsingfors. But one of the most influential spokesmen of the assimilationists, the president of the Jewish community in Vienna, Alfred Stern, opposed this plan and his refusal to have anything to do with it caused the Congress movement among Austrian Jewry to founder in 1918.

Even earlier, the Zionists, aware of the resistance to their Congress platform, continued to work independently for their Galuth-political aims. In June 1917, their veteran parliamentary champion, Benno Straucher, renewed his demands for national rights in the Austrian parliament and, in 1918, he submitted a memorandum to the Austrian authorities proposing that a national-Jewish Chamber and a "Ministry for Jewish Affairs" be set up. Nothing was said about communal autonomy because it was felt that the Jews of Western Austria were not yet ready for it. However, the situation differed in Galicia. There, a conference of Zionists, meeting in April 1918, made a demand for the creation of "Jewish-democratic national communities," but without defining the jurisdiction of these bodies in detail. This gap was filled by the suggestions of several Jewish leaders, but it was

the proposal of Max Rosenfeld, of the Poale-Zionist movement, which received particular attention. Rosenfeld suggested the following functions for the "national community": "to solve all national problems, cultural and economic, including a) elementary, secondary, and adult education, b) conduct of labor unions, c) welfare administration, d) supervision of emigration, e) public health." Authority in all matters of a purely religious nature should be transferred from the community to the rabbinate.

These demands became the all-important subject of discussion and negotiation among Jewish groups. But none of them was granted prior to the fall of the Hapsburg monarchy. The failure of the Congress movement showed the government only too clearly that Austrian Jewry was divided on the nationalist issue. Nevertheless, isolated incidents left room for anticipation of a change in the government's Jewish policy. But the end of the war brought with it the dismemberment of the Hapsburg realm. When Emperor Charles finally issued his manifesto to the "Austrian peoples" (October 17, 1918), he promised certain rights to "every nationality in its own territory" thereby automatically excluding the Jews.

Subsequent historical events far exceeded the scope of the concessions which Emperor Charles was willing to grant to the individual nationalities. The fate of Jewish nationalism in Austria thenceforth depended on the attitude of the various succession states among which the Hapsburg empire was divided.

2. *Russia*

In contrast to the situation in Austria, the majority of politically minded Jews in Russia were cognizant of and united in their self-identification as a nationality, at least in principle. This can be observed as far back as 1905. One might think, therefore, that the principle of self-determination should easily have led to the recognition of a Jewish nationality in Russia. In reality, however, Tsarism continued

to oppose every national-political concession, even after the outbreak of the war.

Only in Poland did conditions seem to be different. On August 14, 1914, the Russian Commander-in-chief promised the Poles the realization of their dream of national independence "after the victory of Russian arms." His proclamation also mentioned the minorities of Poland in this sentence:

"There is only one thing which Russia expects of you [the Poles]: respect for the rights of those nationalities to whom history has bound you."

The Jews assumed that this sentence applied to them as well. The Russophile Polish groups thought differently, especially the National-Democrats who had joined with the Party for political action to form a Polish national committee in Warsaw. To their minds, Jews were excluded from the nationalities mentioned in the manifesto.

It would have been useless to restate national-Jewish aims under an autocratic political regime of this kind. Only when Tsarism was overthrown did the time become propitious. The new provisional government was democratic. It could not, therefore, continue to deny to the peoples of Russia the right of self-determination which was rooted in the ideology of democracy. Consequently, it promised first the "abolition of all social, religious, and national restrictions." There was no doubt that it would accord the Jews civil equality. The question was, however, whether it would grant them special national rights as well.

With the Jewish student body, following the example of the Viennese student organization, "Kadimah," supplying the impetus, the Jews began to pave the way for such recognition. The Russian Zionists offered further clarification of the demands for "national rights" for the "Jewish nation" made by the Jewish students immediately after the downfall of the Tsar. The Zionists insisted that the prospective emancipation would have to differ basically from the western emancipation of the nineteenth century. Tshlenow, the leader of the Russian Zionists, stressed this idea; in the nineteenth century, he stated,

"it was asked of non-Jews, but particularly of Jews, that they merge ideologically (with the majority peoples). Today there is no place for such demands and there should not be. The civilized world realizes now that the betrayal of a nation and of its national values and ideals constitutes disgrace and misfortune not only for the betrayers but for all of humanity."

The Zionists, committed to this basic attitude, declared that the terms of the Helsingfors platform were to "serve as a pattern for our political actions." In order to make this program compatible with existing conditions, a conference was called in St. Petersburg in June 1917 to discuss a report by J. Grünbaum which closely followed the lines of the Helsingfors program.

" . . . We must have an all-inclusive Jewish community which is to embrace all Jews and not only the religious ones. Within this community, there must be created a religious organization, composed of observant Jews and supported by contributions from the community, to wield authority in religious matters." (On this point, Grünbaum, like Max Rosenfeld in Austria, exceeded the Helsingfors program.)

Grünbaum also raised the question of language which had remained untouched at Helsingfors. Yiddish was to be officially recognized and was to be used by public officials in their contact with Jews.

"It is our misfortune that Hebrew, our national language, is not our conversational language. We can demand its use only in schools, in documents, etc."

Grünbaum's report was the subject of much debate. Opposition was particularly strong to his proposal to deprive the communities of religious authority. The result was the adoption of a resolution which was naturally based on the demand for recognition of a Jewish nationality. In the matter of language, a compromise was reached which accorded Hebrew a preeminent position but permitted Yiddish as a subsidiary medium. With reference to organizational forms, the Zionist resolution accepted almost verbatim the Helsingfors platform, particularly the concept of compulsory membership of all Jews in the Jewish-national political body.

This plan was accepted in its fundamental aspects by

other Jewish middle-class parties, such as the People's Party and the Democrats; the latter, however, unlike the Zionists, preferred Yiddish to Hebrew as their first-choice language.

Labor groups reacted similarly. The Bund, in keeping with its program of 1905, campaigned for a type of autonomy which was limited to cultural spheres. Corresponding demands were made by the Poale-Zionists, the Zionist-Socialists, the Zeire-Zionists, and by a new party, founded in 1917, composed of socialists, territorialists and Sejmists; all this, despite the fact that the limitation of autonomy to the cultural realm was almost universally rejected. The March revolution, which had unhesitatingly granted the Jews civil equality, did not pay heed to these demands for the time being, at least. The only reference of a national nature embodied in the emancipation decree was a clause which abolished the former language limitations "in correspondence concerning private business, in education, and in bookkeeping." But it disregarded completely demands for the recognition of the Jews as a nationality, for the use of their languages in dealings with state officials, and for the granting of autonomy.

In order to present these points to the democratic Russian constitutional assembly, the Russian Jews, prompted by the Zionists, elected a Jewish congress which was to give these demands a final form. But this congress never met because the Bolshevists had, in the meantime, overthrown the provisional government. True, they too recognized the right of self-determination for every nationality, "to include even the separation and the formation of independent states," and also accorded national minorities the right of "free development" of their national character. But, following Lenin, they claimed that the essential prerequisite for a nation was the possession of its own territory, without which "economic life in its complexities of production and consumption" could not develop. In the case of the Jews, of course, this prerequisite was missing. The Bolshevists, therefore, suppressed the Jewish Congress movement, which aimed to win

recognition of a Jewish nationality in spite of the lack of territory. To compensate for the suppression of the congress, the formation of a "Jewish National Council" was permitted composed of delegates of the Jewish parties. But it was very short-lived and soon gave way to community conferences which, in turn, were dissolved by the Soviets as "bourgois institutions," along with other elected communal bodies. This put an end to the dream of Jewish autonomism in the Soviet Union.

3. *The Succession-States of Russia and Austria*

A. Autonomist Demands in the Russian Succession States.[3]

Developments followed a different course in the territories adjoining Russia. On November 5, 1916, the Central Powers, which had partially occupied this region, proclaimed Poland "an independent constitutional state and a hereditary monarchy." In February 1918, at Brest-Litovsk, the Russian revolutionary government recognized the independence of Poland. The Treaty of Brest-Litovsk likewise granted independence to Lithuania, and thus inspired the Esthonians, Ukrainians and Latvians also to seek independent status.

The Central Powers, naturally, were not desirous of straining their relations with the newly-formed states by introducing minority problems. They, therefore, declared at Brest-Litovsk that the solution of such problems should be undertaken "by each state dealing independently and constitutionally with its national groups." The occupation authorities, accordingly, declined to participate in any discussion of whether or not the Jews of Poland or Lithuania were to be recognized as a nationality. Hence, the laws promulgated during the period of occupation were merely of a provisional nature.

For the Jews in the Russian border-states, there again

[3] For details and sources, see Kurt Stillschweig, "Die nationalitätenrechtliche Stellung der Juden in den russischen und österreichischen Nachfolgestaaten während der Weltkriegsepoche," *Monatsschrift für Geschichte und Wissenschaft des Judentums*, LXXX (1938), pp. 217-248.

arose the pressing need to present to the majority peoples their national political demands. In the Baltic, as well as in the southern provinces, there was no assimilationist movement of any importance, just as there had been none before the war. The level of culture of the surrounding world failed to promote assimilationism.

It was a different matter in Poland. Here, a section of the Jewish middle-classes was deeply affected by the new and all-consuming flame of Polish nationalism. The great mass of orthodox Jews was, however, in keeping with tradition, non-political, although two rabbis representing German orthodoxy attempted to sway them, as one of them explained, "to the pro-Polish viewpoint."

Opposed to the orthodox, and to the assimilated, were two national-Jewish parties, the Zionists and the People's Party (the Volkists). (The Bund had never figured prominently in Poland.) The basic difference between these two parties lay only in their attitude toward the Palestine problem. They saw eye-to-eye on the desirability of participation in national politics in a national-Jewish sense.

These divergent Jewish viewpoints were clearly discernible as early as the time of occupation. They came particularly to the fore in the negotiations with the municipal Council of Warsaw, in 1916 and 1917. This municipal Council, the first representative Polish body in more than one hundred years, was elected in the summer of 1916. Jews represented forty-four percent of the Warsaw voters, so that, on a percentage basis, they were entitled to forty seats. The Poles, however, claimed that this Municipal Council did not only represent the capital itself, but was, in a way, the first Polish parliament for the entire nation. The Jews acquiesced in this contention and agreed to limit the number of their delegates to nineteen. Of these four were members of the People's Party, three were Zionists, six were independent or orthodox and six assimilationists. Within the nationalist ranks, the old question of whether Yiddish or Hebrew was to be the language of instruction in the schools

soon arose. They agreed only in their refusal to adopt Polish for Jewish instruction. Next to language and educational rights, the representatives of the People's Party in particular desired that the Jews be permitted "to observe the Sabbath without having to observe two days of rest each week." In addition, they made demands for the establishment of the Jewish communities in accordance with the principle of autonomy without offering any new ideas on the subject. The debates in the Warsaw municipal Council found repercussions in several Polish political bodies. There were seven Jewish delegates in the Polish State Council, which convened in June 1918, four appointed and three elected. Some of these presented national Jewish demands, while others described such demands as "attacks on Polish culture." The national-Jewish group finally met in Warsaw and formed a body which was to formulate and later present its demands to the Peace Conference in Paris.

B. Autonomist Demands in the Austrian Succession States.

The decayed framework of the Austrian monarchy collapsed toward the end of 1918, under the centrifugal pressure of its militant "nationalities." There arose the Czechoslovak state, and the short-lived West Ukrainian Republic; in the East the Polish nationals joined with their brethren from Russia; and the territory inhabited by Germans was constituted as the German-Austrian Republic.

This death struggle of the Danubian monarchy took place amid gigantic convulsions which assumed, at times, the form of open warfare. Germans were aligned against Czechs, Czechs against Hungarians, Poles against Ruthenians, and Ruthenians against Poles. In the midst of this seething conflict were the Jews who, just as in pre-war times, were pulled back and forth by the different nations.

In this hour of struggle, the overwhelming majority of assimilationist-minded Jews stood steadfastly by the peoples to whom they had declared their allegiance in the pre-war period. But there were exceptions to this general rule in

isolated cases involving non-Jews as well as Jews. For instance, in Czechoslovakia, prior to the attainment of independence, the majority of the Jews in the Sudeten region had pledged themselves to German groups, while their co-religionists in Slovakia had, by and large, joined the Hungarians. But as soon as Czechoslovakia was constituted an independent state, some Jews in the Sudeten area shifted to the Czechs while in Slovakia some turned to the Slovaks. The spokesmen of the Jewish national party described such turnabouts as a "repugnant, fluctuating and dishonest assimilation." They, therefore, worked along different lines to counteract such developments. They formed central and local "Jewish National Councils" which proclaimed "absolute neutrality" in the war among Austria's nationalities.

In the West Ukrainian Republic, the central national council did not succeed in political action. The capital, Lemberg, (Lwow), had been occupied, in November 1918, by the Poles who condemned Jewish neutrality as "treason" to the Polish cause, and staged pogroms in revenge. But in Galicia the various local national councils, representing territory still unoccupied by the Poles, held a conference in Stanislau. In Vienna, where Jews were for the most part assimilated, the nationalists forced the resignation of Dr. Alfred Stern from his position as head of the Jewish community, and also formed a "Jewish National Council for the Austrian Republic." This, in spite of the statement by the newly-elected board of the Jewish community that the German-national-minded Jews constituted "doubtless the majority in Vienna as well as in the rest of the republic."

All the platforms of these national councils were based on the demand for recognition of a Jewish nationality. According to the conception of the councils in Vienna and Prague, this nationality was to be composed of all those "who pledged themselves to it, with the proviso that no coercion was to be exercised in that direction." The Galician council, on the contrary, in agreement with the Russian Zionists,

conceived the Jewish nationality as a group with compulsory membership for everyone professing the Israelitish faith.

Besides recognition of a Jewish nationality, the Jewish national councils, demanded self-government in all matters "of sole concern to the Jewish nation." The Galician conference of national councils considered that such matters, in addition to cultural problems, embraced "special economic and social interests of the Jews," particularly occupational readjustment. The national council at Prague, however, expressly denied "the existence of special Jewish rights in matters pertaining to trades and occupations."

A similar situation existed in the former German province of Posen. Almost all the Jews there had considered themselves members of the German nation. When it became evident that this province would be separated from Germany, there were some who declared that the Jews would now have to "merge with the Polish nation." Accordingly, a "Jewish National Council" was also constituted in Posen in November 1918, which, like the national councils in Austria, sought national rights for the Jews and strict neutrality toward Germans and Poles. Its demands, however, differed from the usual ones in a single respect: the autonomous Jewish organs were to have authority in all matters over which "any other nationality would obtain authority."

C. Autonomist Demands at the Peace Conference.

Spokesmen of Jewish nationalism not only pleaded their case in their homelands but also appeared at international congresses of representatives of European nationalities such as the one held at Lausanne in 1916, where a delegate "de la nationalité Juive" was present. In 1917, Poale-Zionists were admitted as a separate group in the Socialist International. In 1918 (Copenhagen) and 1919 (London), even the World Zionist Organization formally relinquished the outdated theory of "negation of the Diaspora" which had been under attack by Austrian and Russian groups since 1905. The Peace Conference however was naturally the most important international forum for the demands of Jewish nationalism.

Delegates of the Jewish national councils streamed into Paris at the end of the World War. Representatives of the Jews in the western democracies were also present, ready to plead the case of Eastern European Jewry before the governments of the victorious nations. But a united front failed to develop. True, all Jewish delegates agreed that Eastern European Jews should be guaranteed civil equality in the peace treaty. But on the national question the old controversies flared up once more.

The Alliance Israélite Universelle and the Joint Foreign Committee, spokesmen for French and English Jewry, declined to support the national-Jewish demands in favor of their eastern co-religionists. Opposed to them were the delegates of the American Jewish Congress, the World Zionist Organization and, of course, the representatives of the Jewish national councils from Eastern Europe. There were numerous unsuccessful attempts at compromise. Thus a sharp line of cleavage developed between the two opposing camps. On March 25, 1919, the "Comité des Délégations Juives auprès de la Conférence de la Paix" emerged, composed of the American-Jewish delegation, the World Zionist Organization, the Eastern European national councils and some other groups. It claimed to speak for nine million Jews. The "Alliance" and the "Joint" delegations did not join but proceeded with their own programs.

The several Jewish groups submitted to the Peace Conference a series of memoranda of which the one tendered by the "Comité des Délégations Juives" gained particular importance. This memorandum dealt with various suggestions for the solution of minority problems in Eastern and Southeastern Europe, embracing not only Jewish but all minorities. It demanded, specifically, that the rights of man as well as civil, political, and national rights for all Eastern European minorities be constitutionally guaranteed, with the League of Nations as their guardian. National rights included, above all, language and autonomy rights. Jews were to be formally recognized as "a national minority." Provision was also made

for a "Sabbath clause," granting the Jewish and Mohammedan minorities the right to observe their religious holidays.

These demands played an important part in the discussions at the Peace Conference. Several of the Eastern European states strongly objected to them on the ground that their fulfillment was incompatible with the concept of state sovereignty and would make each minority a state within a state. They also protested against being bound by minority treaties so long as the western powers and Germany were free from such obligations. And finally, they contended, granting such rights to Jews would constitute them a specially privileged group.

Wilson and Clémenceau finally succeeded in placating the opposing parties.[4] Minorities treaties were concluded and corresponding declarations and promises were given to the League of Nations. These measures bound not only the succession states of Austria and Russia (with the exception of the Russian Ukraine and the West Ukrainian Republic), but also the Balkan states, especially Rumania. For purposes of this discussion, the South-eastern European states may be eliminated, for there the Jewish problem was substantially restricted to questions of citizenship and civil equality. In Hungary, also bound by minorities treaties, the Jewish population was almost entirely assimilated.

IV

FULFILLMENT OF THE AUTONOMIST DEMANDS

1. *Recognition of the Jews as a Nationality*

The minorities treaties and declarations showed, clearly, traces of the earlier controversies. They granted the demands of the Comité des Délégations Juives only in part, according to all minorities rights of man and civil rights as well as limited autonomy in language and education. In Poland, Lithuania, Greece, and Upper Silesia, the Jews gained the

[4] For details, see Kurt Stillschweig, *Die Juden Osteuropas in den Minderheitenverträgen* (Berlin, 1936), pp. 32 ff.

additional right of Sabbath observance. The treaties all agreed to a supervisory control by the League of Nations, which in practice, however, was never exercised. They did not fulfill, however, the autonomistic demands, nor did they recognize the existence of a Jewish nationality. It remained within the discretion of each succession state to consider the Jews merely as a religious sect, or to raise them to the level of a nationality. We must, therefore, consider the developments in the various succession states individually.

Two states, Poland and Austria (Deutsch-Österreich) refused outright to grant the Jews recognition as a nationality.[5] In Poland, there flourished, as has been mentioned, a very strong nationalist "all-Polish" movement. The prospect of a separate "state," composed of three million Jews and other minorities, intensified it considerably. Polish opinion was brought into sharp relief as early as 1916 and 1917, when the following statement was made in the Municipal Council of Warsaw:

"We will recognize the rights only of those who live in accordance with Polish national and cultural principles, and not of those who wish to create a Jewish Polish state here."

The Polish Constitutional Assembly, elected in 1919, which had eight national-Jewish members, reflected the same sentiment.

The disunity among Austrian Jewry led to a corresponding result in the Austrian republic. Addressing the Constitutional Assembly of 1919, Chancellor Renner said:

"There is no field of state administration where the Jews would have been considered a nation hitherto; the reason for this is the fact that they, themselves, are not agreed on this point. There are many Jews who would like nothing better than to create a Jewish nation, while others prefer to be merged with occidental nations . . . . I believe it is premature for the government to intervene in this dispute . . . . Only when Jews, among themselves, will be in perfect agreement, can it be decided whether they constitute a separate nation or a religious group among other nations."

The other succession states, however, recognized the Jews as a separate nationality. Through this action they in-

[5] For sources for the following presentation, see Kurt Stillschweig, in *Historia Judaica*, I (1938), pp. 39 ff., and *MGWJ.*, LXXXII (1938), pp. 230 ff.

tended to give expression in state practice to the principle of self-determination to which they owed their own independence. On the one hand, this recognition offered nationalist-minded Jews the opportunity to designate themselves members of the Jewish nationality, while on the other, it did not prevent assimilationist Jews from joining other nationalities. Thus the type of Jewish nationalism introduced in the succession states, unlike Dubnow's, did not involve compulsory membership.

But other motives besides the principle of self-determination played a part in this development. In Czechoslovakia, for instance, recognition of the Jewish nationality was intended to eliminate the "fluctuating assimilation" mentioned earlier. The Slovak minister, Srobar, declared:

"Jews who, until now, have been champions of Magyarism, can pledge themselves as Slovaks only at the expense of their political integrity. Although I cannot recognize them as Magyars," he added, "we are prepared to extend to them all minority rights in cultural as well as in language matters, if they declare their allegiance to the Jewish nationality."

Certain non-political considerations also favored the recognition of a Jewish nationality. Masaryk and Benes, in particular, appreciated Jewish nationalism as "a movement of moral renascence."

The situation was similar in the other succession states, with minor differences, here and there, because of local conditions. The West Ukrainian Republic, for instance, accorded national recognition to the Jews in order to win them as allies against the Poles and to have them intercede with the Entente on its behalf. All in all, recognition of the Jewish nationality was achieved in six succession states: Estonia, Latvia, Lithuania, Czechoslovakia, the West Ukrainian Republic, and the (Russian) Ukraine.

2. *Jewish Autonomy*

Wherever such recognition was extended there existed also the possibility of winning autonomy rights as well. In Czechoslovakia, this possibility was not realized. According to a decision of the Supreme Court, the practical result of

national recognition was "simply" that Jews, when registering in the population census, would not be obliged to acknowledge any nationality other than the Jewish. In the Baltic states and in the Russian Ukraine, however—disregarding the unfulfilled promises of the West Ukrainian Republic—the concept of Jewish nationality was transformed to real autonomy, earliest and most extensively, in the Ukraine.[6]

Here, a central council, or Rada, parliamentary in form, was set up in April, 1917, which was to submit to the Russian government the Ukrainian national demands. The authorities at St. Petersburg capitulated after initial hesitancy and, in July 1917, the Ukraine won recognition as a self-governing federated Russian state. Along with the Rada, a "General Secretariat," comparable to a cabinet, was formed in Kiev. One of the component parts of this organization was a General Secretariat for National Affairs, to which were attached, in turn, three Vice-Secretaries representing the national minorities: Jews, Great Russians, and Poles. It was the duty of each Vice-Secretary to safeguard the civil and political rights of his minority, to suggest legislation and to "supervise the normal development of the national life of each minority and its institutions." Beyond that, the position of the Vice-Secretary was, in certain respects, analogous to that of the General Secretary. Moreover, no regulation touching on the "inner life" of a minority could be promulgated without the signature of the Vice-Secretary.

The legal basis for the authority of the Vice-Secretariats was not clearly established. In spite of this, the Jewish Vice-Secretariat began to function in September 1917, in the following fields: general legal protection, improvement of communal conditions, especially in tax matters, development of education, founding of schools and of seminaries for Jewish teachers. To insure the execution of its program, the Jewish Vice-Secretariat was divided into three sections: the educational department, the communal department, and the

[6] For sources, see Kurt Stillschweig, "Zur neueren Geschichte der jüdischen Autonomie," *MGWJ.*, LXXXIII (1939), pp. 519 ff.

"general office." The educational department was to organize a cultural and particularly a school program. The communal department was given the task of preparing legislation concerning the election of executive boards of the Jewish communities, which was, in fact, later enacted and put into force. The general office concerned itself with problems of legal protection and with all other matters "which were outside the jurisdiction of the other two departments." The Vice-Secretariat also set up a "national council" to which it invited representatives of the Jewish parties. This was later recognized as the "supreme organ" of the Jewish Vice-Secretariat.

The Vice-Secretariat was soon converted into a General Secretariat with full authority in matters relating to national education. Herein lay the impetus for further development toward autonomy.

The law of April 14, 1918, granting autonomy to all minorities, expressly recognized the existence of a Jewish nationality and stipulated that the Jews, like the others, form a "National Association." Its function was to regulate independently the "national life" of the Jews. In order to execute its duties, it was given a degree of state authority, particularly the power of taxation and "the rights of legislation and administration," and was assured financial support by the state. Each nationality was to have its own membership list, "and all these lists were to constitute the national register."

"Each citizen has the right to demand his inclusion in or (by the mere declaration that he no longer belongs to that nationality) exclusion from the national register."

The National Association was to comprise a National Assembly elected by its members, with supreme legislative power, and a National Council elected by the National Assembly, which was to exercise supreme executive authority.

Obstacles were however, placed in the way of convoking the Jewish National Assembly. It was, therefore, decided to convoke at first a Provisional National Assembly composed only of communal delegates elected in the meantime. But this endeavor also encountered difficulties at first. Hetman

Skoropadski, who had come to power in the meantime, was of the opinion that, since Jews had been granted civil equality, autonomy was superfluous for them. Consequently, the autonomy law was repealed on July 8, 1918. The Jews, nevertheless, succeeded in gaining permission for the meeting of their Provisional National Assembly to function as an association of Jewish community delegates, which actually held its sessions in Kiev from November 2 to November 11, 1918.

This provisional National Assembly declared itself in favor of national autonomy, an act of purely theoretical significance in view of the revocation of the autonomy law. The general situation soon underwent another change, for after the overthrow of Skoropadski the new Ukrainian government reinstated this law on November 16, 1918. By this time, however, the Jewish Provisional National Assembly had already adjourned, after electing from among its members a "Jewish National Secretariat," which represented only some of the Jewish parties. The Bund, the United Socialists, and the Poale-Zionists had refused their cooperation. This situation precluded any possibility of presenting a unified program in behalf of the Jewish National Association, in the absence of which the next best thing was to grant each Jewish community the right of self-government. The legal basis for this step was contained in the "statute for Jewish community government" drawn up by the Jewish ministry and confirmed by the Ukrainian government.

This statute accorded the Jewish communities the "status of public-law organs" and placed them in charge of many duties, such as keeping membership lists, education, public health, combatting unemployment, organizing a credit system, legal counsel and protection, emigration, in short, all spheres of Jewish cultural, social and economic life. To carry out these tasks the Jewish communities were to receive subsidies from the government, and were also authorized to impose taxes. The community council was the supreme legislative body of each community and was composed, depending on the size of the community, of a predetermined

number of elected members. Supreme executive power was vested in the community board "which was to function under the guidance of the community councils."

The General Secretary for Jewish Affairs now had only limited supervisory powers. The communities themselves had become the actual executors of political functions and wielders of state rights. They were real communal bodies.

Although the regulations concerning communal self-government seemed to be very far-reaching, in reality they were little more than paper privileges for, at the time of their promulgation, the authority of the Ukrainian government extended over a very limited territory. In March 1919, the Ukraine became the arena of bitter warfare among Bolshevists, Ukrainians, former Tsarist military leaders, and quasi-military groups. Soon after, the government lost control over all, except parts of Podolia and Volhynia, with the rest of the country alternately dominated by Bolshevist armies, by the troops of General Denikin, or by other irregular military formations. Chaos reigned everywhere and Ukrainian Jewry was decimated by pogroms. The eventual end of Ukrainian independence spelled the dissolution of Jewish autonomy.

The historical significance of Jewish autonomy in the Ukraine does not lie so much in its practical realization and functioning, as in its first complete fulfillment of national-Jewish demands. Some time later autonomy was also granted by the Baltic states. There it was actually translated into practice, but limited to the field of Jewish education.

3. *Education*

There has always been a large number of Jewish private schools in Eastern Europe. But the philosophy of life with which the *heder* supplied Jewish youth could by no means meet modern needs or educational standards. The existing public schools were equally unsuited for the children of the orthodox masses. They offset the advantages of a secular education by insisting on the use of the national language

and on attendance at Saturday classes. The development of a modern Jewish educational system was, therefore, a pressing need.

The Baltic states were very liberal in their solution of this problem. Lithuania, at the end of the war, and Estonia, a few years later, transferred authority over the educational systems of national minorities from the central state administration to the minorities themselves. In these countries, therefore, the Jewish nationality, equipped with the power of taxation and assisted by small governmental subsidies, took over the direction of its members' education. In Latvia, in 1919, Jewish autonomy was so constituted that the head of the Jewish educational system could be appointed only with the consent of the Jewish delegates in Parliament.

Jewish education was thus enabled to develop vigorously. Lithuania, with a Jewish population of 160,000, evolved a system comprising 114 public schools and 29 institutions of secondary and higher learning. In Latvia, with a Jewish population of 94,000, in 1928, 86.7 percent of all Jewish public school pupils, and 65.9 percent of all Jewish high school pupils, attended Jewish institutions. In addition, there were Jewish professional schools and seminaries for teachers. The majority of Jewish schools conducted their classes in Yiddish or Hebrew; few of them used German or Russian. No classes were held on Saturday. In the small state of Estonia, with its Jewish population of 4500, a chair for "Jewish sciences" was established at the University of Tartu.

In order to assure the execution of the necessary administrative measures, special organizations were formed in the three Baltic states, particularly in Lithuania, where a Ministry for Jewish Affairs and a National Council were created after the Ukrainian model. But Lithuanian educational autonomy lasted only until 1924, when a change of policy eliminated the Jewish Ministry, as well as the Jewish National Council. From then on, Jewish schools were no longer the public schools of an autonomistically organized minority, but were administered either by the state or privately. In Latvia and Estonia, on the other hand, autonomy

was retained much longer, although with certain limitations. Its remnants were still in evidence at the time of the incorporation of these states into the Soviet Union.

In the remaining succession states, particularly in Poland, the administration of educational affairs was not transferred to the Jewish minorities. But the minorities treaties compensated somewhat for this. They stipulated, first, that the Jews and other minorities had the right to maintain private schools and other educational institutions at their own expense; secondly, the states were required to maintain public schools or special classes for their minorities. The various provisions in the pertinent minorities treaties were, however, so elastic that their value depended entirely on the interpretation each individual state was willing to give them.

Despite all this, Jewish education, supported by foreign Jewish organizations, made great strides in the post-war years, even outside the Baltic states. The situation in Poland, which had a Jewish population of roughly three million, can be appraised from the following report, dated 1935:

"The Jews have founded, at great sacrifice, schools which are attended by thirty-five to forty percent of the Jewish youth of school age. The Zionist school organization, Tarbut, maintains eighty-five kindergartens, two hundred and twenty-five public schools, nine secondary schools (Gymnasiums) and three teachers' seminaries: altogether three hundred institutions, with an attendance of over 35,000 students. The language of instruction is Hebrew. The Central Yiddish School Organization ("Zischo") maintains eleven homes for children, eighty-one public schools, two Gymnasiums and forty-three afternoon and evening courses, a total of one hundred and thirty-seven institutions and 18,400 students. The children come from the homes of artisans, small businessmen and laborers. Orthodox Zionist circles have their own school system, the Yavne schools, namely: five Froebel schools, one hundred and thirty-three public schools and twenty-four other courses, with a total of 16,000 students. The orthodox masses, not identified with Zionism, send their children to the traditional *hedarim* and Talmud Torah schools which educate, in all, 80,000 students. The Agudath Israel organization, Chojrew, maintains schools for boys, and the Beth Jacob organization, schools for girls, which are of great importance for the education of young womanhood, particularly in view of the fact that women's education was strongly opposed in orthodox circles, which relented only in the last ten years. The Beth Jacob schools maintain one hundred and

forty-eight institutions with roughly 21,000 girls from all parts of Poland attending. There is also a teachers' seminary for women in Cracow."

4. *Language Rights*

In addition to educational rights, the minorities treaties granted minorities the right to use their mother-tongue in private life and in business and also gave them "adequate facilities" before the courts (though not before administrative state bodies). To the Jews, this meant the elimination of the former legal discrimination which prohibited bookkeeping and negotiating contracts in Yiddish. But this privilege was not translated into practice. In Poland, for example, a law declaring documents written in Hebrew letters invalid remained in force. Czechoslovakia embodied a similar clause in its Exchange Law as late as 1927. In the courts of law, a similar situation persisted. The Latvian practice was fairly typical, in that the use of minority languages was tolerated to a limited extent before the courts, though Yiddish was not even mentioned.

Isolated exceptions there were but not of any great practical significance. Thus, a manifesto published on the tenth anniversary of the founding of the Estonian republic was issued in Hebrew as well as in Yiddish. At the request of the Jewish Vice-Secretariat Yiddish inscriptions were placed on the Ukrainian certificates of legal tender.

Recognition of minorities languages in international law was not altogether restricted to theory. It stimulated the cultural life of eastern Jewry in the post-war years and gave strong impetus to Jewish journalism. In 1936 there were in Poland only nine Jewish periodicals published in Polish, while eighty-eight were in Yiddish and fourteen in Hebrew. Of the Yiddish periodicals, eighteen were dailies, forty-two weeklies, and twenty-eight appeared monthly. In Lithuania, there were four Yiddish daily newspapers, three of them Zionist, with a circulation of more than 10,000. There were also fourteen Yiddish and four Hebrew weekly

and monthly magazines. A similar situation prevailed in Latvia and, to a lesser degree, in Estonia. But in the Austrian Republic and Czechoslovakia the recognition of minority languages hardly achieved practical importance.

V

CONCLUDING REMARKS

A comparison of the situation of Eastern European Jewry before and after the First World War reveals as one of the most significant changes in the post-war period the incorporation of almost three and one half million Jews into the Soviet Union. These masses which, before the war, constituted the nucleus of Eastern European Jewry and the most active protagonists of Jewish nationalism, went their own independent way after the war. The dissolution of orthodoxy and the completely changed Russian-Jewish scene produced a three-fold result: assimilation, settlement in a particular territory (Biro-Bidjan), and recognition of a Jewish nationality. The Soviet-Jewish nationality, however, had little in common with the earlier aspirations of Jewish nationalists. It was something new in character.

In the succession states, on the other hand, the pattern of the earlier nationalist movement was retained for the time being in its broader aspects, although here, too, some discrepancies had developed. The post-war period witnessed, for instance, some concessions by Orthodoxy. The modern Jewish schools contributed their share: a secular education to conservative-religious youth which became political-minded and began to form political groups. These groups revealed the same basic traits as the early ones, except that they were more numerous and represented finer differentiations in political thought. The agents of political activity, too, had been replaced. Jewish nationalism in the succession states was no longer championed by national councils, formed exclusively for this purpose, but by Jewish delegates elected to the respective parliaments. These Jewish members of parliament

were admitted as representatives of their nationality at international congresses, and also participated in the meetings convoked annually by the national minorities organizations of Europe.

In the cultural sphere, Jewish nationalism attained some success although the desired autonomy was only partially obtained. Language and educational rights, as well as social and economic reforms, gave it great strength. Jewish welfare organizations came to life, professional schools sought, in ever-increasing number, to broaden the productivity of Jews, and Jewish labor unions formed complex Jewish-national economic bodies. In short, many of the early symptoms of maladjustment disappeared from the life of eastern Jewry. But did Jewish nationalism in the Diaspora really cure the disease from which it had sprung, the Jewish plight?

This question must be answered in the negative. Nationalism did ameliorate the plight of the Jews in one way or another—and even this means a great deal—but it was no panacea. The Jews of Eastern Europe were faced with universal developments with which they were powerless to contend. The devastating effects of war took their toll anew among minorities in the "post-war" years. All minorities suffered from compulsory assimilation, economic ruination and physical assault. The condition of eastern Jewry, in particular, deteriorated. In 1931, a Jewish representative at the minorities congress summarized their lot as follows:

"The situation of the Jewish minority is worse than that of the other minorities. All the others constitute a majority somewhere. Almost all of them have a state which affords them protection. We Jews have no state . . . . we suffer doubly: first, as an ethnic minority like other minorities, and secondly, also as Jews."

The League of Nations proved to be so powerless in this situation that, in 1934, Poland refused to remain bound by League of Nations minorities control. It was too much to ask that the complex and involved problem of minorities, and that of the eastern Jewish Diaspora, in particular, be solved by the League of Nations in the short span of twenty years. Complex sociological phenomena such as the Eastern

European Jewish question can hardly be solved by legislation or international treaties. But a more determined effort to implement and enforce the minorities treaties might have brightened somewhat the dismal Jewish situation in Eastern Europe. The hope embodied in the treaties was fulfilled in only a very small measure. Here and there slight improvements were effected, but the over-all picture was not changed in spite of the international attempts in that direction.

The situation of Eastern European Jewry became more and more unbearable. Plans for mass emigration were under discussion. Then, in 1939, disaster struck. It bound the destiny of Eastern European Jewry to the tragedy of world Jewry and, at the same time,—to the future of the world.

REMBRANDT'S *SYNAGOGUE*

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REMBRANDT'S well-known etching *The Synagogue* (Plate 1) has recently been made the subject of an interesting article.[1] Its author advanced the hypothesis that this etching represents not merely a typical scene but a definite occurrence. Basing his opinion on the figure of the man sitting in the center and seen from the back, he asks this question: "Is it Judas contemplating his crime or stricken with remorse?" In support of this idea the author reminds his readers that once before, in his early years, Rembrandt took the story of Judas as the subject for his picture entitled, *Judas Giving Back the Thirty Pieces of Silver.*[2] He certainly did this with his incomparable gift of narrative expression, already well developed in his youth. But this great gift must have failed him here, if we are to assume that the man sitting in the synagogue at ease is the remorseful Judas. None of the other persons pictured takes the slightest notice of his presence, neither the old men in conversation with one another in the foreground, nor the other men leaving the synagogue, nor those disappearing in the background. Therefore, it seems much better to adhere to the old view and look upon the scene as one of every-day Jewish life. In 1648, the year in which the etching was made, Rembrandt lived in Amsterdam in a district mainly inhabited by Jews, and thus could easily watch their life, habits and customs closely.

[1] Ludwig Münz, "Rembrandt's Synagogue and Some Problems of Nomenclature," *Journal of the Warburg Institute*, III (1939/40), pp. 119 ff.

[2] The original of this painting which exists in several versions, seems to be in the English collection of Lord Moyne. A restoration of this picture, a few years ago, revealed Rembrandt's monogram and the date 1629; cf. Collins Baker, "Rembrandt's *Thirty Pieces of Silver*," in *Burlington Magazine*, LXXV (1939), pp. 179 f.

This etching by Rembrandt raises other questions not yet considered. Which synagogue is portrayed in the picture, and what types of Jews were taken by Rembrandt as models?

When speaking about the Jews of Amsterdam in connection with Rembrandt, one thinks, first of all, of the Sephardic Jews from Spain or Portugal with whom the celebrated painter is known to have come into close contact. He portrayed several men representative of this circle: in an etching Rabbi Manasseh ben Israel, and in a painting and etching, the physician, Ephraim Bonus. Without doubt other Sephardic Jews, too, sat for their portraits to Rembrandt. They were wealthy enough to be able to indulge in this luxury, then customary in the upper strata of Dutch society. Furthermore, they did not interpret the Second Commandment so strictly as to preclude the making of any kind of pictorial representation, except for such as might lead to idolatry. Having lived as marranos for several generations they were acquainted with the current predilection for portraits, so characteristic of the Renaissance, and clung to it even after they had reverted to the open practice of Judaism.

In studying Rembrandt's portraits of Manasseh ben Israel and Ephraim Bonus one notices that the Sephardim had assimilated themselves to the surrounding world, particularly as far as dress is concerned. They wore the broadbrimmed hats, the white collars and the short cloaks of their time, and their beards were carefully trimmed. In the etching of the Synagogue, in contrast, one sees Jews wearing long beards framing the whole face, robes like caftans falling down to the ankles, and caps some of which point upwards.

Likewise it is impossible to discover any connection between the interior depicted in the etching of the Synagogue and any one of the synagogues of the Sephardim in Amsterdam. In a short space of time, the number of synagogues had increased to three owing partly to the rapid growth of the community, partly to the difference in religious attitudes among the Jews. They finally decided to bury these differ-



THE SYNAGOGUE
Etching by REMBRANDT

PLATE 1



REMBRANDT: JACOB BLESSING THE SONS OF JOSEPH
Museum, Cassel, Germany



REMBRANDT: THE CIRCUMCISION
National Gallery of Art, Widener Collection, Washington, D. C.
Photograph by Courtesy of National Gallery of Art, Washington, D. C.

PLATE 3



PLATE 4

REMBRANDT: THE CIRCUMCISION—DETAIL
National Gallery of Art, Widener Collection, Washington, D. C.
Photograph by Courtesy of National Gallery of Art, Washington, D. C.

ences and to form one united community. In 1639 they built an imposing edifice out of one of their three older synagogues. This synagogue no longer exists, for some thirty years later Amsterdam Jewry was strong enough to erect a still larger prayer house, the Portuguese Synagogue, which is still standing. There are some engravings preserved which give a very clear picture of the interior[3] and exterior of the synagogue built in 1639. Its long rectangular hall was divided into a broad nave and two narrow aisles by columns which supported the women's galleries. This does not tally at all with the building drawn by Rembrandt which has neither columns nor galleries.

As is well known Jews from other countries also appeared in Amsterdam in the wake of those who had come from the Iberian Peninsula. First among those immigrants were Jews from Germany who sought to escape the horrors of the Thirty Years War, or saw golden opportunities in that thriving city of commerce. In 1648 Jews began to stream in, moreover, from Poland, fleeing the Chmielnicky pogroms there.

Rembrandt was surely aware of all these newcomers. They were hardly expected to order their portraits from him. For one thing, they were poor and could think only of their own hard struggle for a bare existence. For another, they interpreted the Second Commandment far more literally than their Sephardic brothers, and hence would have considered it a sin to have portraits in their homes.[4] Nevertheless Rembrandt seems to have felt great sympathy for these refugees, for he was not only a great artist but also a warm and feeling human being. He may also have been attracted from the artistic point of view by their expressive faces and strange costumes. Even if he did not paint their portraits he most probably persuaded some of them to sit for him

[3] An engraving of the drawing by J. Veenhuisen is reproduced in Hk. Brugmans and A. Frank, *Geschiedenis der Joden in Nederland*, I, (Amsterdam, 1940), facing p. 273.

[4] In 1714, during a visit to London, Rabbi Zebi Ashkenazi from Amsterdam was secretly portrayed for his admirers, while he himself would never have given his consent; F. Landsberger, "The Jewish Artist before the Time of Emancipation," in *Hebrew Union College Annual*, XVI (1941), p. 378.

for studies of heads. In some of Rembrandt's paintings of Jews one may easily recognize the features of Ashkenazim, for instance, in the half-length portrait in the Kaiser Friedrich Museum in Berlin, with the heavy lips and the wide cheek-bones, and in the one in the Museum in Groningen, with the untrimmed beard and side-burns ("peyes").[5]

As to the places of worship of the Ashkenazim, our particular interest must be directed to the German Jews. For, in 1648, the Polish Jews in Amsterdam were too few and lacked sufficient means to build a synagogue of their own.

The Jews who had immigrated from Germany were originally under the patronage of the Sephardim and also took part in their religious services. But as they felt they were only tolerated and their language and rites were somewhat different, they tried to acquire their own place of worship as quickly as possible. As early as 1635 they held services in a small hall of their own, and by 1639 they were able to rent larger rooms. In 1646 they planned the erection of a new synagogue, but met with resistance on the part of the Christian population. Apparently they were not so welcome to the Dutch as their more prosperous Sephardic brothers. We do not know whether this synagogue was ever completed;[6] in any case it must have been smaller and simpler than the synagogue of the Sephardim erected in 1639.

Neither drawings nor records of these early German-Jewish houses of worship have survived, but it is safe to assume that they lacked the galleries and columns of the Sephardic synagogue. The German Jews placed their women in the wings at the side so that they could participate in the service only through openings in the walls. The separation of the sexes was carried out more rigorously here than among the more "enlightened" Sephardim. Moreover, the floor in the German synagogue was usually lower than the street

[5] Good reproductions of these portraits are now available in A. Bredius, *The Paintings of Rembrandt*, (Vienna—London, 1936), pp. 250, 271.

[6] Cf. Herbert I. Bloom, *The Economic Activities of the Jews of Amsterdam in the 17th and 18th Centuries* (Williamsport, Penna., 1937), p. 27; D. M. Sluys, "Hoogduits Joods Amsterdam van 1635 tot 1795," in Brugmans and Frank, *Geschiedenis der Joden in Nederland*, p. 306.

level so that one had to descend a few steps to reach it. The custom of descending to a lower place for prayer can be traced to the words of Psalm 130, "Out of the depths have I called to Thee, O Lord." This thought of the psalmist was understood in a literal sense in the Talmud (*B. Ta'anith*, 23 b) and therefore descending to a lower place for prayer became a custom particularly among the Ashkenazic Jews. Rembrandt was certainly aware of this fact and in his etching placed special emphasis on it. True to reality, he also pictured the caftans as well as the long beards, to which the Ashkenazim, separated from the Christian world for centuries, clung with great tenacity.

Rembrandt's *Synagogue* is thus a valuable historical document, picturing an otherwise obscure German synagogue and its Ashkenazic worshippers. One fact, however, must be borne in mind: Rembrandt was not an architectural painter in the usual meaning of this word. When he painted an edifice he was content to convey a general impression so as not to detract interest from the main figures by giving too great attention to details.

As the date of the etching here under consideration is 1648, the year in which the first Jewish massacres took place in Poland, one would like to know whether some of these men in the synagogue are Polish Jews. It may be surmised that those wearing high fur caps to protect themselves against the cold of the East may have been of Polish origin. These refugees were patronized by the German Jews in much the same way as the German Jews had formerly been patronized by the Sephardim. They participated in the German-Jewish services until they were able to have a synagogue of their own.

Counting the men pictured in Rembrandt's *Synagogue*, one finds them to number ten. Is this merely a coincidence, or was Rembrandt aware that a Jewish public service can be held only when at least ten men are present? In one of his late works Rembrandt painted the ceremony of circumcision, not an ordinary one, but the circumcision of the Infant Jesus, as mentioned in the Gospels. This picture, formerly

in the Joseph Widener Collection in Philadelphia, has recently been donated to the National Gallery of Art in Washington (Plate 3). The circumcision, a very popular subject in Christian art, is usually depicted as taking place in the Temple, but Rembrandt took into consideration that the child would be circumcised eight days after his birth and that the parents of Jesus set out for Jerusalem after the purification of Mary (*Luke* 2,22). For this reason he placed the scene outside the stable of Bethlehem. According to custom, the circumcision is performed by a man especially chosen for this rite, the *Mohel*, but it was also permissible for a father to circumcise his own child.[7] This seems to have been the case in Rembrandt's picture, because the old man in the yellow robe, forming a group with Mary and the child, is surely Joseph.

Furthermore, Rembrandt knew that, immediately following the ceremony of circumcision, the child is given a name. Thus a man with writing equipment at his waist, inscribing the name in a book, is to be seen in the picture. There is another detail observable, exceptional in pictures of the Circumcision of Jesus. Next to and behind the man with the book, as far as the eye can see, a group of men has gathered to take part in the ceremony. With reference to this the opinion has been expressed that the picture of the circumcision had grown out of the idea of the Adoration of the Magi, which always included a large following.[8] Another interpretation may be attempted here. The presence of these men can be traced to a Jewish custom. Since the circumcision is symbolic of the child's entry into the Covenant of Abraham, and as such constitutes a religious act, the presence of ten men was customary. And, in fact, counting all the men in this painting—at the back a woman is looking out of the window—the figure is ten. Therefore it may be assumed here, as well as in the *Synagogue* etching, that this number of men present was intentional.

[7] See, *e. g.*, Leon da Modena (1571-1648), *Riti Ebraici*, Part IV, ch. 8, sect. 4.

[8] Otto Benesch, *Rembrandt, Werk und Forschung* (Vienna, 1935), p. 66.

It is surprising what a knowledge of Jewish customs and rites Rembrandt possessed. In this connection attention should be directed to a hypothesis recently set forth concerning Rembrandt's painting *Jacob Blessing the Sons of Joseph.*[9] Rembrandt in his wonderful picture in the Museum in Kassel (Plate 2), added to the figures usually depicted in this scene, Jacob, Joseph, and his sons, Manasseh and Ephraim (those mentioned in the Bible, *Gen.* 48, 8-20), the figure of Joseph's Egyptian wife, Asenath. For an explanation reference is made to a Jewish legend transmitted in *Pesikta Rabbathi.*[10] Just as Jacob was about to bless his grandsons, he was struck with the idea that the descendants of the two children, the kings Jehu and Manasseh, would become idolaters. He therefore wanted to refrain from blessing them and asked Joseph whether he had married his wife in accordance with the Law. Joseph produced his wife and exhibited the marriage contract proving the validity of his marriage. Then he said to his father: "I pray thee, my father, bless my sons, if only for the sake of this pious woman . . ." whereupon Jacob pronounced the blessing. In this writer's opinion, Rembrandt had no intention of illustrating this legend as such. He would then have been more explicit, whereas Asenath stands motionless near Jacob's bed. But the very fact that she stands there at all is striking. Thus, one may well assume that Rembrandt knew of the significant role Joseph's wife played in the legend.

To understand all this, one must bear in mind that in the seventeenth century an active exchange of ideas between Christians and Jews took place, particularly in Holland. Learned Christians studied Hebrew to acquire the ability of reading the Bible in the original. Highly educated Jews, for their part, studied Latin in order to understand the works of Christian scholars. Manasseh ben Israel asked Rembrandt to illustrate his Spanish work *Piedra Gloriosa o*

[9] Wolfgang Stechow, "*Jacob Blessing the Sons of Joseph*, from Early Christian Times to Rembrandt," in *Gazette des Beaux Arts*, VI. Series, Vol. XXIII (1943), pp. 193 ff.

[10] Ed. Friedmann (Vienna, 1880), p. 11b-12b; cf. also Louis Ginzberg, *The Legends of the Jews*, II (Philadelphia, 1910), p. 136.

de la Estatua de Nebuchadnesar, and Dionysius Vossius, his Christian friend, translated Manasseh ben Israel's book, *Conciliador,* into Latin to make it available to readers all over the world. One could dwell further on the spiritual contacts between Jews and Christians in this period,[11] but only this need be added: pictorial art played an important part in furthering them.

Previously no attention was drawn to the novelty of Rembrandt's undertaking to depict a synagogue mainly for the interest of Christians.[12] Precursors of Rembrandt had shown a desire to depict the life of the Jews only in an anti-Jewish vein. Albrecht Altdorfer, the well-known German artist, once did an etching of the synagogue of Regensburg, shortly after its destruction. Very significantly, he placed this inscription in Latin over it: "In the year of the Lord 1519 the Jewish synagogue in Regensburg, by just judgment of God, was completely destroyed." Only in this fact could he see a justification for his artistic work.[13]

As to Rembrandt, he would have been ashamed to express pleasure at the destruction of a synagogue. For him the Jews and their world were definitely very attractive in many ways, and those who acquired his etching, in all probability, shared his opinion.

A few years later—the exact date cannot be ascertained—the great Dutch painter Jacob Ruisdael visited the Sephardic cemetery on the Ouderkerk, near Amsterdam, and made two drawings of the oldest tombstones, as he was probably interested in their peculiarities. Prints were made of the drawings by the artists Abraham Bloteling and Romeyn de Hooghe. Before these were published, Ruisdael himself made his drawings the main subject of one of his world-

[11] Worthy of note in this connection, with ample bibliography, is Salo W. Baron, *A Social and Religious History of the Jews,* II (New York, 1937), pp. 164 ff.

[12] The above mentioned engravings of the Sephardic synagogue built in 1639 are of later date than Rembrandt's *Synagogue* etching.

[13] A second etching of Altdorfer depicts the vestibule of the synagogue. Both are reproduced in R. Krautheimer, *Mittelalterliche Synagogen* (Berlin, 1927), nos. 23, 34.

renowned pictures *The Jewish Cemetery* which is preserved in the Museum in Dresden.[14]

Thus Jewish themes appeared for the first time in Christian art outside the biblical frame and became a subject of general European interest. It is characteristic, indeed, that such a genius as Rembrandt initiated this new and important approach in the art of painting.

[14] Another version of the picture is found in the Institute of Fine Arts, Detroit, Ill.; see J. Rosenberg, "The Jewish Cemetery by Jacob van Ruisdael," in *Art in America*, XIV (1926), pp. 37 ff; cf. also Kurt Ernst Simon, "Wann hat Ruisdael die Bilder des Judenfriedhofs gemalt?", in *Festschrift für Adolf Goldschmidt*, (Berlin, 1935), pp. 158 ff.

REVIEW SECTION

MEDIAEVAL ITALIAN JURISPRUDENCE AND THE JEWS

A BOOK REVIEW*

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A FEW YEARS ago this reviewer deplored the fact that, outside of Europe, mediaeval legal history is only rarely chosen by mediaevalists as a subject of scholarly interest.[1] All the more does he enjoy the opportunity now to review a product of American scholarship in this field. Interest in the life and work of Bartolus de Saxoferrato (1313-57), one of the famous, if not the most famous, and certainly the most influential Italian lawyer of the Middle Ages, only recently revived, is now apparent also in our country. J.L.J. van de Kamp, in his comprehensive work, *Bartolus de Saxoferrato,* 1313-1357,[2] was most concerned with problems of biography, bibliography, literary history, and iconography of the great jurist. Miss Sheedy, in her doctoral dissertation under review, was prompted to examine the voluminous *opus* of Bartolus for information regarding certain aspects of social life in fourteenth-century Italy.

For centuries, Bartolus, the prototype of and Prince among the Postglossators or Commentators, was considered the outstanding "legist" and a leading authority, in the law schools as well as in the courts and juridical literature of Italy. Through his writings his influence extended over Spain and Portugal, France, the Netherlands, and Germany, and lasted until the seventeenth century. The theoretical works and legal opinions in actual law cases (*Consilia*) of a practicing jurist and teacher mirror the social conditions of the age in which he lived and worked. It was therefore a well-chosen task to supplement our knowledge of the

* *Bartolus on Social Conditions in the Fourteenth Century.* By Anna T. Sheedy. (Studies in History, Economics and Public Law, edited by the Faculty of Political Science of Columbia University). Columbia University Press. New York, 1942. Pp. 267.

[1] *Speculum,* XIII (1938), p. 246; cf. also Guido Kisch, "American Research in Mediaeval Legal History," in *The Jurist,* II (1942), pp. 214-247; G. Kisch, "A Decade of American Research in Mediaeval Legal History," in *Progress of Mediaeval and Renaissance Studies in the United States and Canada, Bulletin,* No. 17 (1942), pp. 27-34.

[2] Italian edition, (Urbino, 1935); Dutch edition, (Amsterdam, 1936); cf. the review by G. Kisch, in *Speculum,* XIII (1938), pp. 246 f.—An article which escaped all recent writers on Bartolus, may be noted here: Ivo Pfaff, "Kaiser Karl IV. und Bartolus," in *Mitteilungen des Vereins für Geschichte der Deutschen in Böhmen,* LVI (1918), pp. 59-66.

period from Bartolus' works. They are a source of particular value for the historian; for all facts, considerations, and legal opinions presented are directly derived from contemporary life. It is unfortunate that this review, due to the scope of this periodical, must be restricted to a comparatively small chapter of Miss Sheedy's book, that on the Jews (pp. 230-242).[2a]

In Roman law, Jews and heretics were considered as two separate groups. Justinian's *Code* treated both under separate rubrics, in *Cod. Just.*, I, 5, *de haereticis et manichaeis, and in* I, 9, *de judaeis et caelicolis.* This differentiation was recognized and upheld by the Italian Commentators, and thus the two groups were not subject to the same laws. The author did not restrict her investigation of the legal treatment of Jews to Bartolus but included the writings of his teacher, Oldradus de Ponte (de Laude) (died 1335), and his pupil, Baldus de Ubaldis (1327-1400),[3] both of literary fame and great influence among mediaeval and Renaissance lawyers. They also concerned themselves with the legal status of the Jews in their comments on the *Codex Justinianus* and in their *Consilia.* The *Code* contained several laws concerning Jews, ranging in date of issue from the third to the fifth centuries. The Jew as Roman citizen was subject in all his activities, except those *quae ad superstitionem eorum pertinent,* to the law of the land and its courts of law.

To Bartolus, the author correctly maintains, the position of the Jews remained substantially as it was under the Justinian *Code,* with some modifications and changes effected by Canon law and Italian statutes. This is shown in the light of several law cases involving problems such as Jewish protection under public law, practice of their religion, including Sabbath observance, exclusion of Jews from certain offices and academic degrees, their appearance in general courts, trial of their cases in the ordinary courts, prohibition of actions regarded as offenses against the Christian religion, judicial oaths to be taken by Jews, sexual relations between Christians and Jews, bequests by Christians to Jews, price-fixing of

[2a] For a general evaluation, see Albert J. Lynd, in *Catholic Historical Review,* XXIX (1943), pp. 100-102; in contradistinction, Loren C. MacKinney, in *American Historical Review,* XLVIII (1943), pp. 849 f., has no appreciation for "Bartolus' legalism" which "obscures the scene like a heavy cloud."

[3] Side by side with the Latin forms of the names Bartolus and Baldus, the Italianized names Oldrado (instead of Oldradus) and Giovanni d'Andrea (instead of Johannes Andreae) (*e.g.*, p. 238, and *passim*) are used frequently. This writer cannot see any reason for using the Italian form, or for the diversified employment of the mediaeval jurists' proper names (cf., *e.g.*, William (!) Durand*us*, on p. 35). But this *monitum,* perhaps, is not to be laid at the door of the author. Only one more slip which eluded author as well as editor may be noted here. Among "the most important commentaries upon Pope Gregory IX's new compilation, known as the *Decretals,*" and promulgated in 1234, first place is taken, according to the author (p. 35), by that of Bernard of Pavia. Since Bernard of Pavia died as early as 1213, he cannot well have written a commentary on the *Liber Extra* published more than twenty years after his death.

Jewish merchandise. Each of these problems of legal history offers interesting aspects, historically as well as dogmatically, and deserves separate treatment, all the more because the law of the Justinian *Code* and its juridical interpretation was of greatest significance in determining the later policy toward the Jews, under Canon as well as secular law. Space does not permit going into detail in this review. The cases are briefly related by the author, who contents herself with presenting the facts and Bartolus' argumentation. Rarely, however, does she enter a juridical-critical analysis of the jurist's underlying reasoning. Thus, the author correctly observes that, throughout the legal discussions, the religious factor was evidently considered the chief cause for discrimination between Jews and Christians (p. 238). But as to the death penalty for sexual relations between the two groups, she leaves untouched the problem whether the ecclesiastic or secular court was competent, and whether that severe penalty was conditioned by the qualification of the transgression as a religious or as a sexual delict. Similarly, Bartolus' concessions to Canon-law rules and canonist doctrines with respect to the Jewry-oath and usury should have been pointed out and treated more penetratingly from the point of view of legal history.

In his reasoning on legal problems affecting Jews Bartolus took into consideration also the Jewish standpoint and Jewish law, thereby as always revealing juridical acumen and judicial impartiality. This can be clearly gathered from his *consilium* on the taking of an oath by Jews (p. 239 f.). Bartolus was interested in "Jewry-law" just as a hundred years before him the greatest German jurist of the Middle Ages, Eike von Repgow (*ca* 1180-1233), had been.[4] While there is not the slightest evidence that the author of the *Sachsenspiegel* had any knowledge of Hebrew, Bartolus himself tells us that he learned Hebrew from a Jewish teacher. In his *Tractatus de insigniis et armis* he writes:

> Pro cuius declaratione praemitto illam quaestionem quae fuit inter Judaeos et me, dum Haebraicum addiscebam.

This fact is certainly noteworthy.[5]

Attention must be directed to an important observation of a general kind which eluded the author. As is well known, in the Middle Ages, literal interpretation of the Law was considered typically Jewish.[6] Literal interpretation of laws and statutes was, however, unsympathetic to and rejected by the leading Italian lawyers, who compared this juridical

[4] G. Kisch, *Sachsenspiegel and Bible,* in *Publications in Mediaeval Studies,* Vol. V (Notre Dame, Ind., 1941), *passim.*

[5] Cf. Van de Kamp, *Bartolus de Saxoferrato* 1313-1357 (Amsterdam, 1936), p. 143. It is mentioned, only in passing, in another connection by Sheedy, p. 112, note 22.

[6] Cf. Herman Hailperin, "The Hebrew Heritage of Mediaeval Christian Biblical Scholarship," in *Historia Judaica,* V (1943), p. 147, with further references; also Hailperin, "Nicolas de Lyra and Rashi," in *Rashi Anniversary Volume* (New York, 1941), pp. 126 f.

method with that customary among Jews in the interpretation of Scripture, and designated it as *inhaerere tamquam Judaei.*[7] According to Bartolus, the supreme function of the jurist is to interpret law in such ways as would conduce to the greatest good of society. Bartolus' pupil, Baldus de Ubaldis, repeatedly pleaded for a most minute searching out of the true meaning (*mens*) of the legislator, by interpretation:

> Lex et statutum non intelligenda sunt judaice; . . . . non enim sunt verba statuti sic judaice intelligenda, quia pravus intellectus non recipitur in statutis.[8]

Logically, such a method of interpretation operated, at times, also in favor of the Jews. Thus Bartolus, in the case of a bequest "to the Jews of Perugia" (p. 238), propounded an extensive interpretation of the pertinent passage, *Cod. Just.*, I, 9,1, favoring the Jews concerned. While he agreed that nothing could be bequeathed to an association of Jews, on account of the wording, *universitati Judaeorum,* forbidding such associations, in his opinion a bequest could lawfully be made to any individual Jew.[9]

In view of the overwhelming influence the Commentators exercised on the juridical world up to the seventeenth century, their broadmindedness in interpreting the law could very well have increasingly affected the further development of European Jewry-law. It was unfortunate, therefore, that Italian jurisprudence became influential in jurisprudence and legal practice of Germany only in the course of the sixteenth and during the first half of the seventeenth century, primarily due to the spread of humanism. Before and, for some time, even after the invention of printing, the commentaries, *Consilia,* and other casuistic writings of the great Italian jurists had generally no wide dissemination or decisive influence in Germany, and particularly not as far as Jewry-law was concerned. German jurists rather adhered to the legal texts proper, as represented by the Roman and Canon law codes and to the *Glossa Ordinaria.* Their method was far different from that of Italy's great jurists whose high juridical level they never reached; they followed the superficial method of harmonizing the *Sachsenspiegel* law with Roman and Canon law rules, with no deep juridical or critical insight. This course was initiated by their master, Johann von Buch (*ca* 1325), in his *Gloss* on the *Sachsenspiegel,* whose method was later faithfully imitated. Extra-legal sentiments of an anti-Jewish character were much more in accord with the anti-Jewish Roman laws than with the liberal interpre-

[7] Cf. Woldemar Engelmann, *Die Wiedergeburt der Rechtskultur in Italien durch die wissenschaftliche Lehre* (Leipzig, 1938), pp. 148, 151 f.

[8] Engelmann, *op. cit.*, pp. 151 f.

[9] As to Bartolus' and Baldus' opinions on the question whether it was lawful to wage war against heretics or infidels (Jews) for the sole reason that they were not Christians, cf. a most recent publication, Angelo P. Sereni, *The Italian Conception of International Law* (New York, 1943), p. 89, note 17.

tations of the Italian Glossators and Commentators on the Roman law. That attitude, also fostered by and in accord with the growing anti-Jewish sentiments and popular superstitions in Germany, from then on became more and more rooted in the German legal literature.[10]

These are but a few of the reflections evoked by the reading of Miss Sheedy's interesting chapter on the Jews. It was not within the scope of her dissertation to treat this subject exhaustively. In attacking the problem, even if sketchily, by a brief presentation of some law cases and their solution by Bartolus and Baldus, she has performed valuable pioneering work.

[10] For a detailed presentation and documentation see the reviewer's forthcoming book *Jewry-Law in Mediaeval Germany in the Light of Law-Books and Jury Court Decisions.*

BOOK REVIEWS

THE JEWISH COMMUNITY: ITS HISTORY AND STRUCTURE TO THE AMERICAN REVOLUTION. By *Salo W. Baron.* Three volumes: I: Pp. xii + 374; II: Pp. 366; III: Pp. ix + 572. The Jewish Publication Society of America. Philadelphia, 1942.

THE EXPERIENCE of the Jews furnishes one of the great laboratories of history for the testing of the theories of group cohesion and survival. Like all the experiments offered by history to the student of human affairs, the conditions under which they take place are far from ideal. The chief defect of history as a laboratory is that all its experiments lie in the more or less remote past and few, if any, were undertaken with the deliberate intention to prove or disprove a scientific hypothesis. What is more, seldom do we find the facts of historic experiments sufficiently, completely, and reliably recorded and assembled to use them as scientific evidence. The diligent labors of Professor Baron, both in his previously published *A Social and Religious History of the Jews* and in the present work, go far toward remedying these shortcomings.

The locale of the experiments in communal organization which the author of the volumes under review has recaptured from history is vast, ranging all over Europe, including even the ancient Palestinian communities and the regions involved in the First Exile and the Persian and Hellenistic dispersion. The time perspective of this study, while focusing upon the Middle Ages and the early modern period, encompasses the colossal span from the Bronze Age to the American and French Revolutions. Hence we must not expect to find here an equally meticulously detailed and nicely balanced and symmetrical treatment of all areas and periods covered. It would take not three, but thirty volumes, and call for the labor of many men rather than that of one scholar, not yet beyond the half-way mark of his research career, to accomplish that, even assuming that the basic data were available.

The varieties of external conditions and internal forms of community life thus exposed to view are necessarily enormous, and the problems of organization of materials would appear at first glance to be almost impossible of solution. Professor Baron has met this challenge with a boldness and ingenuity exceeded only by his extraordinary erudition through a compromise between the areal and chronological treatment of his subject matter on the one hand, and its topical organization on the other. Volume One, after an initial general and theoretical chapter,

traces the evolving Jewish community from the Palestinian municipality through the Babylonian Exile, the diaspora under Graeco-Roman rule, the Talmudic period, and the Islamic phase, to the end of the European Middle Ages. Before Volume One ends, however, we encounter two topical chapters: one on the intercommunal integration of widely dispersed Jewry into a series of regional and, in a sense, a continental and well nigh universal "supercommunity," and another on local associations. Volume Two maintains a consistently topical treatment covering the subjects of Membership and Elections, Lay and Ecclesiastical Officers, Religious Guidance, Education and Public Enlightenment, Law Enforcement, Public Finance, Social Welfare, and ends with a prophetic and retrospective chapter on Capitalism and Enlightenment which brings the record of the Jewish communities on the eve of Emancipation before the reader for concise review and evaluation. At this point the general reader will stop and wonder what lessons this rich microscopic view of Jewish community life has taught him that will be of help in understanding the collective life of the Jews and of mankind and in groping for the general principles that we need so sorely to steer the course of the Jews and of other minority peoples in the uncharted future. But the scholar will not stop there. He will go on to Volume Three which marks this work as monumental. Indeed, he will have had Volume Three constantly at hand as he read the other two to share the author's learning and acute insights not only into the sources upon which the text rests, but into the finer points and the controversial issues and the unexplored frontiers of scholarship which are there offered in the form of notes and bibliography.

The scope and the organization of the work makes a certain amount of overlapping, discontinuity and repetition unavoidable. The lay, and not infrequently the sophisticated reader is likely to be confused by the author's tendency to take for granted that the time and place context of his descriptive and interpretative materials is unambiguous. This detracts unnecessarily from the otherwise elegant and easy flowing style, the discriminating use of language and the fascinating and illuminating treatment of subject matter.

This study is in a very real sense a successful attempt to write a history of the Jews in the spirit of the "new history" as described by James Harvey Robinson, which would make the historical record of a people reflect faithfully not merely the leaders and the dramatic crises of wars and politics, but the whole gamut of institutions, of characteristic ways of life, of social groupings, of the ordinary routine day to day rounds of life of ordinary individuals, of formal and informal associations, of conflicts and problems of adjustment, of typical attitudes and sentiments—in short of the unstated assumptions upon which life proceeds, of the common understanding and the claims and expectations

which are the essence of the structures we call societies. To be sure, Salo Baron's work does not contain such conventional chapters as the family, population, social classes, occupations, leadership, etc., but the discerning reader will have no difficulty in reconstructing from the incidental treatment of these topics in the scattered pages of these volumes a fairly adequate picture of the evolving Jewish community in these respects.

The concept "community" is not precisely defined in this study. As the author uses the term it contains the elements of both *Gemeinschaft* and *Gesellschaft* as set forth by Ferdinand Tönnies, of *mechanical* as well as *organic* solidarity as these terms are used by Emile Durkheim, and of *status* as well as *contract* as indicated by Sir Henry S. Maine. Professor Baron seeks to include within his conception of community not merely a population in a given habitat, or the ecological entity, but the social structure and the body of institutions, laws, habits, attitudes and sentiments as well. He treats the symbiotic and the consensual elements that go to make up human collective life as one. His emphasis, however, is upon the element of social control, i.e. he seeks to uncover the ways in which men are affected in their behavior by the influence and the presence of their fellows. In short, he is interested in Jewish collective life not only in so far as it was a community but also a society. He has not, however, fallen into the error, so common among even modern historians, of assuming that the most effective forms of control are the formal and especially the legal devices. With a fine sense of balance he has recognized the important function of informal controls particularly in the intra-group relationships.

The limitations of space forbid an adequate account of Professor Baron's specific contributions and a rigorous evaluation of the controversial issues upon which he sheds light, even if the reviewer were competent to undertake such a task. The partisans and the sectarians will no doubt find in his pages many evidences of bias. The present reviewer, however, is bound to say on the basis of his limited knowledge of the subject that if the work is colored by preconceived notions, as the work of every author who has interest in a subject and has something important to say is sure to be, the author has successfully concealed them. Indeed, it is difficult to see how anyone could have written on a subject of such relevance to the most crucial contemporary issues among world Jewry and have been as successful in resisting the temptation to teach lessons and advocate solutions as our author has been.

While no attempt is made in the work to classify the historical forms of the Jewish community into neat types and to arrive at sweeping generalizations and evaluations, the study is not at the same time an unanalyzed mass of raw facts. The generalizations and personal judgments set forth are of limited scope. Considering the variegated forms and the

heterogeneous settings of the social arrangements covered, the author wisely refrains from oversimplification and unwarranted abstractions. His task is to make us understand and not to preach a moral sermon. He does succeed brilliantly, however, in showing the roots of the contemporary conditions of Jewish communal life, at least up to about the beginning of the last century. He examines dispassionately the survival values of the various institutions, practices and forms of Jewish social life without forgetting that a given social institution might be conducive to group solidarity and survival in one social and physical setting and be disintegrative in another. He holds to the view that no single, simple doctrine can account either for the survival of the Jews or for their peculiar fate. It is not merely what goes on inside the Jewish community that determines the career of the Jews, but what goes on in the outer world as well. Those who look for a panacea which will give a certain prescription for the ills of the Jews in the modern world will be disappointed in this work. Those who look for understanding will be rewarded.

Professor Baron needs not be told that his continuation of the story through the last century and up to the present will be eagerly awaited. By adding this publication to its brilliant predecessor in the Morris Loeb Series, namely Louis Finkelstein's *The Pharisees,* the editors have set a new high standard for Jewish scholarship in America.

University of Chicago LOUIS WIRTH

MINOR HISTORICAL WRITINGS AND OTHER ESSAYS. By *Henry Charles Lea.* Edited by *Arthur C. Howland.* University of Pennsylvania Press. Philadelphia, 1942. Pp. IX and 414.

"NO STUDENT of modern history can pronounce the name of Du Cange without a feeling of affectionate veneration. The rare combination of qualities requisite to lexicography—patient industry, critical acumen, exhaustless learning—so seldom vouchsafed to a single individual, render those who succeed in perfecting their self-imposed and repellent tasks benefactors of no common order." These characteristic words of appraisal, expressed in a review of Du Cange's *Glossarium Mediae et Infimae Latinitatis* by Henry Charles Lea (p. 371), may well be applied to the great historian of the Inquisition in the Middle Ages himself. It is unnecessary to enumerate his voluminous standard works, well known to every mediaevalist and historian of law. Lea, resembling Du Cange in all the scholarly qualities extolled by himself, showed resemblance to him also in another respect: he left piles of manuscripts behind him. The notes and material he collected and prepared for writing a history of witchcraft were published posthumously in three volumes

by the University of Pennsylvania, in 1939. Now, thirty-three years after the author's death, another collection of essays and studies is published in the present volume. It contains all of Lea's minor historical writings not later incorporated in his larger works. They are mainly concerned with the Inquisition (three essays, pp. 71-94), Spanish History (three essays, pp. 203-263), and the Church (six essays, pp. 97-199); others refer to nineteenth-century Church and public affairs (pp. 267-368). Most attractive and important for the readers of this journal are the studies on the Inquisition (pp. 71-94), some of them having been only summarized in the *Inquisition of Spain*, III, pp. 551-54; and the essay "The Ecclesiastical Treatment of Usury" (pp. 129-151), also summarized in the *Inquisition of Spain*, IV, pp. 371-74. A few of Lea's many book reviews have been included in this volume "as examples of the conscientious manner in which he responded to this demand upon his time." The depth and minuteness of Lea's knowledge appear also from these byproducts of his scholarship. Sincere thanks are due to the Editor, Arthur C. Howland, who discharged himself of his difficult task with a circumspectness and accuracy worthy of Lea's writings.

GUIDO KISCH

MARRIAGE LAWS IN THE BIBLE AND THE TALMUD. By *Louis M. Epstein.* Harvard University Press. Cambridge, Mass., 1942. Pp. X + 362.

IN HIS BOOK on the Jewish marriage contract published in 1927, the author gave us a critical and historical study of the complicated rules governing the relations between husband and wife. His present treatise may be considered, in a certain sense, as a sequel to that preceding volume. Of six chapters, the first three are devoted to an investigation of three marriage institutions, which have fallen into innocuous desuetude, namely, polygamy, concubinage,[1] and levirate marriage; the last three chapters treat principally of impediments to marriage, namely, intermarriage, incest, and other marriage prohibitions.

As for the scope of this book, the author does not profess to array and discuss in exhaustive fashion the complete data on these themes, the materials for which are scattered throughout a thousand Hebrew legal tomes and more. Such a task would require a series of volumes the size of this one. But as he apprises us in the Preface, his aim was to present a comprehensive historical survey of these legal institutions and

[1] On p. 69 note 115, with regard to concubinage in Greece and Rome, cf. also E. Hruza, *Beiträge zur Geschichte des griechischen und römischen Familienrechtes*, II, (Erlangen-Leipzig, 1894), pp. 62-93; Jean Plassard, *Le Concubinat romain sous le Haut-Empire* (Toulouse, 1921).

prohibitions, from their remote beginnings to modern times. He thus endeavors to trace the various laws to their biblical roots, lavishing much attention upon Assyrian and Babylonian parallels, and describes the development of these institutions in the talmudic epoch, noting their mutations in the circles of the Jewish Hellenists and sectaries, with occasional observations on Greek and Roman influences, and their evolution in the post-talmudic era, both among the Rabbanites and Karaites.

The author's forte is manifestly in the field of historical study of the Jewish law. The volume betrays mastery of the subject matter, patient research and analysis, and exhibits much penetration and discrimination. However, in a work of this scope, points of disagreement over matters of interpretation are inevitable. This reviewer should like to register a few points wherein he differs with the learned author.

On p. 117, Dr. Epstein notes that the ceremony preliminary to the consummation of the levirate marriage, which became customary in post-biblical times, is not called *Erusin* or *Kiddushin*, which would imply conveyance or sanctification, for the levirate widow is neither conveyed nor sanctified anew. The term used is מאמר, meaning oral declaration or promise. But no explanation is offered why the formula for מאמר or levirate betrothal, is identical with that of the usual betrothal, "Be thou betrothed (מקודשת) unto me according to the laws of Moses and Israel." It seems to me that at first the prescribed form of declaration at the levirate betrothal read as follows: "I, so and so, promise to provide for the due nurture and support of so and so, my sister-in-law, but the right to dower shall be assigned to her from the estate of her first husband" (*Tosefta, Yebamot,* II, 1). While the *Tosefta* prescribes this form only when the statement was a written one, there can be little doubt that the formula originally was recited when the declaration was oral. At a later period, the מאמר, for some reason, lost its distinctive character, and was completely assimilated to the ordinary betrothal from which it became indistinguishable, and consequently the ceremony was identical in both cases (cf. *Yebamot,* 52 b; *Yerushalmi,* II, 1; V, 1; *Tosefta,* II, 1).

On pp. 251-254, in his discussion of the laws governing the marriage of uncle and niece, the author maintains that the rabbis attached special merit to marriage with a sister's daughter because it was prohibited by the Romans (cf. p. 253, note 120). This argument is unconvincing. It should be recalled that in Roman law, too, marriage between uncle and niece, both brother's daughter and sister's daughter, was originally entirely prohibited. Only for the benefit of Claudius was the law changed to permit marriage with a brother's daughter. In the time of Constantine, the pristine prohibition was restored.[2] Neither can I agree with

[2] Cf. William W. Buckland, *Textbook on Roman Law,* second ed. (Cambridge, 1932), pp. 114-115; Edgar and Hunt, *Select Papyri,* II, (Cambridge, 1934), p. 47.

the author that the statements in the *Mishnah, Nedarim,* VIII, 7 and IX, 10, can be taken as an indication of popular antipathy to the marriage of uncle and niece. The refusal there of the uncle to marry his sister's daughter is to be attributed to purely personal reasons as is particularly clear from *Nedarim,* IX 10.

On pp. 174 and 194, the author remarks that the tannaitic rule promulgated by the school of Jabneh (second century) which declared marriage between Jew and Gentile invalid and not merely prohibited, was inspired by Roman jurisprudence and that the derivation from the biblical verses, *Deut.* 7:3 and 21:13, quoted in support of the rule, is far-fetched. I cannot follow the author in his reasoning on this point. To me it seems that the rule is a logical development within the framework of the Jewish law. For we do find other prohibited marriages which are also invalid, *e.g.,* when the prohibited union entails capital punishment or excision (*Yebamot,* 45 a). According to R. Akiba even where the marriage is interdicted by a simple prohibition it is invalid, including the case of a childless widow who married outside of her husband's family without undergoing *Halitsah* (*Yebamot,* 92 a). If such unions were declared invalid one would expect *a fortiori* a union between Jew and Gentile to be declared null and void. Now for the rabbis to read into the verse from *Deut.* 7:3 (quoted by R. Simon ben Yohai in *Yerushalmi, Kiddushin,* III, 12) not merely a prohibition of marriage but the declaration of the nullity of such a marriage *ab initio,* is not far-fetched from their point of view. Compare also the *Vulgate, ad loc.*: *Neque sociabis cum eis conjugia,* which seems to imply the same idea. For *conjugium* is a technical term for marriage in later Roman law.[3]

Neither is the parallel with the Roman law exact. In classical Roman law, a marriage between a Roman and an alien woman (*peregrina*) who was not granted the special rights of *connubium* (cf. Ulpian, 5, 4), which was frequently bestowed upon the wives of veterans,[4] was considered a *matrimonium.* This form of matrimony had some legal significance[5] albeit it is no *justum matrimonium,* and the children follow the status of the mother (Gaius, I 67). A nefarious and incestuous marriage contracted by a Roman would be null and void under Roman law,[6] but this is not the case if a Roman marries an alien. However, in later Roman law (*ca* 370, C. E.) marriage with barbarians was prohibited under penalty of death.[7]

[3] Cf. the phrase, *nulli provincialium—cum barbara sit uxore conjugium; Theodosian Code, De Nuptiis Gentilium,* III, 14, 1.

[4] Cf. Edouard Cuq, *Manuel des institutions juridiques des Romains* (Paris, 1917), p. 161, note 5.

[5] Cf. Papinian in *Collatio,* IV, 5, 1; and Gaius, *Institutes,* I, 75.

[6] Ergo si quis nefarias atque incestas nuptias contraxerit neque uxorem habere videtur neque liberos; Gaius, I, 64.

[7] Cf. the passage quoted from *Theodosian Code, supra,* note 3.

In the bibliography I miss the עין משפט by Samuel Eisenstadt (Jerusalem, 1931) which, on pp. 321-350, lists some 350 works on Jewish marriage. Similarly, Chayim Tchernowitz's book תולדות ההלכה (New York, 1943) which contains several chapters on marriage should by all means have been mentioned. These minor criticisms do not, however, detract in any way from the value of the book, which is a welcome contribution to the study of the history of the Jewish law of marriage. Both the scholar and the intelligent layman interested in the subject will need to refer to this book.

Jewish Theological Seminary of America BOAZ COHEN

NECROLOGUES

SIMON M. DUBNOW
1860-1941

Reports of Simon M. Dubnow's death had spread in this country during the war so often that, when in the end the news of his death was true, few believed it, as if this man past eighty was not made to die. And, indeed, he was not, although his bones, like those of his fellow-martyrs in Riga, were consigned by their satanic tormentors to an unnamed grave. For Simeon Markowitch Dubnow, to give his full name, was a commanding figure, outstanding even among the celebrated men of the time in which he lived. He had the quality of genius which made him all kinds of a man—a gifted writer, a brilliant thinker, a great historian, a radiant personality, a leader and lover of his people, and one of the representative Jews of Eastern Europe.

A man's work is reflected in his personality, in his reaction to his environment and attitude to the world in which he lives, the real world, and not the imaginary world he builds up in his mind. Dubnow's personality was rich, warm, kindly and gentle, deeply rooted in his people and never estranged from them. He had lived a long life of more than two generations; he had known many upheavals, intellectual and spiritual struggles; the odyssey of his wanderings went all the way from the piety and saintliness of Mstislavl, the small Russian town in which he was born in 1860, to the religious doubts and negations of the sophisticated circle in St. Petersburg in which he lived, yet, never, never even for a moment, had he lost sight of his people, had he ceased loving, working, fighting, and struggling with and for them.

He started out upon his career as a writer. Fundamentally he was a literary man. Writing was his metier, and his style was so fresh and brilliant, possessing the qualities of both depth and sincerity, that editors and readers forgot his extreme youth. He wrote leading articles for the best-known Russo-Jewish publications of St. Petersburg, principally the *Voskhod*, counterpart of the Hebrew *Ha-Shahar* and *Ha-Shiloah*. But soon other dreams had begun to shape themselves in his mind, dreams of more enduring work than the ephemeral articles he was turning out. For, in addition to being a writer, Dubnow was a thinker and scholar whose younger days were spent under the influence of his grandfather, Ben Zion, a wise and learned man, poring over the Bible and the Talmud. At first he dabbled and later he devoted himself seriously to the study of the Jewish mystical movements in the seventeenth and eighteenth centuries.

The results of his studies were full-length monographs on the Sab-

batian and Frankist movements. The subject absorbed him and, while continuing his regular contributions to *Voskhod,* he started on researches in the most fascinating latter-day mystical movement of Hasidism. It was an ambitious and daring undertaking for a young man not quite twenty-five with literary assignments wholly unrelated to the subject he had in mind. But the thought obsessed him, and he began gathering material wherever he could find it—in private and public libraries, in rare manuscripts, in zealously guarded family papers, and in the personal experiences of men intimately acquainted with Hasidism. It took him several years to complete his work, for there were many digressions and diversions incidental to the life of a journalist. But when the work was done, the world had for the first time a "History of Hasidism" never attempted before, richly documented, brilliantly written, both stimulating and informative. He did more than merely write a history of Hasidism, he unraveled the social and economic tissue from which the movement was spun. It was a great work, never since surpassed, it appeared in a number of editions and translations, and is to this day read by thousands.

St. Petersburg was followed by Odessa (1890), a world different from the one he had lived in before. For Odessa was the home of the Jewish revival, the center and rendezvous place of the brightest Jewish spirits, the creators of both Zionisim and modern Hebrew literature. It was a challenging company of men who brought out what was best and most enduring in Dubnow's genius. Although only thirty years old when he arrived there, to the Odessa period of his career (1890-1903) belongs some of the most mature and substantial work of his life. It was there where, by a series of articles, he attempted to make the Jews of Russia history-conscious, gathering material from heretofore unpublished documents and community *pinkasim* which afterwards went into his *History of the Jews in Russia and Poland,* a monumental work in three volumes, covering a period of more than a thousand years, from the Kingdom of the Khazars to World War I; it was there where he wrote and published in Voskhod his famous essay, "What is Jewish History," which was subsequently developed and appeared in English translation under the title, *Jewish History, an Essay in the Philosophy of History,* a precious little book read by thousands; it was there where he began writing his equally well-known "Letters Concerning Ancient and Modern Judaism," an examination of Jewish national consciousness, in which, in contradistinction to the Zionist ideology, he advocated religious, cultural, civic and political autonomy for Jews in the Galut. These "Letters," which aroused a storm of controversy in almost all Jewish circles, were the basis for the founding of the Jewish Political Party in Russia in 1906, and provided the program for the demand for political minority rights for Jews at the Peace Conference of World War I. It was also during his Odessa domicile that, realizing the need of a compact Jewish history, he com-

piled (1896-1897) a Russian version from the books on Jewish history by S. Baeck and M. Brann with original chapters dealing with the story of the Jews in Russia and Poland, while writing a textbook of his own for the use of the Jewish youth. In addition, he contributed numerous articles for Russian, German and English encyclopedias, including the *Jewish Encyclopedia* of this country of which he was co-editor.

It was however his *magnum opus*, the *Weltgeschichte des Jüdischen Volkes*, which, shaping in his mind for some time, had absorbed his deepest interest during the years of his Odessa residence. In his thought arose a vision of Jewish history other than he beheld in the German-written histories he had read, a vision that encompassed the totality of Jewish life and not merely books, schools and abstract theological and metaphysical speculations, the group or collective consciousness of the whole people, as it were, the common ordinary masses of the people who wrote no books and founded no institutions, but just lived, struggled, and died. Such history, too, he wanted to see written with warmth, sympathy and understanding and not in the detached and impersonal manner in which many of the histories of the Jews were written. The spade work must be there, and scientific precision and accuracy, but also feeling, imagination and sentiment. Graetz' *History of the Jews* came nearest to his ideal, and he even made plans to translate it into Russian. He soon gave it up, however, in favor of writing an entirely new work himself.

The plan must have been in his mind a long time; for when he left Odessa in 1903, the first volume had already appeared and the second was being published serially in *Voskhod*. Faithful to his ideal, he devoted greater attention to the "social tissue" of the times than to the wranglings of schools and scholars, to the general stream of world-history as affecting the Jews, than to books and debates which were of special concern to scholars, taking delight in ascribing purely human and worldly causes to so-called spiritual phenomena, always digging behind the surface for the emergence of the "Jewish national soul." In addition to wide scholarship and sober judgment, the work is characterized in the original by an elegance of style and diction which makes its reading a pleasant, almost exciting, experience.

In the meantime, changes took place in the life of Dubnow. The passing events, sad and tragic for the Jews, necessitated his abandoning Odessa for other domiciles. First it was Vilna, where little work was done by him on his History, his time having been taken up with political activities leading to the rescue of his stricken and bereaved brethren, stricken and bereaved by the tremors of pogroms which arose in many places of Jewish residence. The infatuated lover of his people, the man heroically devoted to their cause and interests, is perhaps never so radiantly revealed as during his brief three-year stay (1903-1907) in this city. Meetings, conferences, and consultations with the leading Jews of

Vilna had absorbed all his time. Those were days of fighting, not writing, and Dubnow the scholar, the literary man, laid aside the pen in favor of the sword.

Then it was St. Petersburg, still the capital of the Russian empire, but already tottering to its collapse. There were great rapid changes, swiftly shifting events, war, disturbances, disorders, revolutions, first Kerensky and the provisional government, then Lenin and the Bolshevist counter-revolution with its tragic after-effects for the Jews. Simon M. Dubnow had witnessed all this, had lived through and experienced all the pain and the suffering it implied, had experienced cold, hunger, privation, and loneliness. One cannot read his diaries of those days, days of wrath and catastrophe, without a lump coming to one's throat, without admiring the courage, the heroism, the endurance of the man approaching sixty, yet dreaming, writing, working under circumstances which tax belief.

He might have succumbed were it not that, suddenly, release came to him from the hell of his Soviet prison. He went to Kovno where, for a while, he occupied the chair of Jewish history at the university of this city. But he could not have stayed there very long, for we find him soon afterwards in Berlin, capital of the Weimar Republic where he was reunited with many of his old friends and where he enjoyed a brief respite before his last ordeal. It was in Berlin during the years 1925-1929, that he witnessed the consummation of his life-work, the publication in German translation of his *Weltgeschichte des Jüdischen Volkes von seinen Uranfängen bis zur Gegenwart,* in ten great volumes. It coincided with his seventieth birthday, and to commemorate both events, the late Prof. Ismar Elbogen in collaboration with many outstanding scholars, published a *Festschrift* (Berlin, 1930).[1]

When the Nazi satanic hordes swept over Germany and many who could escaped, Dubnow accepted the hospitality of Riga. It was a tragic blunder for which he finally paid with his life. His last years in this city are shrouded in darkness and uncertainty. Not even his daughter whom the writer consulted for enlightenment, could be helpful. Of this much, however, she was sure, that it was during his Riga exile, that her father had arranged his diaries and wrote his memoirs in several large volumes which appeared in a greatly abridged form in German as, *Mein Leben,* (Berlin, 1937), and slightly more fully in two volumes in Hebrew under the title, *Sefer ha-Hayim,* published at Tel-Aviv the same year. Huge piles of personal papers and correspondence of inestimable value for an understanding of the spirit of his times were smuggled out of Riga by him for "safe-keeping" in Vilna, alas, for a fate one might easily guess.

[1] This *Festschrift* includes also a bibliography of Dubnow's writings, Josef Meisl, "Simon Dubnows Abhandlungen und Schriften," pp. 266-295; originally published in *Soncino-Blätter,* I (Berlin, 1925-26), pp. 223-247.

There is no information on how Simon M. Dubnow behaved or acted when the orgy of slaughter spread through the Riga ghetto, or how he personally had met his fate, but one may feel assured that a heart so staunch and strong as his, did not fail him in the last moment. He died as thousands had died before him, in the supreme faith in the destiny of his people.

New York City JACOB S. MINKIN

ISMAR ELBOGEN
1874-1943

Looking at the world he intends to describe the historian becomes aware that men and events, ideas and institutions are largely shaped by factors outside themselves. He knows that nothing stands by itself, that everything is connected in all directions by numberless ties with living and life-creating forces. He manifests his objectivity by the degree in which he himself moves with the stream of life, remembering that he too is subject to this principle. His research into historical problems is itself history, the more so if he is significant and important enough to pass into the history of his science.

Ismar Elbogen possessed the cardinal virtue of moderateness in the depth of his soul. He had pondered too much over the character and fate of his specific *Fach* to become a dogmatist, had experienced too keenly the change in opinions and attitudes not to sense in that change a revelation of the true nature of history. He was a scholar, yet not a *Matmid* secluded in the four cubits of his learning. He lived in, and felt and acted with, German Jewry during its last two generations.

That was a community not only split up into warring parties, as all Jewries are, but drawing a powerful stimulus to spiritual and practical life from its sometimes heated debates. Elbogen did not join any distinct group, yet he observed closely the shifting currents of opinion, feeling that the dissension was an expression of the soul of modern Judaism. Indeed, it was an instructive school for an historian.

Again and again he sought the true meaning of the *Wissenschaft des Judentums,*[1] clarifying it by a threefold investigation. Tackling his problem directly, he developed "the idea of the *Wissenschaft des Judentums,*" rendered account of its achievements in the last half century, and by the end of the First World War called for a new approach to our learning; or again he presented portraits of its outstanding representatives, men such as Leopold Zunz, Samuel D. Luzzatto, Moritz Stein-

[1] As to Elbogen's books and writings mentioned in this article, see Jenny Wilde, *Verzeichnis der von Prof. Dr. I. Elbogen* 1898-1924 *verfassten Schriften* (Berlin, 1924; 1927); continued in *Monatsschrift für Geschichte und Wissenschaft des Judentums,* LXXVIII (1934), pp. 465-471.

schneider, Ludwig Philippson, Heinrich Graetz, Abraham Geiger, Alexander Kohut; and lastly he selected and published examples of scholarly correspondence, such as that between Zunz and Michael Sachs, or between Graetz and Halberstam. His work in this field indicates that he did not seek confirmation of his own preconceptions in one or another brilliant personality. He was content to listen and to lead others to pay heed to those who had something to say.

It is impossible to separate in him the scholar from the Jew who was deeply affected by important events. The decisive impressions of his home and his youth made him a conservative, and his personal adherence to tradition never wavered. Yet he was clearly conscious that the forces which had molded him were by no means the only ones possible or justified. To say that he was not ready to surrender to any party or school does not denote a cool neutrality. His was rather the attitude of the biblical word, "I dwell among mine own people." He was an enemy of extremism in the sense in which a German thinker said: "Any radicalism is fallacious." However, he did not shun the vigorous and forthright word when it was necessary. When Harden's *Zukunft*, influential among a large and important audience, opened its columns to a Jewish author (Jacob Fromer) to ring the death-knell of Judaism, it was Elbogen who gave the appropriate and splendid answer. The author of *Dorot Ha-Rishonim* did not escape his well-deserved punishment when honor and scientific truth required that Jewish scholars in Germany defend themselves against unjustified attack.

Several times Elbogen differed with Zunz's definition of the *Wissenschaft des Judentums*. He could agree with him that such an approach to Jewish literature was the road to an all-encompassing research into the history of the national culture. But he proceeded beyond Zunz. For Zunz archeology was the last word of the Jewish mind, its past the final expression of the Jewish group. That was an error. Whatever our people has suffered during the last century, particularly in our generation, it is certain that Zunz's pessimism has been refuted by the facts. Elbogen quite unemotionally believed in the future of Judaism and wished that living organism to be the subject of study. Art and music, social and spiritual achievements are equally entitled to our attention. These problems, suggested by modern nationalism have only just begun to play a part in the *Wissenschaft des Judentums*.

It is evident that in advancing from a study of the past to contemporary problems of whatever kind the critical mind must resort to systematic principles, to a set of values, on the basis of which historic phenomena are to be judged. Though a sharp line of demarcation cannot be drawn between the historical and the systematic aspects it is clear that, particularly in philosophic and religious issues, the student must before all else carefully and critically analyze his own thought and the spirit of which he is a spark. Most professional scholars have too

long adhered to the prejudice that historical research is the only justified business of Jewish science. Elbogen was an exception. He was and continued to be an historian. However, he did not disdain those who took pains to reformulate old problems for the living. He did not see why we should be concerned only with the faith of R. Meir of Rothenburg and not with the contemporary theological problems, too, as long as they are presented in a serious way.

Elbogen possessed not only an analytical mind, but the capacity to proceed beyond isolated facts to a total fabric of ideas. Once he spoke of people who, although widely learned, were yet not learned men, true scholars. His knowledge was very vast, but he was a scholar. The sense of the essential pervades his most original work in which he describes the historic development of the Jewish liturgy. In the Preface he deemed it necessary to point out that the reader would not find a complete list of Piyyutim, that all the nuances of the various rites were not recorded. That, he explained, belonged to the history of literature and would be out of place in a book dealing with the development of the liturgy. (Elbogen used to give special lecture courses on literature, a subject comparatively rare in the curriculum of rabbinical schools.) He does not confuse the reader with petty detail but is concerned rather with the evolution of the forms of religious expression in the services from the earliest period to the present. His great work is thus a most important contribution to the history of religion as revealed in prayer and ritual. That he pursues this development up to his own time, and does not stop with the completion of the traditional Siddur and Machsor, nor refrain from telling the story of the innovations and reforms of the last century, all this is again evidence of a mind open to the whole of Jewish life.

Thus Elbogen was more than any other fit to depict Jewish life during the last century, the epoch ending with the tragedy of German Jewry in 1933. His last book, designed to supplement Graetz's *History*, will soon come from the press.

Let us once more return to the remarkable personality of Elbogen the scholar. For all his conservative leanings, when Jewish congregations or rabbinical organizations asked his advice in their efforts to reform the traditional prayer book he did not deny it to them. He was neither a Zionist nor an anti-Zionist. Yet he pursued with fervent devotion to the Jewish cause the fortunes of every political and religious current. Unlike many another scholar whose love is lavished on books and documents, Elbogen's affection was centered on Jews and Jewish institutions and ideas, and for their preservation into a creative future he lived and worked. He started from the *Breslauer Richtung*, but he never sought to convert Jews to that program. In his catholicity of Jewish interest lay his greatness.

This characteristic became very useful to the teacher and practical organizer of scholarly endeavor. Personally Elbogen led a life detached

from the noise of the world, but still he lived within the world and understood its needs. He knew how to solve questions, but also how to raise questions at the appropriate hour. We refer to the outstanding part he played in the production of literary works designed for the higher education of German Jewry, of the adults who longed for knowledge. Every important encyclopedic work issued in the last generation contained not only contributions from his pen, but reflected his counsel and organizing ability. The *Jüdisches Lexikon*, the *Encyclopaedia Judaica*, the *Lehren des Judentums* are among these enterprises; Elbogen was also, as one may put it, the Jewish liaison officer to Gunkel's *Religion in Geschichte und Gegenwart;* and this apart from his contribution to *Germania Judaica* and other scholarly publications, including the *Zeitschrift für die Geschichte der Juden in Deutschland*. Those who had the pleasure to collaborate with Elbogen, will never forget the clear intelligence and unfailing instinct discriminating between the possible and the fanciful, the skilful mediation which threw bridges between stubborn people. The *Gesellschaft zur Förderung der Wissenschaft des Judentums* was particularly indebted to his leadership.

It is no exaggeration to say that Elbogen became the teacher of German Jewry. Professor of history at the *Hochschule für die Wissenschaft des Judentums* in Berlin, he educated, during thirty-five years, several generations of rabbis. He was their guide as well as teacher. His human kindliness and benevolence, his honest will to do good, combined with an unfailing instinct for the right means to help, made all of them revering friends. Brilliant scholars have worked at that institution during the second half of its existence, but Elbogen was its soul and embodiment. To call him the teacher of the Jewish community is not to limit his function to teacher of those who went out themselves to spread Jewish learning. He was the author and inspirer of works which reached the common people; his popular books on Jewish history and particularly on the history of the German Jews represent a tremendous advance over similar earlier efforts. He did not merely retail titles of books and tables of dates, but described movingly the fate of men and evoked a sense of kinship with the past. No strident pathos, no apologia,—we hear, instead, the simple story of his people told by a learned Jew who lived among and loved his people.

New York City MAX WIENER

IGNACY SCHIPPER

1884-1943

Ignacy Schipper, whose untimely death in the Polish hell we deeply mourn, was a lawyer by profession, a member of the Polish Parliament, a leader of Labor Zionism, and a prominent figure in the political and

cultural life of Polish Jewry between the two wars, but he also achieved outstanding distinction in the domain of Jewish historiography.

Schipper made his start with a study of the history of the Jews in his native town of Tarnow (Galicia), published in the *Kwartalnik Historyczny*, in 1905, which fitted in with the local histories written at that time by Moses Schorr (on Przemysl), Majer Balaban (on Lwow), and others. Problems of the economic and social history of the Jews in the mediaeval and modern epochs attracted Schipper's abiding interest since his early steps in the field of Jewish history. His analysis of the origins of Capitalism among the Jews in Western Europe, "Anfänge des Kapitalismus bei den abendländischen Juden im frühen Mittelalter," in *Zeitschrift für Volkswirtschaft, Sozialpolitik und Verwaltung*, XV (1906), also published as a separate pamphlet (Vienna, 1907), won attention in scholarly and wider circles as well. Translations appeared in Russian, with an introduction by the present writer (1910), and in Yiddish (1920).

Schipper then concentrated his researches on the economic evolution of the Polish Jews during their thousand years' history. The quintessence of this work, carried on for more than a generation, was embodied in his *Studies of the Economic Conditions of Polish Jews in the Middle Ages* (1911, Polish), and in a comprehensive *History of Jewish Commerce in Poland* (1937), Polish). Numerous contributions from his pen on subjects hardly treated before, *e.g.*, the amazing net of Jewish taxes in the old Polish state, statistics and topography, agriculture among the Polish Jews, and others, appeared in scholarly journals and encyclopedias, such as the *Russian Jewish Encyclopedia*, the quarterly *Yevreyskaya Starina*, and the cooperative *History of the Jewish People*, XI (Moscow, 1914). Distinguished alike by breadth and depth of scholarship was Schipper's four-volume *Jewish Economic History* from the close of the ancient period to 1500, in Yiddish, supplementing Georg Caro's well known *Sozial-und Wirtschaftsgeschichte der Juden im Mittelalter und der Neuzeit*. Hand in hand with economic researches went extensive studies in the history of the Jewish theatre, the cultural life of Polish Jewry in the Middle Ages, the autonomous communal organization of the Jews in Poland, and the Jews in Congress Poland at the time of the rebellion of 1831.

Schipper was a painstaking scholar, fond of his fascinating discoveries in Polish archives. He combined a thorough analysis of facts with a gift for systematization and generalization. Sometimes he was inclined toward hypothetical statements like that on the spread of early Khazar and Jewish settlements in Poland on the basis of geographical names containing the words *Khazar or Zyd*, and thus he occasionally indulged in fanciful theories in spite of his devotion to conscientious re-

search. He was also a dreamer, a visionary, a poet. His popular historic articles in the Warsaw Yiddish press were written in a light, novelistic manner, so as to appeal to the ordinary reader and to foster his interest in and understanding of the eventful past of Eastern European Jewry. But these romantic bypaths did not deflect Schipper from the highways of scholarly work. In him the Jewish people has lost a brilliant scholar, a representative historian, a devoted worker, and a champion of Jewish rights and aspirations. I personally mourn the passing of a true friend and helpful colleague.

New York City MARK WISCHNITZER

ELIAS TSCHERIKOWER
1881-1943

Elias Tscherikower, the well-known historian of Jews in modern times, died August 28, 1943, at the age of sixty-two.

Born in Poltava, Ukraine, he studied in St. Petersburg, where he was imprisoned for a year because of his revolutionary activities. Under the influence of Simon Dubnow he devoted himself to the study of Jewish history. In 1913 he published a volume on the "History of the Society for Enlightenment of the Jews" (*Hevrath Mefitsei Haskalah—Istoria Obshtshestva dla Raspostranyenya Prosvyesthshenya Myezhdu Yevreyamy v Rossyi*) embracing the period to 1870. In 1915 Tscherikower came to this country, engaging actively in the movement for the foundation of an American Jewish Congress. After the October 1917 Revolution he returned to Russia. As one of the organizers of the Jewish Secretariat of Ukraine he was instrumental in editing the collective work on this institution (*Die Yiddishe Autonomie un der Natsionaler Sekretariat in Ukraine*), published in Kiev, 1920. After his emigration to Berlin he published a book, *Anti-Semitism un Pogromen in Ukraine*, 1917-1918, based on materials from the "Ost-Jüdisches Archiv," of which he was one of the founders. In 1924 he edited a collection of memoirs and documents on the Jews in the Russian revolution under the title, "In the period of Revolution" (*In der Tkufe fun Revolutsie*). After 1933 he settled in Paris, and in 1940 finally found refuge in America.

As secretary of the Historical Section of the Yiddish Scientific Institute since its inception, in 1925, Tscherikower devoted his entire research work to this institution. He was editor of the three volumes of *Historische Shriften*, published by the YIWO and contributed valuable studies on Jewish revolutionaries and on the history of Jewish socialism. In 1942, two volumes of a collective work "Jews in France" (*Yiddn in Frankraich*) appeared under his editorship and, in 1943, the first volume of the "History of the Jewish Labor Movement in America" (*Geshichte fun der Yiddisher Arbeter-Bavegung in die Fareynikte Shtatn*), of which he also prepared the two volumes which are still unpublished.

Jewish historiography has lost in Elias Tscherikower a prolific writer and one of the foremost authorities on the much neglected field of the history of the Jews in recent times.

Jewish Teachers Seminary RAPHAEL MAHLER

ISRAEL ZINBERG
1873-1943

Israel (Sergei) Zinberg was not one of those Jewish scholars who could devote his entire life to Jewish research. He was by profession a chemist and apparently a very good one because the Tsarist government employed him for over fifteen years in a responsible position in the laboratories of the Putilov Works, despite the fact that he had received his doctorate in Basle and therefore had, strictly speaking, no right of residence in St. Petersburg. His whole interest was however concentrated on Jewish literature and culture and he dedicated all his free time thereto with a zeal that grew with the years.

His name is associated with a great number of literary and communal undertakings which sprang up in the active Jewish community of St. Petersburg at the beginning of the twentieth century and especially with that democratic wing of Jewish public activity which believed in the importance of developing the Yiddish language into an instrument of modern culture. He was influential in the founding of several Jewish publishing houses, was for many years a member of the Executive Board of the Society for the Diffusion of Enlightenment, a contributor to the series *Perezhitoye* and to Dubnow's quarterly *Yevreyskaya Starina.* He was the editor of the section for Jewish literature in the *Yevreyskaya Entsiklopediya,* a sixteen volume work partly based on the material of the *Jewish Encyclopedia* which was prepared in New York about ten years before. But particularly in Zinberg's section, much new material may be found in practically every article, as compared with the *Jewish Encyclopedia.*

During the First World War he published in Petrograd his book (in Russian) *History of the Jewish Press in Relation to Social Trends* (1915), a work which is even today not outdated but is unfortunately little known because the center of Jewish scholarship has shifted to countries and people not acquainted with the Russian language.

His belief that Russia was no longer the center of Jewish scholarship apparently influenced Zinberg to publish his fundamental *History of Jewish Literature* in a language inherently Jewish. He began work on this project before the First World War and started writing it during the war; one volume was published in Russian during the revolution. After that, however, he turned to Yiddish, a language which he had often used for articles in periodicals and for public appearances, and was able to complete ten volumes covering the period of European predominance

in Jewish history, i.e. from about 1000, and divided as follows: the Arabic-Spanish era; the German-French settlement; the Jewish settlement in Italy; the struggle against philosophic rationalism in the Middle Ages; Italian Jews during the Renaissance; the Jewish cultural center in the Ottoman Empire; the German-Polish cultural center; Jewish literature from the earliest times until the Haskalah era; the Berlin Haskalah; Hasidism and Enlightenment, the Galician Haskalah; the Haskalah in Russia.

A study of such great scope cannot be completely uniform in its execution and there are some portions which give the impression that the material is not fully integrated, but this is a minor consideration in comparison with the many excellences of the work which is largely based on a study of original sources. Zinberg not only presented more material, but he presented it differently. Jewish literature was shown as part of Jewish culture and Jewish culture was depicted against the background of European culture. The new and enriching quality of his achievement lies in his conception of Hebrew and Yiddish literature not as two disparate worlds but as two forms of expression for the same Jewish collective personality. Every line of his work is permeated with a great love for the Jewish past and profound faith in Jewish ethics. This "traditional" approach explains why Zinberg's work could not appear in Soviet Russia. He had to publish it in Vilna, Poland. (A New York publisher recently reproduced the Vilna edition and so the history is now available here.) In fact it even seemed somewhat strange that, while publishing such a work in a "bourgeois" country, Zinberg was able to continue in his responsible position in the Putilov Works which had, of course, become a nationalized enterprise. He finally became a victim of the regime, though no one can tell whether the blow against him was dealt because of his *History of Jewish Literature* or was just a concomitant of the general purge among Russian engineers. In any case, he was arrested several years before the outbreak of the present war. According to the latest reports he died in a Soviet prison, when or where is not known. In 1943 he would have been 70 years old.

Yiddish Scientific Institute MAX WEINREICH

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THE PSALMS IN JEWISH LITURGY

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IN his introduction to his excellent *Companion to the Authorized Daily Prayer Book*,[1] Israel Abrahams concludes with the words, "Taken as a whole, it is a not unworthy sequel to the Psalter from which it has drawn so much of its inspiration." Even a cursory review of the daily prayer book confirms the truth of the latter part of that sentence. The Prayer Book is impregnated with the spirit of the Psalter, containing, in addition to an unusually large number of Psalms,[2] whole passages, and these the commonest and best known parts of the prayers, which are nothing more than a mosaic of verses from the Psalms. Were these elements to be removed from the Prayer Book, it would be left mutilated and unrecognizable.

The Prayer Book represents a process of evolution over some 1800 years,[3] an evolution which took the form of a steady addition to the parent stock, all addition and no subtraction, until it assumed its present familiar shape. A consideration of this process reveals the striking fact that this "inspiration of the Psalter" which is regarded as its outstanding feature, is the fruit, almost in its entirety, of this later

[1] (London, 1914), p. IV.

[2] The Index to Psalms at the end of the *Authorized Daily Prayer Book* enumerates 67 Psalms.

[3] Roughly from about 200 B. C. E., when we know the Eighteen Benedictions to have existed in some form, and *circa* 1600 when the last additions of importance were made. Many of the Psalms, however, are of even later date of insertion. See *infra*.

growth, and that the development of the liturgy is coupled with the gradual recognition of the peculiar aptness of the Psalms to express the spiritual yearnings of the Jewish people. What is more striking, their insertion seems to have been the result of popular pressure rather than of rabbinic legislation. A brief review of the successive stages in this development will serve to invest this thesis with the axiomatic certainty of fact.

If we begin with the talmudic period, as we must, the first outstanding point which emerges is that, surprising though it may seem, there can be no question that during the whole period of the Talmud, with one exception, the Psalms had no place at all in public worship. Limited and unsatisfactory though our knowledge of the Synagogue and its origins is,[4] the main outlines of the service are too well known for any doubt to be harbored on this point. The morning and evening services consisted of the *Shema* with its attendant blessings and the *Amidah,* the afternoon service of the Amidah alone. The sole exception, referred to above, was the Hallel, Psalms 113-119 or, to distinguish it from Psalms 145-150 and Ps. 136, which are also variously referred to as Hallel,[5] the "Egyptian" Hallel.[6] These Psalms were originally recited on 18 days of the year in Palestine, and on 21 days in the Diaspora, *viz.*, the first day(s) of Passover, Pentecost, every day of Tabernacles and Hanukkah.[7] Later, the "half-Hallel" came to be recited on the other days of Passover,[8] and when Abba Areka (Rab) returned to Babylon from Palestine, he found an old-established custom, the origin of which had been forgotten, of reciting this "half-Hallel" on new moon. Although the Talmud expressly excludes the recitation of Hallel on the new moon[9] the force of custom, coupled with the peculiarity of its "half" recitation, led

[4] See L. Rabinowitz, "The Synagogue and its Worship," in *A Companion to the Bible,* ed. by Thomas W. Manson (New York, 1939), pp. 453-461.

[5] *T. B., Shabb.,* 118 b.

[6] *Ber.,* 56 a.

[7] *Arakin,* 10 a.

[8] *Meg.,* 10 b.

[9] *Arakin, loc. cit.*

Rab to agree to its retention,[10] and so it has remained to this day.

With this sole exception, the public liturgy during the period of the Talmud was completely "psalmless." On the other hand, talmudic literature shows clear signs of the growing importance of the recitation of certain Psalms as acts of private devotion. In the period immediately following, these were avidly seized upon as the raw material to be fashioned into the first important addition of Psalms to the Jewish liturgy.

This period is the period of tractate *Sopherim,* between the close of the talmudic era, *ca* 500 C. E., and the beginning of the geonic, *ca* 650-1050 C. E. *Sopherim,* which in its present form dates from the eighth century, contains a mass of liturgical material, including all the elements which have combined to impregnate our present-day liturgy with the Psalms and their spirit. These elements are:

1. the impressment of every stray reference in the Talmud to the recitation of Psalms, either as acts of private worship, or as part of the Temple service, to justify their inclusion in the liturgy;
2. the compilation of prayers from scattered Scriptural verses, mostly taken from the Psalms;
3. the clear evidence that this advance was the result of popular pressure, and not of legislation from above;
4. the selection of Psalms for special occasions.

As all later developments which led to the inclusion of still further elements from the Psalms merely ring the changes on the above four, it is worth while to discuss them *seriatim* and in a little more detail.

1. Under this heading came the last six Psalms of the Psalter, Psalms 145-150, the oldest series of Psalms in the liturgy, and the daily Psalm.

Already *Sopherim* calls the first six simply "the six

[10] *T. B., Taan.,* 28 b.
[11] *Mishnah, Ber.*
[12] *T. B., Ber.,* 32 b.

daily Psalms"[13] and justifies their inclusion in the daily service by the passage ואמר ר' יוסי יהי חלקי עם המתפללים בכל יום ששה המזמורים האלה "And R. Jose said, 'May my portion be with those who recite daily these six Psalms.'" Reference to the source of this alleged statement of R. Jose, and comparison of the original with the version of *Sopherim* is in the highest degree interesting. The original passage occurs in *T. B., Shabbath,* 118 b. It is one of a long series of statements by R. Jose b. Halafta, all commencing with the introductory formula יהי חלקי עם, "May my lot be with those who . . . ," which includes such niceties of religious practice as the recitation of the morning prayer with the first flush of dawn, the observance of the Sabbath to its utmost possible limit of time, dying in the act of performing a religious duty, the collection of charity as contrasted with its distribution, *etc.*, and among them is the statement, "May my lot be with those who *finish the Hallel* every day (מגומרי הלל בכל יום)."[13a] The obvious reference is to the "Egyptian Hallel," Psalms 113-119, and it clearly suggests that there was a group of choice spirits who used to read these unsurpassed Psalms of thanksgiving daily. So, indeed, the Talmud immediately assumes and only recedes from the assumption in the face of the later objection, couched in traditionally vigorous talmudic terms, that "he who recites Hallel daily is a blasphemer and a scorner." But this later objection by no means vitiates the assumption that R. Jose did in fact refer to the ordinary Hallel. On the contrary, it strengthens it considerably. Such vigorous reproof can only be understood on the ground that there was in fact a growing movement to recite these Psalms daily, and it is in the highest degree probable that here we have the first extension of the use of Psalms in daily prayer, nipped in the bud by this forceful objection.

13 ששה המזמורים של כל יום *Soph.*, XVII, 11.

13a See the remarks of K. Kohler, "The Psalms in the Liturgy," in his *Studies, Addresses and Personal Papers* (New York, 1931), p. 142, in which he suggests that the reference is to a custom of the Essences of reciting the whole book of Psalms daily! He also suggests that the פסוקי דזמרא are a substitute for the reading of the whole book of Psalms. But this view does not accord with the historical development of these Psalms in the liturgy.

Be that as it may, the Talmud accepts the objection as valid and has recourse to the suggestion that R. Jose was referring to the פסוקי דזמרא, the "verses of song" which were a voluntary and individual introduction to the daily prayers. The use of the word גומרי in this connection can only be justified on the assumption that the following word Hallel is a synonym for the whole Psalter.[14] But there is still no suggestion in the Talmud that it refers to six Psalms, and as late an authority as Rashi, *ad loc.*, applies it only to the last two.

The change in the wording of R. Jose's statement as it is found in *Sopherim* is therefore highly significant, as well as the phrase של כל יום, "of every day." Psalms 145-150 were already firmly fixed as part of the morning service, and justification for this was found by altering R. Jose's original wording to refer explicitly to these Psalms, and ignoring the obvious fact that R. Jose was referring to exceptional and not normal usage.

Less striking but none the less interesting, are the daily Psalms. These Psalms are mentioned in the *Mishnah*[15] as having been sung by the Levites in the Temple, one for each day of the week. There is no suggestion that the custom should be transferred to the Synagogue, but this did occur and the explanation advanced by *Sopherim* is simply that, "the people have adopted the custom," a phrase whose significance will be commented on later.[16]

2. From this innovation, it was but a short step to the inclusion of special Psalms for other occasions of the calendar, although this probably involved the recitation of two Psalms, that of the day of the week, and that of the festival, a notable advance. *Sopherim* has the following list:

Hanukkah—Psalm 30
Purim—Psalm 7
First day Passover—Psalm 135 or 83[17]

14 Cf. Rashi, *ad loc.*, and Abrahams, *op. cit.*, p. XXXVII.

15 *Mishnah, Tamid,* VII, 4.

16 Even the present day we are reminded of the origin of these Psalms by the rubric preceding each, "Today is the day of the week on which the Levites were wont to say in the Temple."

17 R. Elijah Vilna rightly, in this writer's opinion, omits the latter.

Second day Passover—Psalm 136
Pentecost—Psalm 29
Fast of Ab—Psalms 79 and 137[18]
New Year—Psalm 47
Atonement—Psalms 104 and 130
Tabernacles—Psalm 76
Shemini Azereth—Psalm 6.[19]

Of all these Psalms, the first alone has been retained in modern Ashkenazic usage, but the importance of their inclusion lies not in the actual selection, but in the principle underlying it. For the first time we have the principle of the suitability of the Psalms to express the religious emotions inspired by certain occasions, which paved the way for further development.

3. *Sopherim* also contains a detailed liturgical accompaniment, as introduction and conclusion, to the readings from Pentateuch and Prophets.[20] The passages selected there are of supreme interest for our purpose, again as an instance of the new departure in the liturgy whereby the previous free composition of prayers was succeeded by prayers consisting of a string of Scriptural verses, of which the overwhelming majority are from the Psalter. In one way this marks a deterioration of the religious spirit—some of the free compositions of the rabbis of the Talmud, many of which have found their way into the Prayer Book,[21] are models of their kind. In no case, to my knowledge, do they consist of biblical verses, and this feature of the liturgy in *Sopherim* is unprecedented. There are two such passages in *Sopherim*. The first consists of a selection of verses which the reader of the lesson from Prophets recites.[22] These verses are *Ps.* LXXXIV 5., *Ps.* LXXXVI. 8., *Exod.* XV., *Ps.* CXLV.

[18] Also 4 verses from Jeremiah.
[19] *Sopherim;* Chaps. XVIII and XIX.
[20] Chap. XIV.
[21] Cf. for a convenient selection, *A Rabbinic Anthology, ed.* by Montefiore and Loewe (1938), pp. 358-368, and the *Alenu* prayer.
[22] *Soph.*, XIV, 8.

13., a composite verse (ה' מלך, ה' מלך, ה' ימלוך לעולם ועד), (from *Ps.* X. 16., XCIII. 1, and *Ex.* XV. 18). *Is.* XLII. 21., *Ps.* XXIX. 11, and *Neh.* IX. 6. After the scroll has been replaced, the following verses are said,[23] *Ps.* LXXI. 19., *Ps.* CXXXV. 13., and *Ps.* XXXIV. 4.

The other passage, which is of even greater interest, has reference to a prayer simply called יהי כבוד.[24] Now a prayer beginning thus is common to all rites[25] and consists of a number of Scriptural verses, again mostly taken from the Psalms, the connection between them being the similarity of phrase in successive verses. The casual reference to יהי כבוד, especially when contrasted with the detailed enumeration of the verses in the passage quoted above, shows clearly that it was already a well-known prayer in the time of *Sopherim* and dates its composition to the period immediately following the close of the Talmud.

But the interest of the passage is not exhausted with this remark. The יהי כבוד of our Prayer Book consists of the following verses in this order: *Ps.* CIV. 31., *Ps.* CXIII. 2.3.4., *Ps.* CXXXV. 13., *Ps.* CIII. 19., *I Chron.* XVI. 31., ה' מלך, ה' מלך, ה' ימלך לעולם ועד *Ps.* X. 16., *Ps.* XXXIII. 10., *Prov.* XIX. 21., *Ps.* XXXIII. 11., 9., *Ps.* CXXXII. 13., *Ps.* CXXXV. 4., *Ps.* XCIV. 14., *Ps.* LXXVIII. 38., *Ps.* XX. 10. The verses from the Psalms are taken from all five books of the Psalter with the exception of Book II. That omission is supplied in the Yemenite Prayer Book which adds *Ps.* XLVI. 12. from this book, and there is reason to believe that the Yemenite form is the original.[26] At least two other ancient collections of verses from the Psalter in the liturgy show the same peculiarity.[27]

We have thus clear evidence not only of a selection of

[23] *Soph.*, XIV, 11.
[24] *Soph.*, XVII, 11.
[25] *Authorized Daily Prayer Book*, p. 28 f.
[26] For all this, cf. Abrahams, *op. cit.*, p. XXXV.
[27] The passage beginning רוממו, *Prayer Book*, p. 18 and 19, and the verses at the conclusion of the evening service before the Amidah, *Prayer Book*, p. 100.

verses from the Psalms, but of a *systematic* collection, deliberately designed to introduce an acquaintance with all the books of the Psalms. We see in this a conscious desire to make the spiritual beauties of the Psalter as a whole known to the people.

But who was responsible for this desire? It is here that we come to the last point of interest in the introduction of Psalms into the liturgy as reflected in Tractate *Sopherim*. The talmudic justification for the recitation of the daily Psalm is followed by the significant statement,[28] "For this reason *the people have adopted the custom* of reciting these Psalms in their season," while even more significant is the comment on the choice of the Psalm for the last day of Passover, Psalm 136,[29] "And the people have adopted the custom of reciting this Psalm, *even though it is not the best choice.*"[30] This clear statement that the introduction of these Psalms into the liturgy was the result of the desire of the people without any pressure from liturgical authorities, and even in the face of their mild disapproval, gains added weight from a consideration of the whole process of the development of the use of the Psalms in the liturgy.

We have dealt at some length with the incidence of the Psalms in *Sopherim* because this Tractate contains the germ of all later developments, which can now be reviewed briefly.

The next stage is to be found in the first Prayer Books or Orders of Prayer. If Psalms 145-150 could be recited daily when the principle of טירחא דציבורא, undue wearying of the congregation, could be invoked against a lengthening of the prayers, surely on Sabbaths and Festivals when this rule did not apply, more Psalms could be added. Both Sephardic and Ashkenazic rituals contain such additions, differing considerably in the selection, but equally happy in their choice of Psalms.

[28] *Soph.*, XVIII, 1.

[29] *Ibid.*, XVIII, 2.

[30] The language does not make it quite clear whether the dissatisfaction is with the actual Psalm chosen or whether with the reading of a Psalm at all, but the distinction in this connection is immaterial.

We travel through the centuries and more Psalms are added without any of the old being discarded. Two important groups must be noted: the first, introduced in Europe about the twelfth century, consisting of Psalms 104 and 120—134, for recitation on Sabbath afternoon during the winter, and the latest addition of any size, originating from the saintly community of Safed in the sixteenth century, Psalms 95-99 and 29, for the inauguration of the Sabbath. This last affords us perhaps the most striking evidence of the popular interest which was responsible for the steady increase in the number of Psalms in our liturgy. By the sixteenth century, partly as a result of the invention of printing, both the form and the actual wording of the Prayer Book were already firmly established. And yet this practice, conceived by a select circle of mystics in one town of Palestine, spread throughout Europe and other parts of the world and became an integral part of normal congregational worship with unparalleled rapidity. "In Safed, the seat of Jewish mysticism, at the period named, this idea was eagerly developed. It needs no stretch of imagination to reconstruct the scene. White-robed men and boys sang in the Sabbath to the strains of the Song of Songs, and they went out in procession up the hills and down the dales chanting Psalms."[31] But whereas the recitation of the Song of Songs at the inauguration of the Sabbath remained an act of private devotion, indulged in by a few, the recitation of these six Psalms was no sooner heard of than it was universally adopted in the Ashkenazic ritual. The author of the liturgical work *Mateh Moshe,* in 1615, makes no mention of it; fifteen years later the author of *Yosef Omes*[32] says, "The order of service for the inauguration of the Sabbath, which *new ones, lately come up, have adopted as a custom,* is indeed a good and beautiful custom."[33] This custom of the "new

[31] Abrahams, *op. cit.*, pp. CXX, CXXI.

[32] § 588, not 589 as Abrahams.

[33] Cf. Baer, *in loc.*

ones, lately come up" was soon common to all Ashkenazic rituals. Bearing in mind the intense conservatism which attaches to all liturgies, and to the Jewish Prayer Book in particular, the rapid acceptance of this custom can be explained only on the assumption that it satisfied a deeply-felt religious yearning.

But we have strayed somewhat from the chronological order of the inclusion of the Psalms. To the earlier part of this period belong prayers which consist, not of complete Psalms, but of compositions made up of Scriptural verses, of which the overwhelming majority are from the Psalms. The model upon which they are constructed, the יהי כבוד of *Sopherim, is clear.* In each case the verses are selected from all five books of the Psalms, and show a conscious desire to include extracts from all five books. One such prayer is that beginning רוממו, before the six daily Psalms, the verses being *all* from the Psalms, as follows: Ps. XCIX. 5, 9; LXXVIII. 38; XL. 12; XXV. 6; LXVIII. 35, 36; XCIV, 1, 2; III. 9; XLVI. 8; LXXXIV. 13; XX. 10; XXVIII. 9; XXIII. 20, 21, 22; LXXXV. 8; XLIV. 27; LXXXI. 12; CXLIV. 15; XIII. 6.

A later addition to the daily evening service, first mentioned by *Vitry,* but ascribed to the Geonim,[34] consists of: Ps. LXXXIX. 53; CXXXV. 21; LXXXII. 18, 19; CIV. 31; CXIII. 2; I Sam. XII. 22; I K. XVIII. 39; Zech. XIV. 9; Psalm XXXIII. 22; Psalm CVI. 16; Psalm LXXXVI. 9, 10; Psalm LXXIX. 13; Job XII. 10; Psalm XXXI. 6; Is. LII. 7.

The effect of these and similar prayers in imbuing our liturgy with the spirit of the Psalter cannot be overestimated. Not only are no less than 250 verses of the Psalms so used in our liturgy,[35] but many of these verses, either singly or in groups, occur so often in the prayers as to justify the statement that they can be regarded as the motif of the

[34] *Vitry,* p. 78; *Pardes,* 11.

[35] Cf. A. Berliner, *Randbemerkungen zum täglichen Gebetbuche,* I (Berlin, 1909), p. 9.

whole liturgy. To give but one instance of each: The verse Psalm LXVIII. 38, which is repeated twice daily in the morning service, is also the opening verse of the supplicatory prayers for Monday and Thursday morning, and of the daily evening service. One of the passages in which it occurs in the morning service is repeated in the Sabbath afternoon service and in the service at the conclusion of the Sabbath. In the same passage is found the group of three verses, *Ps.* XLVI. 8, LXXXIV. 13, and XX. 10, which were favorites with Isaac Luria in whose school the recitation of Psalms for the inauguration of the Sabbath originated. They are also recited together as a prayer prior to the daily evening service, in the *Habdalah, etc.* So characteristic are prayers composed from verses of the Psalms that it is not an exaggeration to say that even were all the complete Psalms extracted from the Prayer Book, the influence of the Psalter would still be strong and unmistakable.

The Psalms for the inauguration of the Sabbath are, as has been mentioned, the last addition to the formal service, but the addition of Psalms to the liturgy by no means ends there. On the contrary, probably partly to compensate for the formalization of the prayers, it may fairly be said that every opportunity was seized upon to include more Psalms before and after the fixed orders of service. Chronological sequence must be somewhat abandoned here, for the practice spread from before the sixteenth century to modern times. If a daily Psalm after the morning service, then why not a daily Psalm after the evening service? Psalms to be recited before the service for the conclusion of the Sabbath, Psalm XXX, before actually commencing the morning service, a Psalm before returning the Scroll to the Ark, a Psalm before Grace after Meals, a Psalm to conclude the lengthy Sabbath night service. The service for counting the Omer concludes with a Psalm, and Psalms form an integral part of the night prayers. The "free" silent prayer of the morning becomes stereotyped—in the shape of a Psalm. It is therefore strictly

in the line of Jewish tradition that all the special orders of service, mostly drawn up by the late British Chief Rabbi, Dr. Adler, which give a distinctive touch to the *Authorized Daily Prayer Book,* the service at the consecration of a house, the elaboration of the marriage service, the service on the occasion of making collections for hospitals, for thanksgiving after childbirth, for the sick and for recovery from sickness, in the house of mourning and at the setting of a tombstone, are all mainly selections of appropriate Psalms. The Index to the Psalms at the end of the Prayer Book shows the result of nearly two millenia of liturgical development from a "psalmless" liturgy to our present day Prayer Book. Seventy-four of the 150 Psalms are there indexed; one occurs five times, one four times, three thrice, and five twice, besides "back reference." The Sephardic rite includes some[36] which do not occur in the Ashkenazic, with which this article is concerned.

Even today we may note an expression of that religious spirit to which we have ascribed the inclusion of the Psalms in the liturgy, the *vox populi.* It is a well-established custom, in England at any rate, to recite Psalm XCII to a traditional chant, at the Sabbath afternoon service while the Scroll is being wound up. There is no liturgical justification for this practice, which is mentioned as a rubric only in the *Authorized Daily Prayer Book.* It serves to fill in the time during which the vestments are replaced on the Scroll. This is probably its origin, but it is both significant and characteristic that the gap is filled by a Psalm, in the same way that in many foreign congregations the time between the Sabbath afternoon and night services is employed in the recitation of Psalms.

The same *vox populi* shows itself in a contrary direction. Most prayer books provide for the recitation of a Psalm before Grace after Meals, Psalm CXXVI for Sabbath and festivals and Psalm CXXXVII for weekdays. The choice of

[36] *E. g.*, Ps. LXXV; Ps. CXI; Ps. CXIX; for Sabbath afternoon.

the second Psalm with its imprecatory conclusion is not a happy one, and although the former is indissolubly bound up with Grace after Meals, despite exhaustive inquiries, I have never found an instance of a single Jew, however orthodox, reciting the latter. The conscience of the common Jew rebelled, and his rebellion took the form of passive disobedience.

One last use of Psalms must be mentioned, although unfortunately it has not found its way, to my knowledge, into any regular liturgy. It seems strange that the only suggestion for the addition of Psalms to the liturgy which failed of acceptance is the proposed list of Psalms for the various festivals in Tractate *Sopherim*. Of that list only Psalm XXX, for Hanukkah, is universally recited. The idea underlying such a selection, however, has found a remarkable extension in a list of Psalms for every day of every festival, and every occasion of note in the Jewish calendar, as well as for every *Sidra*.[37] That this custom is at least two centuries old is shown by the fact that Elijah b. Solomon of Vilna, the famous "Vilna Gaon," has a list which differs in some respects from the usual one. Although the lists are headed respectively, "Psalms which it is the custom to recite after the ordinary service on festivals, fast days and other days of note in the year," and "Psalms which it is the custom to recite every Sabbath according to the contents of the *Sidra*," the custom has not found acceptance. They are none the less of interest. The principle of selection follows that of the original *Haftarah*, the similarity of the contents of the Psalm to the message of the festival or the contents of the *Sidra*. Although naturally, to find 54 appropriate Psalms for the days of note requires at times a degree of homiletical ingenuity, no greater tribute could be paid to the universality of the religious spirit of the Psalms than the fact that the appropriate

[37] The list occurs at the end of Baer's famous עבודת ישראל and before the Psalms in the Horeb edition of the Prayer Book (Berlin, 1929). In each of these prayer books the whole book of Psalms is included. The fact that they do not occur in the ordinary prayer book is probably the reason that the custom has not been adopted in the regular service.

Psalm is always found, and never fails to heighten the religious significance of the *Sidra* or the festival.

The history of the progressive addition of Psalms to the liturgy which has been reviewed here, the overcoming of the powerful tendency towards conservatism in prayer, is as much a tribute to the essential religious spirit of the Jew, as to the inherent power of the Psalms to express every nuance of religious emotion in the approach of His children to their Father in Heaven.

CZECHOSLOVAK JEWS AND AMERICA

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I

Methodological and Bibliographical Remarks

AMERICAN JEWISH historiography has long since outgrown the primitive phase of searching for so-called Jewish "firsts," namely, the first settlers from various countries, the first Jews in certain trades or professions, in politics or military and civil service, the first synagogues and cemeteries, the first prayer books, almanacs, or newspapers of Jewish interest. True, all historical facts of this sort will always remain basic raw material and an indispensable foundation for every study in American Jewish history. Their discovery will continue to be a fascinating venture for the historian. But in posing a problem such as "Czechoslovak Jews and America" or similar themes, in our day, one cannot and must not be satisfied with digging up historical documents and facts alone. Nor is it appropriate to follow the path of earlier and present-day dilettanti who indulge in indiscriminate publication of historical documents which, according to their conception, are "self-explanatory" or "need no comment." Such a working technique cannot find scientific justification even with regard to documentary material of a seemingly simple character. In fact it cleverly avoids the issue. This pseudo-scientific method chooses the easy course of stopping work just where problems begin, when historical methodology and discerning analysis have to set in.[1]

[1] The aims and methods of writing American Jewish history have been recently subjected to public discussion, with some worth-while suggestions made by Harold J. Jonas, "Writing American Jewish History," in *Contemporary Jewish Record*, VI (April, 1943), pp. 137-150; cf. Jonas, "What Can History Do for Us?", in *The Chicago Jewish Forum*, II (1943), pp. 5-9; also, Isidore S. Meyer, "The American Jewish Historical Society," in *Journal of Jewish Bibliography*, IV (1943), pp. 6-24.

Naturally, the scholarly way is by far more burdensome. It presents difficulties with regard to both obtaining and evaluating the historical raw-material. The investigation of a problem like that chosen for the present essay brings all such difficulties very clearly to light.

First of all, comprehensive studies would be necessary of the general historical background and of the Jewish situation in the European homeland as well as in the country of immigration. While an extensive literature provides thorough information about European and American history in general,[2] the mines of Jewish history are still untapped as far as Czechoslovakia is concerned. A comprehensive scholarly work or even a more modest monograph on the one thousand years of Jewish life, work, and achievement in Bohemia, Moravia, Silesia, Slovakia, and Carpatho-Russia does not exist in any language. The fate of the Jews in these lands from the days of the first world-traveling visitor, Ibrahim ibn Jacob (970), up to the renewed outbreak of the *Furor Teutonicus* and its disastrous consequences in 1938, has not yet found its Graetz or Dubnow.[3] Nor has a history of the Jews in those countries been written even for the period of the rule of the Hapsburgs, particularly in the eighteenth and

[2] On Bohemian history, in particular, there is the standard bibliography by Cenek Zibrt, *Bibliografie české historie* (Prague, 1900 ff.), a monumental and exhaustive work. For brief selective bibliographies, see Robert J. Kerner, *Bohemia in the Eighteenth Century* (New York, 1932), pp. 375 ff.; S. Harrison Thomson, *Czechoslovakia in European History* (Princeton, 1943), pp. 365 f.

[3] The older and more recent writings on the history of the Jews in Moravia were critically reviewed by the eminent Bohemian-Moravian historian, Bertold Bretholz, in his *Geschichte der Juden in Mähren im Mittelalter*, I (Brünn-Prague-Leipzig, 1934), pp. 5-30. His presentation is important for the history of the Jews in Bohemia and Silesia, too. For a critique of the collective works on the Jews of Bohemia, Moravia, and Bratislava (Pressburg), *Die Juden und Judengemeinden . . . in Vergangenheit und Gegenwart*, ed. by Hugo Gold (Brünn, 1934, 1929, 1932), see also Bretholz, *op. cit.*, p. 27. There is practically no publication in English on the subject except several unsatisfactory articles in *The Universal Jewish Encyclopedia* (New York, 1939 ff.). In the brief article "Bohemia," for instance, *ibidem, II*, p. 441, the reader is still referred to Johann Franz von Herrmann, *Geschichte der Israeliten in Böhmen von den ältesten Zeiten bis zum Schlusse des Jahres* 1813 (Vienna-Prague, 1819), written in the nineteenth century under the restraint of a strict censorship and comprising no more than 118 pages duodecimo. Neither Prague, nor Pressburg-Bratislava, nor any of the Moravian cities famous for their Jewish communities and celebrated Jewish scholars were considered worthy of inclusion in the *Jewish Communities Series*, published by The Jewish Publication Society of America.

nineteenth centuries.[4] The publication of monographs on individual problems, initiated only a decade and a half ago through the efforts of the Society for the History of Czechoslovak Jewry in Prague,[5] was abruptly halted with the subjugation of Czechoslovakia to National Socialist rule. Thus, to treat any particular question of Czechoslovak-Jewish history, most of the historical facts and developments have to be unearthed directly from primary sources.[6]

This is particularly true of the history of the emigration from the lands of the ancient Bohemian Crown to America. The Czech-Jewish migration to the New World is a problem

[4] For some glimpses into the history of Bohemian Jewry in this period, see [Anonymous], *Die Juden in Böhmen und ihre Stellung in der Gegenwart* (Prague, 1863), though of an apologetic character, a well balanced historical presentation of facts, by a well-informed writer. It seems that Joseph Wertheimer's two-volume work, *Die Juden in Österreich, vom Standpunkt der Geschichte, des Rechts und des Staatsvorteils* (Leipzig, 1842), also published anonymously, served as a model for the anonymous author; cf. Guido Kisch, *Die Prager Universität und die Juden* 1348-1848 (Mährisch-Ostrau, 1935), p. 109 n. 374. On the personality of the anonymous author, who must be sought among the Jewish intellectual circles of Prague because of his excellent knowledge of all relevant historical details, see the present author's forthcoming article "Bibliographical Notes on Early Czech-Jewish Literature," to appear in the *Journal of Jewish Bibliography*. He was Med. Univ. Doctor Marcus Teller, "der bekannte Literat und Journalist," according to a contemporary report from Prague in the Hungarian-Jewish weekly, *Ben Chananja*, ed. by Leopold Löw, vol. VI (Szegedin, 1863), p. 208; cf. also M. Steinschneider, *Hamaskir Hebraeische Bibliographie*, VI (1863), p. 82, no. 231; A. Freimann, "Deutsche anonyme Schriften über Juden und Judentum," *Zeitschrift für hebräische Bibliographie*, XVIII (1915), p. 87, no. 195. On Dr. Marcus Teller (1813-1875), see Herrmann Joseph Landau, *Prager Necrologe* 1870-1882 (Prague, 1883), p. 59 f.—For statistics of the Jews in the Bohemian provinces in the eighteenth century, see Sigismund Peller, "Über die böhmischen und österreichischen Juden zur Zeit Maria Theresias," *Monatsschrift für Geschichte und Wissenschaft des Judentums*, LXX (1926), pp. 284-288. As to the economic situation of Bohemian Jewry in the seventeenth and eighteenth centuries, see A. Pribram, "Zur Geschichte des böhmischen Handels und der böhmischen Industrie in dem Jahrhunderte nach dem westphälischen Frieden," *Mitteilungen des Vereins für Geschichte der Deutschen in Böhmen*, XXXVI (1898), pp. 222-227.

[5] Cf. *Jahrbuch des Gesellschaft für Geschichte der Juden in der Czechoslovakischen Republik*, ed. by Samuel Steinherz, vols. I-IX (Prague, 1929-1938); referred to henceforth as *JGJC*.—A brief, and far from complete, bibliography of writings concerned with the emancipation of the Jews in Bohemia, Moravia, and Hungary is found in Volkmar Eichstädt, *Bibliographie zur Geschichte der Judenfrage*, I:1750-1848 (Hamburg, 1938), pp. 156-158. This work was compiled by the National Socialist "Reichsinstitut für Geschichte des neuen Deutschlands" (sic), and is antisemitic in character.

[6] Cf. Josef Bergl, "Judaica v archivu ministerstva vnitra v Praze" [Judaica in the Archives of the Ministry of Interior in Prague; in Czech], in *Sbornik archivu ministerstva vnitra Republiky Ceskoslovenské*, VI (Prague, 1933), pp. 5-64.

still entirely unexplored both from the factual angle and with regard to the political and sociological causative factors. Not even a search for manuscript materials relating to American history was attempted in the Czechoslovak archives when the Carnegie Institution of Washington began to issue a number of important "Guides" to such materials in various European countries, about thirty years ago.[7] But even if such a Guide to the historical documents of Czechoslovakia had been compiled, it would be of little avail at present, since the archives are not accessible for research.

Turning from Europe to America, it must be stated that the difficulties which await the investigator on this side of the Atlantic are not much less troublesome. In spite of her glorious historical record, Czechoslovakia as such is a very recent political conception. Before it came into being, these lands and their inhabitants were considered Austrian or Hungarian respectively, according to their political affiliation. Bohemian, Moravian, or Slovakian immigrants are thus rarely mentioned, and then compartively late, in American historical sources, with explicit reference to their countries of origin, or better, nationality. The *Statistical Review of Immigration to the United States* knows, prior to 1910, of immigrants from Austria-Hungary only. Bohemia made her initial appearance in the official United States census of 1870 with 39,652 arrivals, although immigration from that Austrian crownland had set in much earlier.

As far as non-Jews were concerned, the preservation of their native tongues, e.g., of the Czech, Slovak or Hungarian language, always represented a mark of distinction, and offers at the same time a welcome clue to the historian.[8] However,

[7] Albert B. Faust, *Guide to the Materials for American History in Swiss and Austrian Archives* (Washington, D. C., 1916), gives only an account of the documentary materials in the archives of Vienna, Salzburg, and Innsbruck. Bohemia and Moravia were not included. Some notes on emigration to America from these countries were found in Vienna; cf. *op. cit.*, pp. 11, 250 (concerning emigration from Bohemia to Brazil, in 1836). No such references concerning Jewish emigration from Bohemia occur in Bergl's inventory of the government archives in Prague, cited in the preceding note.

[8] Cf. Thomas Capek, The *Czechs (Bohemians) in America* (Boston-New York, 1920); Kenneth D. Miller, *The Czechoslovaks in America* (New York, 1922); Rose Rosicky, *A History of Czechs (Bohemians) in Nebraska* (Omaha, Nebr., 1929); Robert J. Kutak, *The Story of a Bohemian-American Village*

this does not apply to the same extent to the Jewish immigrants from the Bohemian lands. They rarely preserved their native Judeo-German or Czech for more than one generation. The Jewish immigrants from Hungary, including Slovakia, were different in their linguistic attitude. They clung (and cling even today) tenaciously to the German or Judeo-German their parents and they themselves had spoken. But the bulk of Jewish immigrants from Bohemia and Moravia in the nineteenth century used High German as their native tongue.[9] Thus lacking any definite linguistic mark they become for the historian almost indistinguishable from their coreligionists who originated in Germany. Needless to say, Bohemian as well as German Jews turned likewise to English after the "German period" in the history of American-Jewish immigration had come to a close. From their tabulation in the census new difficulties arise. No data are available prior to 1870. From 1870 until 1900 Jews may well be included in the figures of immigrants from Bohemia. From 1910 on their

(Louisville, 1933); Estelle Hudson, *Czech Pioneers of the Southwest* (Dallas Texas, 1934); Martha E. Griffith, "The Czechs in Cedar Rapids," in *The Iowa Journal of History and Politics,* XLII (1944), pp. 115-161; 266-315. Joseph S. Roucek, "Czechoslovak Americans," in Francis J. Brown and Joseph S. Roucek, *Our Racial and National Minorities: Their History, Contributions, and Present Problems* (New York, 1937), pp. 230-245, with bibliography on pp. 806-809. "The Slavs from Central and Southern Europe—Slovaks, Croatiens, Serbs, Slovenes, Dalmatians—were being booked by the census enumerators as Austrians or Hungarians. The practice of tabulating immigrants by country of birth remained in force until 1910, when an amendment to the Thirteenth Census Act called for statistics of the nationality or mother tongue of the foreign-born and of the parents of the native population of foreign or mixed parentage. These statistics were chiefly significant with reference to the natives of Austria, Hungary, Russia, Poland, Rumania, and Serbia. Among the foreign-born from Austria the most important group consisted of those speaking Polish, who constituted 28 per cent of the total in 1910, followed by those speaking Bohemian, German, Yiddish and Hebrew and Slovene, in the order named." Numbers of the foreign-born from Bohemia: 1900: 356,830; 1890: 215,514; 1880: 85,361; 1870: 39,652. Thomas Capek, *Czechs and Slovaks in the United States Census with Reference to All Slavs* (New York, 1939), p. 2. Samuel Joseph's valuable study *Jewish Immigration to the United States from* 1881 to 1910 (New York, 1914) and George M. Stephenson's *A History of American Immigration* 1820-1924 (Boston-New York, 1926) do not yield any results concerning Jewish immigration from the territories of later Czechoslovakia. The conditions in Bohemia differed considerably from those in that other crownland of Austria, from which almost exclusively Jewish emigrants were pouring into the western hemisphere, Galicia.

[9] Cf., e.g. the language employed by the Bohemian Jew, S. E. Rosenbaum, in his diary published in *Publications of the American Jewish Historical Society,* XXXV (1939), pp. 65-113.

classification depended on whether they identified themselves as of Jewish nationality or as employing the Czech tongue. It does not seem that the *Statistical Review of Immigration* generally included Jews in the numbers of immigrants from Bohemia and Moravia.

This historically obscure situation gave rise to two schools of opinion. Their representatives, not too much concerned with painstaking research, elected a course even easier than that described above. Both were interested in an obvious and intriguing question: what was the contribution of Bohemian or Czechoslovakian (Jewish) immigrants to American civilization? The one school of thought considers this contribution so intricately interwoven with that of the immigrants from Austria at large that decomposition of the constituent elements seems no longer possible.[10] The other school maintains that Czechoslovak Jews have seemingly left very faint traces of their presence in America, most of them having merged rapidly with the American environment, and immediately bcoming and living and working as American Jews.[11]

There may be some truth in both hypotheses, in the first one with reference to the immigration from Austria-Hungary before the First World War, in the second with regard to immigration from Czechoslovakia in the post-war period. However, one of the results of the present essay will be to prove that neither hypothesis in such generality as set forth, can pass the test of historical analysis. More, this investigation will proffer evidence that, all difficulties of research notwithstanding, the Jewish immigrants from Bohemia, Moravia, and Slovakia not only made important and original contributions to American civilization, but left remarkable and lasting imprints on American life and culture.

From what has here been pointed out it is easily intelligible that, for the time being, no all-inclusive researches

[10] Cf. regarding Bohemian musicians in particular, Paul Henry Lang, *Music in Western Civilization* (New York, 1941), p. 955.

[11] So Roderick A. Ginsburg, author of *The Soul of a Century, Collection of Czech Poetry in English* (*s.l. et a.* [Chicago, 1943]), in a personal communication to the author, of March 29, 1944.

can be carried on[12] nor exhaustive results of a definitive character expected. Nevertheless, in the chapters to follow, a first attempt will be made to examine the attitude of Czechoslovakian Jews toward America, the facts of and the causes behind the emigration to America of Jews from the territories later included in the Czechoslovak Republic, to describe their contribution to American civilization, and to evaluate the part American Jews of Bohemian origin played in preparing and supporting the foundation of the free state of Czechoslovakia.[12a]

II

News of the Discovery of America in the Ghetto of Prague, and the First Emigrants

The discovery in 1492 of a fabulous new continent naturally attracted the attention of the Jews as it did of the entire world. Geographical knowledge, however, was scanty, transmission and dissemination of news slow and irregular in those days. It will hardly be possible to establish with exactitude the date when the Jews in the Bohemian lands first learned of Columbus and America. The world-shaking news

[12] This refers particularly to the search for statistical data and the use of sources such as directories and newspapers. The mere compilation of a complete list of all prominent American Jews of Czechoslovakian (= Bohemian, Moravian, Silesian, and Slovakian) descent, would necessitate a systematic search through all volumes of the *Jewish Encyclopedia, The Universal Jewish Encyclopedia,* and other encyclopedic works. Such a task, however, could be carried out only with some assistance in research, not available to this author. He, therefore, had to rely mainly on his knowledge of historical facts and methods, and the material he collected in the course of his studies in American-Jewish history now extending over a period of ten years. There were only few biographical works, of a rather limited scope, that aided his endeavors: "Biographical Sketches of Rabbis and Cantors Officiating in the United States," in *The American Jewish Year Book,* 5664 (Philadelphia, 1903), pp. 40-108; Solomon R. Kagan, *Jewish Contributions to Medicine in America,* 1656-1934 (Boston, Mass., 1934); Tomàs Capek, *Navstevnici z Cech a Moravy v Americe v Letech* 1848-1939, *Prispevek k Dejinam Americkych Cechu* [Visitors to America from Bohemia and Moravia in the Years 1848-1939: A Contribution to the History of American Czechs; in Czech] (Chicago, 1940).

[12a] At the end of these introductory remarks, the author wishes gratefully to acknowledge the courtesy of the Jewish Theological Seminary Library, the New York Public Library, and the Library of the American Jewish Historical Society in permitting use of their collections, without which this study could never have been completed.

attaching to these names is likely to have reached the Jews of Central Europe at the same time as, and certainly not much later than their Christian neighbors. Whatever theory may be advanced in this respect, it will always remain merely a guess of greater or lesser probability.

But there is historical evidence that America as a specific problem entered the Jewish horizon in Bohemia as early as one hundred years after Columbus's first momentous voyage. Not, of course, in connection with emigration. For that was the "golden age" of the Jewish community in Prague, when leaders such as Rabbi Yehuda ben Bezalel Löw (*ca.* 1525-1609), called the "Hohe Rabbi Löw," and Mardecai Marcus Meysel (1528-1601), one of the greatest financiers of his time and counselor to Emperor Rudolph II, stood at its head.[13] In those days a great historiographer and mathematician also lived and worked in Prague, David Gans (1541-1613), whose scholarship brought him into personal intercourse with Johannes Kepler and Tycho de Brahe.[14] He was the author of the first popular Universal History in Hebrew, the chronicle *Zemah David*, first published in 1592. In this work, often reprinted and brought up to date through appended continuations, Gans not only referred to Columbus and Amerigo Vespucci but even devoted what in his time was considered a scholarly discussion to the discovery of America. True, the "New World" was a very obvious subject for a historiographer in the sixteenth century, and Gans was even not without predecessors in choosing this fascinating event as an historical topic. The first Hebrew author to mention "the New World recently discovered and unknown to date," was Abraham Farissol of Avignon (1451—*ca.* 1525). This indefinite reference with no mention of Columbus is found at the end of chapter 28 of his geo-cosmographical work, *Iggereth Orehoth Olam* (Treatise on the Roads of the

[13] Cf. Leopold Zunz, *Zur Geschichte und Literatur* (Berlin, 1845), p. 269; Guido Kisch, *Die Prager Universität und die Juden* 1348-1848, pp. 6 f.

[14] For bibliography on David Gans, see G. Kisch, *Die Prager Universität und die Juden*, p. 74 note 35; Charles S. Freedman, *Introduction to David Gans: His Life, Background, and Works*, Master's Thesis, Jewish Institute of Religion, unpublished, only in typescript (New York, 1937), Appendix C, pp. 1-22.

World), written in Ferrara in 1524.[15] The subject was also referred to, but in a different way, by a younger contemporary and Avignon *landsman* of Farissol's, the renowned Jewish historian Joseph ben Joshua Hakohen (1496—*ca.* 1578). In his Hebrew chronicle, *Dibre ha-Yamim le-Malke Zarefath u-le-Malke Beth Otoman* (Chronicles of the Kings of France and Turkey), first published in Sabbionetta in 1554, the name of the New World is explained as having been derived from "the name of the man who discovered this country 'Americo.' "[16] It must be left to the sagacity of experts in early American history to elucidate the relationship of and discrepancies between these two historical reports.[17]

One hundred years after the discovery of America opinion on the subject in Prague seems still to have been divided. The historical, chronological, and geographical problems involved were not altogether settled among the scholars of the Bohemian capital. In his Universal History, Gans reflects

[15] Cf. M. Kayserling, article "America, The Discovery of," in *The Jewish Encyclopedia,* I (New York, 1901), p. 512; Nathan Grün, *Beiträge zur Geschichte der Juden in Prag* (Prague, *s.a.*), pp. 2 f.; Mendel Silber, "America in Hebrew Literature," in *Publications of the American Jewish Historical Society,* XXII (1914), pp. 105-108; Silber, *America in Hebrew Literature* (New Orleans, 1928), pp. 11-18, Hebrew section, p. 1. Silber does not mention, however, the passage at the end of Farissol's chapter 28, which reads as follows:
ועתה נדבר מעולם חדש הנמצא אשר אין לו קשר ודבקות אתנו ולא נודע עד היום הזה.
Nor does Silber reprint the Hebrew account in full. No attention was drawn by Grün and Silber to the fact that neither the name of Columbus nor America was mentioned by Farissol. As late as 1691, when a second edition of his work was published with a Latin translation by Thomas Hyde, אגרת אורחות עולם, *id est Itinera Mundi, sic dicta nempe Cosmographia* (Oxonii 1691), the editor and translator added the following note, on p. 185 note 8:

> *Terra Nova* Ea est America, sic dicta ab Americo Vesputio, qui ad hujus terrae investigationem regis Castiliae jussu a Calisia seu Gadibus solvit 1497. Ab eo denominatio facta est, quamvis ante eum Christoph. Columbus dictam investigationem inchoaverat anno 1492.

—On Abraham Farissol, see *Encyclopaedia Judaica,* VI (Berlin, 1930), pp. 937 f.

[16] Cf. Kayserling, *loc. cit.,* p. 512; Grün, *op. cit.,* pp. 3-5; Silber, *loc. cit.,* pp. 109-111; Silber, *op. cit.,* pp. 18-23; Hebrew section, pp. 20-22.—On Joseph Hakohen, see *Encyclopaedia Judaica, IX,* pp. 349-352.

[17] Grün, *op. cit.,* p. 5, offered an explanation and advanced an interesting hypothesis with particular reference to the fact that Joseph Hakohen, although living in Genoa, had no knowledge of Columbus as the discoverer of the New World.—On other reports concerning America, cf. Silber, *loc. cit,* pp. 112-115; *op. cit.,* pp. 24-28. Silber's selections of all the pertinent texts are, however, arbitrary and often incomplete, and his translations do not render the texts faithfully.

this uncertain state of knowledge.[18] He offers two versions: one, under the year 5254 (1494), crediting Columbus with the discovery of the New World; and another, under the year 5293 (1533), crediting Americo. The latter date is David Gans's own choice. He mentions, however, Rabbi Joseph Hakohen, from whom he probably took his second version, as authority for a different date, the year 1520. No reference is made to Farissol, whose work was apparently known to the Prague historiographer.[18a] But he found yet another date, 5254 (1494), given by one of his main authorities, the Christian historiographer Henricus Rättel.[19] He faithfully listed also the latter's version, even putting it in first place in accordance with the chronological order.

All told, there can be no doubt that, in 1592 when David Gans completed his *Zemah David*, the problem of who had discovered the New World was still an open question in Prague. No definite date for this historical event was as yet generally accepted. As to the geographical aspect, there was only a faint notion of America current in Prague at the end

[18] Cf. Grün, *op. cit.*, pp. 5-8. A translation of David Gans's account in his *Zemah David* is found in the Appendix, *infra*, under No. 1. Silber, *loc. cit.*, pp. 115-119 (separate edition, pp. 29, 38), is inaccurate in his evaluation of David Gans's literary intention. He accuses him of trying "to show that the discovery of America was not made in 1494 (sic) by Columbus, as some historians of the time had it, but in 1533 by 'Amerigo.'" The plain and clear text in *Zemah David* does not betray a misinterpretation or bias on the part of Gans. He did by no means "stray far from the world of fact and wander in the world of fancy," as Silber will have it. He merely represented the state of knowledge in Prague in 1592. The correctness of the latter evaluation is well supported by the fact that Gans gave the correct name of the discoverer and the correct date of the discovery of America in his second work, *Nehmad ve-Na'im*, which was written twenty-one years later, in 1613.

[18a] By a *lapsus calami* he ascribed it to Abraham Provencali, in his Preface to the second part of *Zemah David*. But no doubt is possible that Farissol's work was meant. Cf. Guttmann Klemperer, *David Gans' Chronikartige Weltgeschichte unter dem Titel Zemach David verfasst im Jahre 1593, zum ersten Male aus dem hebräischen Originaltext ins Deutsche übertragen*, ed. by M. Grünwald (Prague, 1890), p. 10 note 8.

[19] He was the translator from Latin and editor of Joachimus Cureus, *Schlesische General Chronica darinnen . . . Beschreibung des Landes Ober und Nider Schlesien . . . Durch Joachimum Cureum in Latinischen Sprach beschreiben, jetzundt aber . . .* verdeutscht durch H. Rätteln (Wittenberg [and] Leipzig, durch D. L. Müller, 1585). This is the only edition of this often reprinted Silesian chronicle translated by Rättel and published prior to 1592, the year of publication of Gans's *Zemah David*. Almost all known editions of the work are found in the British Museum; none, however, was available to the writer in this country.

of the sixteenth century, as again can be gathered from Gans's very indefinite description. This was completely in accord with the general state of information on these subjects at the time. At the end of the pertinent paragraph, Gans refers to Azariah Dei Rossi (1514-1578), who in his work *Meor Enayim* (The Light of the Eyes) had advanced the theory that the New World, particularly the land of Peru, was to be identified with the biblical land of gold, Ophir,[20] "where King Solomon of blessed memory used to send his ships once in three years according to I *Kings* IX: [28; X: 22] and II *Chronicles* VIII: [18]." On this quotation Gans remarked: "Dei Rossi set this (hypothesis) forth with strong proofs."[21]

Such, in substance, seems to have been the knowledge concerning America current among the learned circles in the ghetto of Prague at the end of the sixteenth century. Twenty years later, in 1613, when Gans completed another work on astronomy and mathematics, *Nehmad ve-Naʿim,* his knowledge of America had considerably improved. There he gives 1492 as the year of the discovery, tells correctly of Columbus and Americo, and offers a geographical description appropriate to his day.[22]

In the course of the seventeenth and eighteenth centuries, from the "Prager Fenstersturz," in 1618, which marked the beginning of the Thirty Years War, up to their expulsion from Prague under Maria Theresa in 1745, the Jews of Bohemia had ample occasion to dream of the re-discovered fairy-tale land, Ophir-America. Not until 1740, however, do we find, more realistically, the earliest trace on the American continent of a Jew who most probably stemmed from

[20] Azariah Dei Rossi, *Meor Enayim,* (Ed. Mantua, 1574), chapter XI, p. 58: אולם כדבר החכם מכל האדם יש דבר שיאמר ראה זה חדש הוא וגו׳ יאמן לודאי כי בזמן המלך שלמה היה הישוב ההוא נודע ומפורסם. גם לעתים מזומנים הולכי נתיבות יצאו ושבו למו מזה ומזה לסחורה ולכל צורך, וארץ אופיר ופרוים אשר ממנה אנית תרשיש אחת לשלש שנים ככתוב בספר מלכים ודברי הימים היתה מביאה אליו זהב וכסף ובשמים שנהבים וגו׳ שהם כלם דברים אשר במדת זמן כמוהו בין המלך והעכוב הנאות הובאו גם כן על ידי האניה ויטור״יאה הנזכרת אין ספק שהיא מדינת הפי״רו הנמצאת בעולם חדש הנזכר כמו שנאמר עוד פרק נ״א.

[21] *Zemah David, ad annum* 5293 (1533).

[22] ספר נחמד ונעים (Jessnitz, 1743), chapter III, sections 73-80, pp. 7 v ff.; the Hebrew text is reprinted in Silber (book-edition), Hebrew section, pp. 53-55. Through the courtesy of Doctor Solomon Grayzel, Jewish Publication Society of America, Philadelphia, Pa., a translation of the historical account is included in the Appendix, *infra,* under No. 2.

Bohemia. It is a very meager account found in a will filed in the Surrogate's Office of the County of New York, which reads as follows:[23]

> Will of Uria Hyam, now resident of New York, chandler.
> I leave to my brother Enoch, now living in Bohemia, £ 20.

All one can learn from this clause is that in making his will, the testator, described as a chandler, thought of his closest relative left behind in Bohemia. Thus one may well suppose that he himself originated in that country. No other clue is given, however. Hyam was the owner of a Negro boy, also mentioned in his will, and left by him to his grandson in Jamaica. He also bequeathed the sum of £ 6 to the Congregation of the Children of Israel in New York. Uriah Hyam will have to be regarded as a probable immigrant from Bohemia, the first one recorded, unless and until more definite information about some predecessor of his turns up in American or European archives.

Search through the published materials from early American-Jewish sources discloses, only forty-four years later, a person of whose Bohemian origin there could be no doubt even if Prague were not explicitly given as his native city.[24]

[23] Lee M. Friedman, "Wills of Early Jewish Settlers in New York," in *Publications of the American Jewish Historical Society*, XXIII (1915), p. 151; reprinted in Friedman, *Early American Jews* (Cambridge, Mass., 1934), p. 72.— The early Jewish immigrants from Bohemia are not mentioned in the brief surveys of the history of Czech (Bohemian) immigration to America in Francis J. Brown and Joseph S. Roucek, *Our Racial and National Minorities* (New York, 1937), pp. 230 f., and Carl Wittke, *We Who Built America: The Saga of the Immigrant* (New York, 1939), pp. 409 ff. The first non-Jewish immigrant from Bohemia to land in America was Augustine Herrman who came to New Amsterdam in 1633. A number of Czech Protestants (Moravian Brethren) followed between 1741 and 1762; cf. Brown-Roucek, *op. cit.*, p. 230 f.

[24] It must not be forgotten that emigration from the Holy Roman Empire, including the lands of the Bohemian Crown, was prohibited by a decree of Joseph II, promulgated in Vienna, on July 7, 1768. Its text is reprinted in Friedrich Kapp, *Geschichte der Deutschen im Staate New York bis zum Anfange des neunzehnten Jahrhunderts* (3rd ed., New York, 1869), pp. 392 f. Only in the beginning of the nineteenth century was the emigration tax of 20% of the assessed property abolished; yet emigrants from Bohemia had still to guarantee their continued participation in the general *Judensteuer;* cf. I. M. Jost, *Neuere Geschichte der Israeliten in der ersten Hälfte des XIX. Jahrhunderts*, I (Breslau, [1846]), pp. 326 f.; Heinrich Jaques, *Denkschrift über die Stellung der Juden in Oesterreich* (4th ed., Vienna, 1859), pp. LXVI f.

He is Joseph, the son of Wolf Karpeles of Prague.[25] Joseph Karpeles came to America some time during 1783 or 1784, and lived in Philadelphia in 1784 and 1785, after which there is no further trace of him. Karpelis or Karpeles, as the name was pronounced in Prague, is to be considered as one of the few men with Jewish education and some Hebrew scholarship who lived among the Jews in America at the end of the eighteenth century. His knowledge of Hebrew is proved by an unpublished letter in the archives of the Mikve Israel Synagogue in Philadelphia, which he wrote to the rabbis of Amsterdam and the Hague in 1785 concerning a religious problem, and in which he quoted sufficiently from rabbinic sources to show that he was well acquainted with Jewish lore.[26] Another letter in Karpeles's hand, dated the second of Elul, 1784, and found in the Library of the Jewish Theological Seminary of America, was addressed by Haym Salomon to Rabbi David Tevele Schiff of London.[27] The famous "financier of the American Revolution," Haym Salomon (1740-1785), engaged Karpeles to write this letter, partly in Hebrew, partly in Yiddish. It treats of a legal dispute concerning an inheritance worth eight hundred ducats, which was to be decided by a court of arbitration. The arbiters were Simon Nathan, *Parnass* of the Mikve Israel Synagogue, chosen by the adversary, and Joseph Karpeles, selected by Haym Salomon. Both parties to the litigation were required to deposit personal checks of four thousand ducats each, to guarantee their accepting the decision. This reveals the responsibility entrusted to Karpeles, just as his co-arbiter's

[25] Cf. Hyman B. Grinstein, "A Haym Salomon Letter to Rabbi David Tevele Schiff, London, 1784," in *Publications of the American Jewish Historical Society*, XXXIV (1937), pp. 107-116. In this Hebrew letter his second name is spelled in Hebrew characters קארפלים. This name occurs frequently on tombstones of the old Jewish cemetery in Prague. Its spelling varies. The pronunciation was either Karpelis or Karpeles. On the Karpeles family, see Simon Hock and David Kaufmann, *Die Familien Prags nach den Epitaphien des alten jüdischen Friedhofs in Prag* (Pressburg, 1892), pp. 328 ff. There (p. 333) tombstone inscriptions appear of one Gutel Karpeles (died 1737) and one Keleh Karpeles (died 1742), both wives of Wolf Karpeles who survived them. This Wolf Karpeles may very well have been the father of Joseph Karpeles.

[26] Grinstein, *loc. cit.*, p. 113. Dr. Grinstein informs me that he will publish this letter in the periodical *Horeb*, probably in 1945.

[27] Published with English translation by Grinstein, *loc. cit.*, pp. 107-111.

capacity as president of a respected Jewish community testifies to the esteem in which Karpeles was patently held.

Hyam and Karpeles are the only Bohemian Jews of whom historical accounts have so far been found in American Jewish records of the eighteenth century.

[This is the first part of an extensive study on the Czechoslovak Jews and America.]

Appendix

1

Accounts on the Discovery of America from David Gans's Zemah David (1592)

1494

In the year 1494, there was in Genoa a man named Columbus, who was a philosopher and a very wise man. He argued with King Ferdinand of Naples and said: Owing to the steady winds blowing across the ocean from west to east, it follows that there must be farther along dry land [to the west]. King Ferdinand, at his own expense, sent him [on an expedition] and he went to sea and found the New World, called Novo Mundo. This took place in the year [5]254, 1494 of the Christian era. So wrote Henricus Rättel, on p. 257; and see below for the year [5]293, 1533.

1533

Ameriki, a man of great valor, gathered unto himself men of little worth and descended to the sea to gather booty. The sea became very stormy, and a strong wind carried them so far away from the settled world that the north star [קוטב] *Kutab* was hidden from them. After many days they found the new world and he called it by his name, Ameriki, to this day. This happened in the year [5]293, 1533 according to the Christian era, though according to RIH (R. Joseph Hakohen), page 154, this was in the year 1520 of the Christian era. Henricus Rättel wrote that this was in the year [5]254, 1494 according to the Christian era, through a man from Genoa named Columbi; see above in the year [5]254. After these events, the Emperor Charles sent large ships to the above-mentioned land America and conquered there a large portion of that land, and called it Hispania Nova, which translated means New Spain, to this day. And the King of France also conquered a large portion of it and called it New France. And know that according to cosmographers, who are research scholars, this new world is greater than all the lands of the Christian kings of our day in every part of Europe. According to them the location of this land is under the soles of our feet. But this is not the place to speak of this at length; if my Rock will bless me, I shall expatiate on this subject elsewhere. In the *Sefer Meor Enayim*,

שער נ'

סימן ע"נ מציאות עולם חדש הנקרא אעריק"ו בשנת האלף רנ"ב :

אשר בכותב יתן זכרון זה אחר לפנינו כותב קונת דב־
תרא לנו לנו ותצנו כו ויקרתים נם הנומעים
תמיתי לדרוש כו שהיכור קונת יותר מן סנוך לכוונת
ספרי כי לפי כלי הם חפנו על הדרש ורצונו לדעת
מה ל יגלה בזה. דרך ביאור ס"ג שר זה לו לדעת מה לפנ'
בזה כתב שהיו אחר שהו יושב עליה • ומנוף לזה
שזקים ומניחת חלק ומקומו כתוב העולם הוא ע"י
תחבולות הטבע וזה חכמה נחלק ומפני דרכ והניקו נם
נחלים חקרי לב כמו שהמבאר לפנים מקנת דרכי
מלחמות ע"י חכמת מחכמה ובכה הוצלחים לדבר
מלחמות ע"י חרב ונ' זה שהיה קרוב לומפנינו וה כתו
קק זה שהיה כ"ב ובלחם מלחמי הרן שהרב כתב חזו
פרש"ז על הכתוב הרן שהרן שהיה כתוב בשת כפו"ר ע"ה
מרן ר' בכת יהיה יותר נדול מבני שלחי ויהי"ו ע"ה
ומקו"ו לבל הרן שהרן שהיה ה"ו ע"ה נדול חרב ולח
מה שהיה נדול הרן שהרן שהיה בחכמה כלל מה שהיה בכל
בחכמה ומהרן שהרן שהיה מקומות היה לפי למוכח קיים
מלחמי כתוב שהרן שהרן שהיה נדול בפני עצמו לפני כפי'
ס"ר ה"ו ע"ה ומהרן שהרן שהיה בחכמה בכל מה שהיה
מהרן שהרן שהיה נדול מהרן שהרן שהיה ע"ה ומהרן שהרן שהיה
מהרן שהרן שהיה נדול מהרן שהרן שהיה ע"ה ומהרן שהרן שהיה
מהרן שהרן שהיה נדול מהרן שהרן שהיה ע"ה ומהרן שהרן שהיה
(ומהרן שהרן שהיה נדול מהרן שהרן שהיה ע"ה ומהרן שהרן שהיה

מלפני ית' כפל לנורל חלק תרופ"ח שכתבתי בני יפת
נומר ומנוג ומנוך ותן ותן ית' ומשך ותירס ובני נומר תוכלו
ותירס ותנרמה וכל חלו המחות כולם הסמוכות על מדיבל
נחלת כי כל ח' ות' קרוב חרגו עירו על שמו כי תקנ"ל
כסנר יוסיפן כן נוריק כפי מה שכתבתי ובכורו נ"כ דון
יפתן לשבתכתיל כפ' ולכל שמות בני כת חמר שם שלנו
השמות רובם שם שמות המדינות חנר כחלק תרי"ב חלקי
נומר ומנוג כתבו היוסיפון בתרוך שמך יפתו נוסמטי"ם
ונוט"י ופיון יפתו היוכים ותוכל לתקרו שבא ספר"ד (וכף
כתב כפל יוסיפן קק קנ"ם) ותירו"ם תרגיתי"ם תיבכ"ו
תלגי"ת כת ה"ל טייטג לנר • כוזים נוסרי סקורן ניסרין
תוגרמה טורקיה"ז דוהני"דעבי תר"ק. חנר כולם שם כחלק
תרו"פי ולבכ' בסכנל בנורלם חלק תגריקה שבתמר וכניס'
כוש ומנים כוש ושולה ונו' כולם שם שמות המדינות
שבקה"ו על שמם ומיכם נתיכים פי' כי כלם ידועים שם
כוש כחלק שנרי"ח ולבכו שם כפל בנורלם חלק תס"ח
שב חמר ובכו שם ציום חנר ושרם חמר שמות או המדינו'
תיכם נתיכי' שנרו זו כיותר כי ציולם הוא חלכו'פרס שבתם'
בהכי"ל פי' ת' ורבי כשון הכיתם חנר בציולם שהיכם
ובכו כן לשנר כי הניר שבולם כיטה שבקה"ת וכנת מו שנ'
חת מציולם רש"ז ומפי"ל נלמלכי חמר כנ"ח בחלכים
כ"ם ו"ט • נם תחזר תרכות פרתי שסס תר"ם כתר"ם
תר"ם נ"ם חרס ת"ק"ת • תרס מעכ"ם תר"ם כית רמוס •
(חנר מ"ת ת"ק"ת ע"ם חרס כן שם כן כת) כולם שם

מדינות רשומות נכרים ויחשיס כחלק ת"ס יח :

סימן ע"נ מציאות עולם חדש הנקרא אעריק"ו בשנת האלף רנ"ב :

אשר בכותב יתן זכרון זה אחר לפנינו כותב קונת דב־
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מלחמות ע"י חרב ונ' זה שהיה קרוב לומפנינו וה כתו
קק זה שהיה כ"ב ובלחם מלחמי הרן שהרב כתב חזו
פרש"ז על הכתוב הרן שהרן שהיה כתוב בשת כפו"ר ע"ה
מרן ר' בכת יהיה יותר נדול מבני שלחי ויהי"ו ע"ה
ומקו"ו לבל הרן שהרן שהיה ה"ו ע"ה נדול חרב ולח
מה שהיה נדול הרן שהרן שהיה בחכמה כלל מה שהיה בכל
בחכמה ומהרן שהרן שהיה מקומות היה לפי למוכח קיים
מלחמי כתוב שהרן שהרן שהיה נדול בפני עצמו לפני כפי'
ס"ר ה"ו ע"ה ומהרן שהרן שהיה בחכמה בכל מה שהיה
מהרן שהרן שהיה נדול מהרן שהרן שהיה ע"ה ומהרן שהרן שהיה
מהרן שהרן שהיה נדול מהרן שהרן שהיה ע"ה ומהרן שהרן שהיה
מהרן שהרן שהיה נדול מהרן שהרן שהיה ע"ה ומהרן שהרן שהיה
(ומהרן שהרן שהיה נדול מהרן שהרן שהיה ע"ה ומהרן שהרן שהיה

סימן ע"ה החלק החמישי מכדור הארץ נם היא בעולם החרש ונקרא החלק החיא פיר"ו :

דע שבעולם יחזיר חשר רכ"מ כו חלק המקרים שכי
חלקים ני"ת ת"ח ני"ת נ"ת ני"ת ני"ת ני"ת ני"ת ני"ת
הנעני חתיל חנלנ שנשיחם מקו כשוב ושלן ורון
נשון וישכת פתרים

chapter XI, he wrote that the New World is the Land of Ophir whither King Solomon (Peace be upon him) sent his ships every three years: I *Kings*, ch. 9 and in *Chronicles* ch. 25 [*sic*]; and he set this forth there with strong proofs (see there).

2

ACCOUNT CONCERNING AMERICA IN DAVID GANS'S WORK NEHMAD WE-NAᶜIM (1613), CHAPTER 73.
ON THE DISCOVERY OF A NEW WORLD, WHICH IS CALLED AMERICO IN THE [CURRENT] THOUSAND 252 [1492]

Says the writer: because the matter which is before us is somewhat new among us, so that those who hear or read of it will find pleasure in it, I saw fit to expand somewhat my discussion of it to more than is necessary for the purpose of this work. For I said in my heart, if it be a man's wish and desire to know what is above in the eight heavens, it is all the more important for him to know what is below on the stretches of the earth's globe upon which he lives . . . Now, I have undertaken to speak about the discovery of a new world. Know that the latter ones, [who lived] about 150 years before our day, found, at a considerable distance from the boundary of the land of Spain, many hundreds of miles [parasangs] across the lower expanse of the globe which is directly under the soles of our feet, a broad land, larger than the two parts [continents] Europe and Africa. They called that entire land Novo Mundo, meaning New World. The ancients had not known of this new land at all, because all the wise men and geographers of old had assumed the working theory that half the globe is sunk in water, as we reported above in paragraph 64. For this reason they got to know nothing at all about the new land, since they assumed that the end of Spain and Portugal was the terminus of the world and that no dry land was to be found beyond. The first man to discover the New World was a Genoese by the name of Cristoph Columbi, a philosopher and very clever man. He disputed with Ferdinanus [*sic*] King of Spain and with his wife, the Queen Isabel. He said that, in view of the prevailing theory among the philosophers about the wind rising and coming from the soil, he judged and asserted that, since the perennial winds blow over the land of Portugal—the ocean stretching from west to east—it follows of necessity that there must be another land beyond it to the west. King Ferdinanus sent him and his men, and they went down to the sea. The sea grew stormy all around them and an easterly wind carried them on a southwesterly course. They continued to sail until, in a [comparatively] few days, they reached the New World. Its actual great size, however, was not known to them, but he considered it an island like other islands of the sea. This was in the year 1492 according to their reckoning, that is, 5252 of Creation. About six years after these events, in the year 1498 according to their reckoning, that is 258 of the smaller count, Ferdinanus King of Spain sent to the said land his

third in command, a man of intelligence and knowledge, a warrior from his youth, whose name was Americo, a Florentine, who had already gone down [to sea] with the above-named Columbi. With him were many ships with soldiers and men of bitter soul, who had their war-weapons along. They went down to the sea and came to the New World a second time. Americo and his men traveled inside the country a distance of many days, and he performed there great and terrible deeds, so that he became famous and celebrated in all the kingdoms of Europe. For this reason that entire land was called by his name, Americo, to this day. While Columbi had preceded him, as shown above, nevertheless he had not performed noteworthy deeds as Americo had done. This portion constitutes a quarter of the earth's globe. [Again] after the above-mentioned happenings, in the year 1518 of the Christian era, that is, the year 278 of the smaller count, Carolus, King of Spain, sent large ships and a multitude of people to the said land of America and conquered a large portion of that land. They called that country Hispania Nova, meaning New Spain. The center of that land is located in the broad part of the earth, beneath the circle of Cancer, close to 48 degrees from the equatorial line, and 280 degrees in the longitude of the world from the west. [From there] it stretches and broadens in every direction. From all that is heard and written of that country, it contains, according to mathematical calculation, something like 100 by 100 miles [parasangs]. It is a built-up [?] land, fat, good and wide. Much gold is found there in the sands on the river banks; also valuable gems are found there in quantity. When Francisco, King of France, heard all the above-mentioned, he, too, sent his ship with men of valor, to that country and they conquered also for him a large portion of that land. He called it Franci Novoi, meaning New France. The center of this country is located in the broad part of the earth, about fifty degrees from the equator and 250 degrees longitude. It, too, is a broad land, and, from all that is written, its length and breadth it also is calculated to extend about 100 by 100 miles [parasangs].

LEGISLATIVE PROPOSALS AGAINST ANTI-SEMITIC PROPAGANDA IN SWEDEN

By KURT STILLSCHWEIG

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ANTI-SEMITISM has played a waning rôle in Sweden since the emancipation of the Jews in 1870. In fact, the equality of rights of the Swedish Jews became a matter of course and, until 1933, hardly evoked any friction. Even after 1933 Sweden remained faithful to her liberal traditions. This was particularly evident on the occasion of the deportations of Jews from Norway (October-November 1942) and from Denmark (October 1943). Swedish public opinion, led by the bishops, almost unanimously voiced its protest through numerous impressive demonstrations. The Swedish Ambassador in Berlin indicated that the deportations would cause a "strong reaction" in Sweden. Indeed, the Swedish government offered to provide refuge to all Norwegian and Danish Jews threatened with deportation, but the German occupying authorities rejected the offer. The reaction of the Swedish press, public polls and, above all, the manner in which Jews who had entered illegally were received, show unequivocally that the offer of the government had the full-hearted support of the population.

Nevertheless, one cannot fail to note that certain circles of the Swedish population have in recent years, under foreign influence, become infected with the virus of anti-Semitism. In all likelihood, this is only a numerically insignificant group. The very fact, however, that anti-Semitic propaganda could have taken hold at all in liberal Sweden has induced Parliament to raise the question whether legislative

measures against it, similar to those enacted elsewhere (in Holland and France before the war, New Jersey, Manitoba, etc.) should be introduced.

I

Under existing Swedish law, it is difficult to combat anti-Semitism. In general, it is not punishable as an offense since, as a rule, it is directed not against individuals but against "Jews" collectively. A Swedish court (Svea Hovrätt) has condemned it as "gross misdemeanor" ("förärgelseväckande beteende;" Strafflagen, chapter 11, par. 15) in some individual cases (display of signs with inscriptions hostile to Jews). But, the juridical validity of such decisions was contested. Besides, the law provides that only those gross misdemeanors which have been committed in public places are punishable, and by fine only. True, according to a supplementary clause of 1936 (Strafflagen, chapter 10, par. 14a), certain utterances are punishable, but only when "they are liable to threaten public security." In the cases in question, this could rarely be proved.

In view of this legal situation, early in 1942, a proposal to enact supplementary provisions was brought before both Chambers of the Swedish Riksdag (Parliament). The proposal was supported as follows:[1]

"Anti-Semitic propaganda must not be minimized and it must not be thought that the Swedish people is completely immune to this dangerous virus . . . The experience of other countries has shown that unscrupulous statesmen and demagogues, who themselves do not believe in their insane racial theories, utilize this madness in order to destroy democracy and the liberty of peoples . . . Swedish legislation must demand punishment for any kind of propaganda directed against groups of the population, because of their creed or so-called race."

The proposal did not include a detailed plan. It was

[1] Motioner i Första kammaren, 1942, No. 177; Motioner i Andra kammaren, 1942, No. 233.

[2] Första lagutskottets utlätande, 1942, No. 42.

submitted to the Legal Committee of the Parliament (första lagutskott) which dealt with it on May 12, 1942.[2] The Committee touched on certain basic questions of legislative technique, but only cursorily. It stated that "the difficulties in drawing a line between inadmissible utterances and those which may be regarded as justified criticism, can be overcome," and continued:

"In the opinion of the Committee it is quite natural that one or another offensive expression (överord) in a struggle between political parties remain unpunished. But expressions inciting to hatred against groups of the population because of race or religion are inexcusable. They are offensive to the general sense of decency and cannot be tolerated. By condemning such utterances we can protect public order and the sense of decency."

Though the Legal Committee regarded the motion as justified, it did not support it. For the Committee on Criminal Law is at present working on a revision of that portion of the penal code within whose province the problems in question fall. Therefore, the Legal Committee was reluctant to encroach on the work of the Committee on Criminal Law. On these merely formal grounds the Legal Committee recommended the rejection of the motion.

Both Chambers of Parliament abode by the Committee's decision. One of the movers of the resolution declared[3] that "this attitude toward so important a problem must be regarded as a demonstration by the Swedish people which should not be overlooked."

II

Some time after this, the deportation of the Jews of Norway took place. In the meantime, Swedish public opinion had reacted strongly against some conspicuous cases of local anti-Semitic propaganda. It also began to appear that the work of the Committee on Criminal Law would

[3] Riksdagens protokoll, Första kammaren, 1942, No. 19, p. 54.

still require considerable time. Consequently, at the beginning of 1943, a proposal was again submitted to the Riksdag for the introduction of a law to combat anti-Semitism. It was argued as follows:[4]

"It is no exaggeration to state that the persecution of Jews in our sister-country has unleashed tremendous reaction in Sweden . . . There can be no doubt that strong public opinion supports the demand for rapid and effective measures against anti-Semitic propaganda. Whatever is to be done, must be done *now* . . . . Calumnies against the Jews are actually aimed at us . . . "

The Riksdag again turned the proposal over to the Legal Committee. The latter reiterated its attitude of 1942, adding:[5]

"The most glaring racial incitement is undoubtedly to be found in printed material. In order to make legislation effective against race incitement, it would be necessary to amend the ordinance regarding freedom of the press ("tryckfrihetsförordning) . . . "[6]

The Riksdag accepted this, which means—according to the opinion expressed by Swedish Jews[7]—that it expects "positively and unequivocally to penalize racial incitement and, to this end, also to amend the ordinance regarding freedom of the press." The work of the Committee on Criminal Law should, however, not be encroached upon.

III

In several foreign states where anti-Semitic propaganda was penalized, objections were raised against such legislation on the ground that it restricts freedom of expression. This was countered with the assertion that the right of freedom of expression is not unlimited but is rather circumscribed within certain obvious bounds which derive from its very

[4]Motioner i Första kammaren, 1943, No. 90; Motioner i Andra kammaren, 1943, No. 137.

[5] Första lagutskottets utlätande, 1943, No. 34.

[6] Under Swedish law, provisions regarding freedom of press may be amended only by an amendment to the constitution.

[7] *Församlingsblad för Mosaiska Församlingen i Stockholm*, IV (1943), No. 2.

nature. During the notorious trial in Berne, Switzerland, in 1934 regarding the so-called "Protocols of the Elders of Zion" the Court formulated this idea in the following classic manner:[8] "Freedom of the press stops where baseness begins." Pertinent official documents of other states actually support this simple formula more strongly. Typical of this, for instance, is a memorandum submitted in 1938 to Parliament by the Dutch Minister of Justice, which states:[9] "There must remain, unimpaired, free criticism . . . of anything connected with public life, thus including certain sections of the population in their function within the State organism. Unmistakable misuse of this right, however, i. e. criticism which springs alone from bad faith, shall be suppressed with might and main . . . "

Sweden also accepted this line of thought. On October 27, 1943, the Swedish Ministry of Justice drew up a memorandum a part of which reads:[10]

"Free political debate is of fundamental importance in a democratic state, and the right to criticize the attitude of other citizens serves to curb behavior which public opinion would not tolerate. This, however, does not hold for racial incitement. The state cannot tolerate attempts to rouse hatred and contempt against a group of its population only because that group is of a certain origin . . . "

In other words, such "attempts" are regarded by the Swedish Ministry of Justice as a misuse of the right of freedom of expression. But this is not the only legal reason justifying punishment. The French democratic legislation and the Rafferty Bill of New Jersey, for instance, regarded outbursts of anti-Semitic propaganda also as a violation of the principle of equality.[11] The memorandum of the Swedish

[8] Quoted after the records of the lawsuit of the Jewish Bureau of Information, Amsterdam.

[9] Quoted from an English translation apparently not published and placed at the author's disposal by Professor Norman Bentwich of London.

[10] Cf. *Dagens Nyheter*, Stockholm, November 6, 1943.

[11] Cf. also *Publications de la Cour Permanente de Justice Internationale*, Série B., 1923, No. 6, Série A. B., 1935, No. 64. In these decisions the Permanent Court of International Justice explains the notion of "*égalité en fait*." It

Ministry of Justice supported this opinion by stating:

"Such attacks are directed against the equality of rights which should prevail among all citizens of a democratic country and are, therefore, contrary to our conception of the State."

In the French official propostion in 1939,[12] it was stressed that in inflicting punishment for anti-Semitic propaganda, the government actually is not so much concerned with the "interests" (*intérêt*) of a certain group of its population as "rather with that of the national collectivity" (*c'est bien plutôt celui de la collectivité nationale*). This idea is also reflected in the Swedish memorandum stressing that the provision in question should serve for the purpose of "securing general peace within the State."[13] On the basis of these considerations the Swedish memorandum suggests the enactment of this provision:

"Whoever intentionally spreads false rumors or deceitful statements, liable to rouse hatred or contempt against a group of the population of certain origin or faith, or who either orally and publicly or in print, which he disseminates or permits to be disseminated, insults or threatens such a group, shall be punished by fine or imprisonment."

In addition, the memorandum suggests a corresponding amendment of the ordinance regarding freedom of the press (par. 3).

IV

The proposals submitted to the Riksdag and the memorandum of the Minister of Justice caused lively public discussion. Public opinion, however, was less unanimous about this matter than the Parliament.

stresses that a merely *formal* equality in rights of majorities and minorities, whose status and needs are different ("dont la condition et les besoins sont *différents*"), may under certain circumstances be of a disadvantage to the minority, that is, may lead to inequality of rights. —"L'égalité en fait" may render necessary the establishment of a *different* treatment (that is, for instance, the enactment of a protective law in favor of the minority) in order to reach a situation which would bring about an equilibrium between the different situations.

[12] *Journal Officiel de la République Française,* April 24, 1939.

[13] Cf. also the above mentioned opinion of the Legal Committee which stresses "the interest of public security and decency."

The anti-Semitic press, naturally, attacked the projected legislation most vehemently. It stated that such legislation would represent a privilege for the Jews, the right of free expression would be threatened, and Sweden would be transformed into a new Palestine. The views of the liberal press, which constitutes the overwhelming majority, were conflicting. One group supported the proposed legislation. Another, which opposed it, strongly condemned anti-Semitism, just as the Riksdag did, but contended that the projected bill not only would be ineffective but might even prove harmful to the Jews. According to this view, there is no serious Jewish problem in Sweden and the overwhelming majority of the Swedish people is immune to anti-Semitism. The enactment of a kind of exceptional law in favor of the Jews would be interpreted by the population as a special privilege for a specific group and thus artificially create a Jewish problem which does not exist now. Moreover, in the liberal press the view of the Legal Committee was reiterated, namely, that the work of the Committee on Criminal Law must not be anticipated.

A similar difference of opinion, as existed in the liberal press, was to be found among those officials[14] whom the Ministry of Justice had requested to state their attitude in this matter. The objections mentioned above were repeated. As a new argument in favor of the proposed law it was maintained that it might

"serve as a warning (tankeställare) to many who, without malicious intention, were careless in their manner of speech and thought, due to bad examples."

As a new argument against the suggested law it was indicated

"that anti-Semitic propaganda has had a direct connection with the political development in certain countries in the course of the past decade and may therefore only be a temporary phenomenon which, under normal circumstances, might diminish considerably or assume other and more moderate forms."

[14] These opinions are compiled in *Församlingsblad för Mosaiska Församlingen i Stockholm*, V (1944), No. 2.

The newly appointed Minister of Justice has accepted this point of view. He declared that anti-Semitism in Sweden is only a "temporary disease" and "an anomaly." Moreover, the anti-Semitic propaganda in the country "has not assumed such proportions as to require legislative measures against it."

Thus the discussion of this matter has been postponed for the time being.[15] It is possible that it may be resumed if the anti-Semitic movement increases. The problem will certainly come up again when the Comittee on Criminal Law submits the results of its investigation to the Riksdag.

[15] This article was completed on May 30, 1944 (Editor's note).

AMERICAN JEWISH NAMES

By Lee M. Friedman

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"A rose by any other name . . ."
Shakespeare.

I*

"NAMES," wrote Isaac Disraeli in his *Curiosities of Literature*,[1] "by an involuntary suggestion, produce an extraordinary illusion. Favour or disappointment has been often conceded as the *name* of the claimant has affected us; and the accidental affinity or coincidence of a *name*, connected with ridicule or hatred, with pleasure or disgust, has operated like magic . . . Harsh names will have, in spite of all our philosophy, a painful and ludicrous effect on our ears and all our associations; it is vexatious that the softness of delicious vowels, or the ruggedness of inexorable consonants, should at all be connected with a man's happiness, or even have an influence on his fortune."

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[1] II, (New York, 1863), pp. 228-240.

Indeed, the importance of having a pleasing name is so widely acknowledged that a whole literature exists to enable parents to choose names for their children wisely—to prevent them, as Tristam Shandy says, from being "Nicodemus'd into Nothing."[2] On the other hand the present-day custom of being born into a family-name leaves no such freedom of choice.

English law has long recognized this inconvenience and, as the great Lord Chancellor, the Earl of Halsbury, says, "prescribes no rules limiting a man's liberty to change his name . . . He may assume any name he pleases in addition to or substitution for his original name . . . The law concerns itself only with the question whether he has in fact assumed and has come to be known by a name different from that by which he was originally known."[3] Englishmen have not been slow to avail themselves of this right. When a person is raised to nobility it is always open to him to choose the name or title under which he and his family shall henceforth be known. Thus Disraeli became the Earl of Beaconsfield; Max Aiken became Lord Beaverbrook; William Pitt, the Earl of Chatham; John Copley, Lord Lyndhurst; Henry Palmerston, Lord Melbourne; F. E. Smith, Earl of Birkenhead; Lever, the soapman, Viscount Leverhulme, to name but a few. Not only this, but many a well-known English family has arbitrarily adopted a name other than that to which it was born. Thus the Duke of Wellington's family name was not Wellesley but Colley, the Marlborough family, of which the present prime minister is a member, is not Churchill, but Spencer, Lord Byron changed his name from Biron, while the great Northumberland family are not Percys but Smithsons. English Jews also followed this practice. In-

[2] "How many Caesars and Pompeys, he would say, by mere inspiration of the names, have been rendered worthy of them! And how many, he would add, are there, who might have done exceedingly well in the world had not their characters and spirits been totally depressed and Nicodemus'd into nothing." Laurence Sterne, *The Life and Opinions of Tristam Shandy*, I, Ch. XIX.

[3] *The Laws of England*, XXI, pp. 349-354.

deed so generally is this practice accepted that it warrants no more in English literature than passing mention. The classic of our youth began:

"I was born in the year 1632 in the City of York, of a good family, though not of that country, my father being a foreigner of Bremen who first settled at Hull. He . . . married my mother, whose relations were named Robinson, a very good family in that country, and for whom I was called Robinson Kreutznaer; but by the usual corruption of words in England we are now called, nay, we call ourselves, and write our name, Crusoe, and so my companions always called me."[4]

And old Dean Swift in his caustic manner wrote:

"I know a citizen who adds or alters a letter in his name with every plum he acquires; he now wants only the change of a vowel to be allied to a sovereign prince in Italy . . . "[5]

Erasmus, Loyola, Dante, Richelieu, Voltaire, Molière, Linnaeus, and Henry M. Stanley were assumed names. In our own history Ulysses S. Grant, Grover Cleveland and Woodrow Wilson tinkered with their names to give them popular appeal. The public knows Mark Twain far better than it does Samuel L. Clemens.

In this country many states have enacted statutes regulating the change of names, but the practice varies.[6] When

[4] Arnold Bennett in his novels of the five towns (Hilda Lessways I. 5) wrote:

"Hilda then learnt that Mrs. Gailey had married a French modeller named Canonges . . . and that in course of time the modeller had informally changed the name to Cannon, because no one in the five towns could pronounce the true name rightly . . . "

[5] *Examiner* #40, 1711 "This was Sir Henry Furnese, whose real name was Furnace, which he altered into Furnice, Furnise, Furness and Furnese; with an a instead of u, it would become Farnese." S. Baring Gould, *Family Names and their Story*, p. 399.

[6] Thus Massachusetts General Laws (Ter. Ed.) Ch. 210 ss 12-14; New York Code Civ. Pro. ss 2410, 2412; Illinois Revised Statutes (1943), Ch. 96. Where there is no statutory regulation in some jurisdictions it has been held the grant of a change of name is a matter of judicial discretion and not a matter of right (45 C. J. p. 382). Generally, however, in the absence of statutes it has been laid down that the English common law prevails and that a person may change his name at will without resort to legal process so long as it is done without fraudulent intent. (In re, McUlta, 189 Fed. 250, U. S. v. McKay 2 Fed. (2) 257, Christianson v. King County, 196 Fed. 791 aff. 203 Fed. 894).

such proceedings come before the court for action, too often the judge arbitrarily imposes his conception of democracy by insisting that the new name indicate the racial origin of the applicant. Particularly has this been so in the case of Jews when the judge has felt that the chosen name is too "American" and is intended solely to hide the identity of the family. A proper understanding of the history of surnames and of Jewish surnames in particular will lead to an appreciation of what really is involved in such changes, since for most Jews the surnames brought from Europe have no long or sentimental association with the family.

In Europe family names did not come into general use until the late Middle Ages. At about the twelfth century the nobility began to call themselves after their ancestral castles. While among the burgher class surnames began to appear in the fourteenth century, such names were not generally adopted by families until two centuries later. These names may, on the whole, be classified in four general categories:[7]

I. *Places*: The name of the town or city in which the family dwelt: Chester, Lincoln, Clinton, Windsor; or the location of the home: Hill, Lane, Brook, Pool, Church, Wells, some of which were originally John at the Hill, Peter in the Lane, etc.

II. *Indicating Father or Ancestor*: Benson, Wilson, Johnson, Robinson, Jackson, Fitzpatrick (son of Patrick), O'Neil (son of Neil), MacDonald (son of Donald), or with the ancient diminutives kin, cock, ock, *etc.*: Wilkin, Willcox, Robin, *etc.*

III. *Occupation or Office*:[8] Clark (Clerk), Weaver,

[7] Although I have used English names in the listing, the same is equally true of Germany, France and other continental countries.

[8]. Offices have brought new names to divers families, as when Edward Fitz-Theobald was made Butler of Ireland, the Earl of Ormond and others descended from him took the name of Butler. So the Constable families in the County of York are said to have taken that name from some of their ancestors who filled the office of constable in various castles. In like manner the Stewards, Marshals, Spencers. William Camden, *Remaines Concerning Britaine* (5th Ed.; London 1637), p. 145.

Turner, Gardner, Taylor, Smith, Wright, Mason, Cook, Hunter, Carpenter, *etc.* Sometimes the name was adopted from the sign under which one worked or solicited trade: at the sign of the Bell, Lyon, Swann, Lamb, *etc.*

IV. *Descriptions of the Person or Nickname*: Strong, Gay, Smart, Sharp, Longfellow, Bunker (*bon coeur*), Black, White, Read (Red), Coward, Short, Parnell (a low woman), Starke (rude), Cofax or Colfax (a deceitful fox).

As occasion arose to record a name many scriveners, parish clerks and other officials, weak or arbitrary in spelling gave new forms to old names. Often when a person moved to a new locality the name would be pronounced and recorded differently. Thus De Vesci became Veitch; St. Amand, Sandeman; St. Claire, Sinclair; Hogben, Ogden; Grand, Grant; Bell Ami, Bellamy. Many an old Norman French name borne by a follower of William the Conqueror was Anglicized out of all recognition.

In England, from the time of the Domesday Book, we see the gradual adoption of names and their change until finally family surnames began to assume a more or less definite status.[9] Even then, as the learned Camden remarked when he wrote on this subject over three hundred years ago:

"And as to find out the true originall of Surnames, is full of difficulty, so it is not easie to search all the causes of alterations of Surnames, which in former ages have been very common among us, and has so intricated, or rather, obscured the truth of our Pedegrees, that it will be no little labour to deduce many of them truly from the Conquest . . . "

As time passed the humor of these only too often ill-

[9] The early historian Camden illustrates the beginning of this process. He tells how the custom brought over by William the Conqueror from France was for the eldest son to take his father's name while the younger branches assumed the names of the respective estates allotted them.

"If Hugh of Saddington gave to his second sonne his mannour of Fridon, to his third sonne his mannour of Pantley, to his fourth his wood of Albdy, the sonnes called themselves De Frydon, De Pantley, De Albdy, and their posterity removed De."

He cites a family of eight sons each with a different name and none bearing that of the father. William Camden, *op. cit.*, p. 141.

fitting descriptive surnames did not escape those who gave thought to the matter:

Men once were surnamed for their shope or estate,
(Yea, all may from history worm it)
There was Louis the Bulky, and Henry the Great,
John Lackland, and Peter the Hermit.
But now, when the door-plates of misters and dames
Are read, each so constantly varies
From the owner's trade, figure, and calling, surnames
Seem given by rule of Contraries.

Mr. Box, though provoked, never doubles his fist;
Mr. Burns in his grate has no fuel;
Mr. Playfair won't catch me at hazard or whist;
Mr. Coward was winged in a duel;
Mr. Wise is a dunce; Mr. King is a Whig;
Mr. Coffin's uncommonly sprightly;
And large Mr. Little broke down in a gig,
While driving fat Mrs. Golightly.

THOMAS HOOD.

II

A change of name to signalize a significant spiritual experience was evidently not uncommon in biblical times, as for example, the change from Abram to Abraham (*Gen.* XVII:5), and from Jacob to Israel (*Gen.* XXXII:28).[10] Under foreign rule foreign names appeared among the Jews so that by the time of Josephus, Jews bore a variety of Hebrew, Greek, Syrian, Persian, and Roman names.[11] As time

[10] Such also in the New Testament were Simon called Peter (*Matt.* XVI: 18), Saul of Tarsus who became Paul (*Acts* XIII: 9). Popes change names when ascending the Papal throne. The same practice is followed by priests and nuns when entering holy orders.

[11] Although the study of Biblical names is still far from complete, it can be said that Jewish names in Biblical times were derived from personal peculiarities and other such bases much as with all primitive people. cf. *Jewish Encyclopedia,* IX, "Names;" *Universal Jewish Encyclopedia,* VIII, "Names."

went on and the circle of their wanderings widened, it followed naturally that their names underwent many changes.

The Jews of medieval Europe seem to have been unaffected by the practice of adopting family names which was under way among the Christian communities.[12] Then, toward the close of the eighteenth century, as the period of Jewish Emancipation approached, at a time when Christian Europe had already largely accepted the fixed surname, the practice had not penetrated the ghetto. Jews were still distinguished by primitive descriptives such as Abraham the widow's son, Jacob son of Aaron, Isaac the tailor, Moses of Worms, Israel by the Gold Shield, Aaron the lame, the red Jacob, Joseph the Portuguese, Benjamin the bald, Jonah by the well, Simon the learned, and so on.

The political emancipation of the European Jews[13] began when Emperor Joseph II, under the influence of the radical French philosophies of his day, attempted to break down the medieval system of restrictions which had walled up the Jews in ghettos. He issued a number of liberal decrees to ameliorate their condition and incorporate them into the

[12] In Angevin England during the period 1218-1277 the Records from the Rolls of the Exchequer of the Jews, ed. by J. M. Higgs (Selden Society London, 1902; and Jew. Hist. Society of England, London, 1905-1929), present an interesting array of Jewish names many of which have identifying tags and some of which appear to be surnames. Some instances are:
Isaac of Norwich; Moses of Colchester; Moses of Cambridge; Ben of Lincoln; Samuel of Senlis.—Elias de Abbacia; Josce Presbyter; Abraham Gabbay; Solomon Turbe; Jacob de Eveske; Moses Le Blund, Salomon Bunting; Solomon Bigelin; Benedict Episcopus; Abraham Motun (who paid the King 1 bezant that his cognomen be changed—Riggs, *Plea Rolls of the Exchequer of the Jews*, II, p. 19). Moses Son of Brun; Cok son of Aaron.
Hamo, Creese, Hazin, Vines (Vynes), Lumbard, Sampson, Manser. See also the lists in J. Jacobs, *Jews of Angevin England* (London, 1893), p. 345 ff.; M. Adler, *Jews of Medieval England* (London, 1939), *passim*.

[13] Emancipation was the application to the Jews of the eighteenth-century social philosophy based on the individual as the decisive element in society, according to which every individual was entitled to equality. It was anticipated that with such a status the Jews would assimilate and ultimately disappear.

national population. This series of regulations, known as the *Toleranzpatent* (1782)—Edict of Toleration—removed restrictions, opened occupations and schools to Jews, gave them liberty to travel and to dwell where they preferred, and at the same time prescribed that Jews should use German as their language among themselves and in their dealings with others. On July 23, 1787 this was followed by a further ordinance which required the Jews to serve in the army and also to take permanent family surnames.[14] The Jews, however, were not free to select names for themselves, but the selection was left to the local magistrates. Some officials regarded the occasion as an opportunity for graft and exacted a gratuity for a pleasing name, or inflicted upon recalcitrants unpleasant appellatives such as Karfunkel (Carbuncle), Rindskopf (Cowhead), Bear, Wolf, and so forth.

The Jews themselves did not embrace the privilege enthusiastically. Many of them did not respond since enforcement of the law was lax. Some disregarded their official names when they found them a handicap. By and large the law did not prove to be widely effective.[15] Then, as the French Revolution overshadowed Europe and in France the revolutionists established a radical government to carry out their principles

[14] There is a precedent in history for this statute. In 1465, after the English conquest in Ireland, parliament passed a law that:
"Every Irish [man who dwells] among Englishmen, in the Counties of Dublin, Meath, Oriell (South) and Kildare go like unto an Englishman in apparel, and shaving off his beard above the mouth; and that he be within one year sworn the liegeman of the King . . . and take unto himself an English surname of the town as Sutton, Chester, Trim, Streen, Cork, Kinsale, or a colour as White, Black, Brown; or an art as Smith or Carpenter; or an office as Cook, Butler; that he and his issue use that name under pain of forfeiture of his goods yearly until the premises be done, to be levied twice a year to the King's Wars, according to discretion of the King's Lieutenant or his Deputy."
Stat. At Large Ireland 1786 Vol. 1. p. 29; Stat. Rolls of Ireland 5 Ed. IV, ch. XVI (Vol. III, p. 291).

[15] The law only applied to the Jews in Austria, Bohemia, and Hungary. After Joseph II's death (1790) this legislation became practically a dead letter.

[16] This first act only applied to "Juifs connus en France sous le nom de

of *Liberté, Fraternité, Égalité,* the status of French Jews received attention.

By act of the National Assembly of January 28, 1790, the Jewish inhabitants were made citizens of France.[16] For the first time in a European country Jews stood before the law with equal civil rights and obligations with other citizens. With the heavy demands upon the manpower of France caused by the Napoleonic wars, Jews too were subjected to the military draft. But now difficulties arose in identifying the drafted Jews when it was found that they had no fixed surnames. On July 20, 1808, at Bayonne, Napoleon issued an imperial decree, the first article of which related to Jews without fixed family and first names, as follows:

"All subjects of our empire who are followers of the Hebraic Cult, and who to the present time do not have fixed family and first names are commanded to adopt such within three months from the publication of our present decree and to declare the same before the civil official of the Commune where they are domiciled."[17]

As the Napoleonic armies extended their conquest into Germany and other countries this decree too was extended into all jurisdictions governed by the French.[18]

The Jews now complied with the law. Throughout conquered Germany and even beyond where no such laws applied they adopted family names. The times were ripe for this innovation. Under the influence of leaders like Moses Mendelssohn and David Friedländer, the Jews were not only stepping out from the physical limitations of ghetto walls, but intellectually were absorbing modern learning and world culture from which they had been shut off for cen-

Juifs Portugais, Espagnols et Avignionois," that is, to the Jews of Southern France. The following year, the law was extended to include all French Jews.

[17] Ceux des sujets de notre Empire qui suivent la culte hébraique, et qui, jusqu'à present n'ont pas eu de nom de famille et de prenom fixes, seront tenus d'en adopter dans les trois mois de la publication de notre present Decret, et d'en faire la déclaration par devant l'officier de l'état civil de la Commune où ils ont domiciliés.

[18] Cf. Adolf Kober, "Jewish Names in the Era of Enlightenment," in *Historia Judaica,* V (1943), pp. 165-182.

turies. They moved into the outer world and mixing with Christians found it convenient to conform to the social conventions of their neighbors. Then too the local officials were now more efficient. French Jews adopted French names, German Jews, German names, Italian Jews, Italian names. How this operated is illustrated by Oscar S. Straus's account of the origin of his family name:

"Up to the time of Napoleon's taking possession of the country the Jews of the Palatinate had not adopted family names. This they did later, beginning in 1808, when under Napoleon, the Palatinate became the Department of Mount Tennerre and part of France. My great-grandfather, for instance, before adopting the family name of Straus, was known as Jacob Lazar, from Jacob ben Lazarus, or Jacob son of Lazarus, as in biblical times."[19]

The registration of family names, however, was fraught with the old hazard of official corruption, and many Jews found themselves saddled as of old with unpleasant inappropriate names. Moreover, in the process of registration families sometimes lost their identities. A father, perhaps named Klein, found that one son was registered as Berliner, another as Nurenberger, while a third was Rosenberg. The Polish "ski" or "sky" signified that Isaac Wilensky, Solomon Cracowski were the Isaac who came from Wilna and the Solomon from Cracow, while the "vitz's" or "witz's" were the familiar "sons"—Rubenowitz, the son of Ruben, Slomovitz, the son of Solomon.[20] These names have remained current up to the present.

III

When European Jews emigrated to America, in booking passage, or registering with the American immigration officials, their foreign-sounding names received many a strange twist as they came to be spelled out in English. When their children entered the public schools, puzzled teachers renamed whole families in spelling out as best they could what they understood from their frightened infant charges. Again, as European families learned English in America, they and

[19] Oscar S. Straus, *Under Four Administrations* (Boston, 1922), p. 1.

[20] In Russia many Jews took the name of Gordon after the Scotch soldier favorite of Catherine the Great, who commanded her guards.

EMPIRE FRANÇAIS.

DÉCRET IMPÉRIAL

CONCERNANT les Juifs qui n'ont pas de Nom de Famille et de Prénom fixes.

A Bayonne, le 20 Juillet 1808.

NAPOLÉON, EMPEREUR DES FRANÇAIS, Roi d'Italie, et Protecteur de la Confédération du Rhin;

Sur le rapport de notre Ministre de l'Intérieur;

Notre Conseil d'état entendu,

Nous avons décrété et décrétons ce qui suit :

ART. PREMIER.

Ceux des sujets de notre Empire qui suivent le culte hébraïque, et qui, jusqu'à présent n'ont pas eu de nom de famille et de prénom fixes, seront tenus d'en adopter dans les trois mois de la publication de notre présent Décret, et d'en faire la déclaration par devant l'officier de l'état civil de la Commune où ils sont domiciliés.

ART. 2.

Les juifs étrangers qui viendraient habiter dans l'Empire, et qui seraient dans le cas prévu par l'article premier, seront tenus de remplir la même formalité dans les trois mois qui suivront leur entrée en France.

ART. 3.

Ne seront point admis comme noms de famille, aucun nom tiré de l'ancien testament, ni aucun nom de ville. Pourront être pris comme prénoms, ceux autorisés par la Loi du 11 Germinal an 11.

ART. 4.

Les consistoires, en faisant le relevé des juifs de leur Communauté, seront tenus de vérifier et de faire connaître à l'autorité s'ils ont individuellement rempli les conditions prescrites par les articles précédens.

Ils seront également tenus de surveiller et de faire connaître à l'autorité ceux des juifs de leur communauté qui auraient changé de nom sans s'être conformés aux dispositions de la susdite loi du 11 germinal an 11.

ART. 5.

Seront exceptés des dispositions de notre présent décret, les juifs de nos états, ou les juifs étrangers qui viendraient s'y établir, lorsqu'ils auront des noms et prénoms connus, et qu'ils ont constamment portés, encore que lesdits noms et prénoms soient tirés de l'ancien testament ou des villes qu'ils ont habitées.

ART. 6.

Les juifs mentionnés à l'article précédent, et qui voudront conserver leurs noms et prénoms, seront néanmoins tenus d'en faire la déclaration; savoir: les juifs de nos états, par-devant la Mairie de la commune où ils sont domiciliés, et les juifs étrangers, par-devant celle où ils se proposeront de fixer leur domicile; le tout dans le délai porté en l'article premier.

ART. 7.

Les juifs qui n'auraient pas rempli les formalités prescrites par le présent décret, et dans les délais y portés, seront renvoyés du territoire de l'Empire: à l'égard de ceux qui, dans quelque acte public ou quelque obligation privée, auraient changé de nom arbitrairement et sans s'être conformés aux dispositions de la loi du 11 germinal, ils seront punis conformément aux lois, et même comme faussaires, suivant l'exigence des cas.

ART. 8.

Notre Grand-Juge Ministre de la Justice, et nos Ministres de l'Intérieur et des cultes, sont chargés, chacun en ce qui le concerne, de l'exécution du présent Décret.

Signé NAPOLÉON.

Par l'Empereur :

Le Ministre Secrétaire d'État, Signé H. B. MARET.

LE PRÉFET du Département de la Manche, Membre de la légion d'honneur,

Vu le Décret impérial du 20 Juillet 1808, ci-dessus transcrit, ensemble les instructions transmises par S. Ex. le Ministre de l'Intérieur, sous la date du 8 Septembre présent mois, pour l'exécution dudit Décret;

ARRÊTE CE QUI SUIT:

ART. 1.er

Un registre double, timbré et paraphé par le Président du tribunal de première instance, sera ouvert à la mairie de chaque commune du département de la Manche où il y a des juifs, pour y inscrire et recevoir la déclaration de tous ceux qui sont Français, et qui sont désignés dans les articles 1.er et 5 du décret du 20 Juillet 1808.

ART. 2.

Tout juif majeur devra faire lui-même sa déclaration; les pères, et, à leur défaut, les mères la feront pour leurs enfans mineurs, les tuteurs pour leurs pupiles.

ART. 3.

Le fils majeur sera tenu de prendre le nom de famille de son père existant; les frères et sœurs majeurs n'ayant plus ni père ni mère, adopteront tous le même nom de famille.

ART. 4.

La déclaration prescrite par les articles précédents, sera faite et inscrite sur les deux registres, par le Maire, dans les termes énoncés au modèle suivant :

Par-devant nous, Maire de la Commune d
« Canton d Arrondissement d
« Département de la Manche, s'est présenté, (*mettre ici « les nom et prénom actuels du juif déclarant*), qui a « déclaré, prendre le nom de « pour nom de famille, pour prénom, celui de « et a signé avec nous le jour du mois de « de l'an mil huit cent huit.

(Signature du déclarant.) *(Signature du Maire.)*

ART. 5.

La formule ci-dessus sera suivie à l'égard des juifs « qui se trouveront dans le cas de l'article 5 du Decret; « en conséquence leur déclaration sera la même et on « substituera seulement le mot *conserver* au mot *prendre*.

ART. 6.

La déclaration qui sera faite par les pères, ou à défaut, par les mères d'enfans mineurs, et par les tuteurs sera faite avec la modification et suivant la formule ci-après :

« Par devant nous Maire de la commune d
« Canton d Arrondissement d
« département de la Manche, s'est présenté (*mettre ici « les nom et prénom et domicile actuels du père, mère « ou tuteur déclarant*) lequel a déclaré donner à « son fils ou sa fille mineur, ou son pupile, néa « le , le nom de famille « de , pour prénom, celui de « et a signé avec nous le jour du mois de « de l'an mil huit cent huit.

(Signature du déclarant) (*Signature du Maire.*)

ART. 7.

Il sera fait et reçu sur les deux registres, une déclaration particulière pour chaque individu : chacune sera signée par le Maire et par le déclarant.

ART. 8.

Le présent Arrêté et le décret impérial qui le précède, seront imprimés, publiés et affichés dans toutes les Communes du Département: MM. les Maires en donneront spécialement connaissance aux juifs ou familles de juifs dont le domicile est connu, et rendront compte de leur exécution au Sous-Préfet de leur Arrondissement.

En l'Hôtel de la Préfecture à St-Lo, le 30 septembre 1808.

LE PRÉFET de la Manche,

L. COSTAZ.

A Saint-Lo, de l'Imprimerie de J. ELIE, Rue Torteron, N.° 99.

NAPOLEON'S DECREE CONCERNING NAMES OF JEWS (1808)

their neighbors repeated the age-old process of adjusting their names to local usage.

Thus historic precedent, a slow and imperfect acquisition of English, and sheer accident have in many instances associated the process of Americanization with the alteration of alien Jewish names. In a new land, speaking another language, the Jews, quite unwittingly, perhaps almost instinctively, in Anglicizing family names or in adopting native surnames in America, are but repeating the historical process which, for them perhaps a little more recently than for other Europeans, marks the progress of civilization.

Even where courts have statutory jurisdiction over the procedure of changing names, some of our leading decisions interpret the law to the effect that, inasmuch as a change of name is a man's common law right, the function of the court is merely to establish the change as a matter of record.[21] But, dissenting judges sometimes feel it necessary to assert their personal taste and ideas in these matters, and here and there provide colorful courtroom data of this phase of the American Jewish scene.

In a Philadelphia court the aristocratic Cabot family (Dr. Hugh Cabot, dean of the Medical School of the University of Michigan; Philip Cabot, head of St. George School, Newport, Rhode Island; Judge Frederick P. Cabot of Boston; George E. Cabot of Cabot, Cabot & Forbes) arose to protest against Mr. Harry Kabotchnick becoming Mr. Cabot. The name Cabot, it was contended, had been associated with American history since the discovery of the continent; to allow persons of foreign birth to assume such a well-known historic name would be an unjust interference with the rights of persons of ancestry who have lived in the country for so long a time.[22] The court, however, was unimpressed and overruled these objections.

Another leading case involved one Adolph E. Finkelstein who sought to change his name to Arthur E. Ferris.

[21] Smith v. U. S. Casualty Co., 197 N. Y. 420, Christianson v. King County, 196 Fed. 791 aff'd 203 Fed. 894, U. S. v. McKay, 2 Fed. (2d) 257, In re Useldinger, 96 Pacific Reporter (2d) 958, Ray v. Photo Player Co., 46 Cal. App. 314.

[22] *Boston Herald*, August 14 and 15, 1928.

Four New York attorneys of the name of Ferris rushed forth to defend the family name which they claimed they had inherited from some Colonial worthy, against profanation. Judge McGeehan, whose own name qualified him to voice the broad spirit of a cosmopolitan metropolis, allowed a new spoke to be added to the Ferris wheel when he informed the aristocratic protestants that American blood is a rich mixture of many peoples, and family names are not copyrighted. To the Ferris family the judge offered the consolation that the new Ferris "would familiarize himself with and would devote himself to the fine American traditions associated with the name he has been permitted to assume."[23]

Samuel Lipsky, a Boston butcher who, with his son, ran a little shop, changed his name to Libby. The well-known Chicago packing firm Libby, McNeill & Libby donned their armor and gave legal battle on the ground that there was room for only one Libby in the nation's meat business; should Lipsky, father and son, continue as Libbys to sell meat in Boston they would wean Yankee business away from the Chicago Libbys. So they wanted the Messrs. Libby to go back to being Lipskys or keep out of the Boston meat business. A wise court decided that Libby né Lipsky, father and son could still continue to supply the Hub with meat.[24]

It is evident, as a New York judge ungrammatically remarked, that "family traditions and respect for old family names are undoubtedly being held in less and less respect in this country."[25] Jews are manifesting no deep concern for European family ties in dropping their traditional surnames. This is not, however, a process of recent origin. It has been going on here continuously since early Colonial days.[26]

[23] *New York Times*, April 30, May 2, 1942.

[24] Libby, McNeill & Libby v. Libby, 241 Mass. 239.

[25] In re Kastenbaum, 44 N.Y.S. 2, 1943.—The judge also added: "One reason that he might have urged, which is not in the petition, is that a translation of Kastenbaum is 'box-tree,' perhaps that is a plausible ground for relieving him of that name."

See Lee M. Friedman, *Jewish Pioneers and Patriots* Ch. 18: "The Campbells are Coming," (Philadelphia, 1943). When the Polish Jew Haym the son of Salomon chose his father's name he became the Haym Salomon whose assistance in financing the American Revolution is so well known. Cf. Hyman B. Grinstein, "A Haym Salomon Letter," *Publications of the American Jewish Historical Society*, XXXIV (1937), p. 112.

It would be unnecessarily repetitious to trace, from one end of the country to the other, this spontaneous Americanization of names, intended to make the bearers more intimately American, but not less Jewish.[27] Levinsky and Levisohn becomes Lewis, Rabinowitz becomes Robinson, Danishevsky becomes Dana, Schwab becomes Swope, Aaron becomes Harris, Schoenberg via Bellemonte becomes Belmont, Sinsheimer becomes Sinton, Isadore Baline becomes Irving Berlin, Samuel Goldfisch becomes Samuel Goldwyn, Schwartz becomes Stewart, Himmler becomes Hamilton. Brooks is the American for Fischbach; Winston for Weinstein,[28] Stanley Kingsley for Samuel Kastenbaum,[29] Wallace for Wallach, Burnston for Bernstein, Waterman for Wasserman, and Adams for Abrams.[30]

By and large our courts, especially those of New York, have been liberal in facilitating these changes of name. This

[27] Although only the change of names by Jews is dealt with the same practice and tendency prevails among other elements in our country. Irish, Armenians, Poles, Germans, Syrians, Swedes, and others are resorting to the same process of name changing.

[28] Compare Weinstein's Petition, 35 D & C (Pa) 227 where the Philadelphia grocer and delicatessen storekeeper Charles Weinstein was denied a change of name to James C. Winston after proof that he had a criminal record and was an habitual user of aliases.

[29] See *supra*, note 25.

[30] The present examples are drawn largely from the files of the Probate Court for Suffolk County (Boston), Massachusetts.
No list could be exhaustive. A few additions from the long docket of Suffolk County show:

Kadetsky	Kedets
Cabelinsky	Cabel
Kalbfleisch	Kalish
Slutzky	Slater
Bilafsky	Beal
Rosnosky	Ross
Rosenthal	Fields
	Russfield
	Russell
	Randall
	Rawl
	Reynolds
	Rogers
	Evans
	Ross
	Rose
Saranovitz	Savage
Sarkovitz	Sanders
Bloomberg	Bromley
Blumenthal	Thall
Soperstein	Spear
Sosnowski	Summer
Wingersky	Wing
Smalensky	Small
Rosenberg	Rosser also Ross
Davgofsky	Davis
Chodorowsky	Clayton
Levinsky	Ellis
Moskovitze	Morse
Saperstein	Sapir

attitude is particularly helpful at a time when a new immigration of European refugees is embarking on American careers and will in many instances have to face this problem. Already it has been decided that the privilege of name-changing will be afforded to alien applicants who have filed their first papers.[31] In a Philadelphia Court Judge George A. Welsh, however, holding that "the national origin is of utmost importance during the war" refused the requests of fifty-four new citizens for permission to change their last names.[32] But when once a person either by virtue of court decision or otherwise has used and been generally known by a name it constitutes his "legal name just as much as if he had borne it from birth."[33]

Sometimes, however, an application for a change of name indicates a desire to cut adrift from the Jewish heritage. Judges have not been slow to detect this and to express their opinion of such attempts in no uncertain terms. In a case[34] which in 1928 attracted much attention, Judge Aaron J. Levy had before him a petitioner who desired to discard his name Levy. With fine disdain, emphasizing that the purpose of name-changing for Jews was to relieve victims from the handicap of tongue-twisting foreign nomenclature, the judge said: "Of course, I share his disappointment and grief in his inability to secure employment in his profession, and indeed lament the fact that this was entirely due to the name he bore. Character and courage are essential in fighting off these vicious and bigoted influences, but as he prefers to run, let him. Doubtlessly, he is wholly ignorant of the fact that the Bible tells us that the Tribe of Levy never worshipped the Golden Calf."

31 Application of Lipschutz, 32 N.Y.S. (2nd) 264.

32 *New York Times*, June 6, 1942.

33 In re Useldinger, 96 Pacific Reporter (2d) 958, Ray v. American Photo Player Co., 46 Cal. App. 314.

34 In the matter of Levy, N.Y. Law Journal, Jan. 24, 1928.

35 In re Cohen, 255 N.Y.S. 616. See also Petition of Cohen, 297 N.Y.S. 905, in which Morris Cohen, graduating from the First Institute of Podiatry and contemplating practice in New York, petitioned to assume the name of

Somewhat later Emanuel Voltaire Cohen decided to change his name to Emanuel Voltaire Conason because he desired to enter as a student in a famous old New England university. Expressing preference for Conason because "the name of Cohen is un-American" the petition for the change was granted upon deletion of the offensive expression.[35]

The debate as to the wisdom and advantage of name changing rages inconclusively. To many it is altogether a matter of taste and sentiment. Others, perhaps more realistically facing the economic and social prejudices of our country, consider that the Americanization of names to some extent tends to eliminate a handicap. This certainly was a potent motivating influence during the First World War and still is a factor today. But there are those to whom any Jewish name-changing indicates an attempt to cast aside ancient bonds and a disloyalty to family heritage—a retreat in the face of the challenge of antisemitism, a sailing under false colors.

In this new land of America shall old names be treasured even when they prove fetters, or shall people new to the land rename themselves? English names from old England for New England, Dutch names from Amsterdam for New Amsterdam, Spanish names for the Great Southwest and the Pacific coast, French names up from Louisiana and down from Canada, a tinge of Scandinavian from the Northwest,

Louis Murray Keegan, claiming that the name Cohen was a handicap, while Keegan was a good old Irish name which he thought to honor by assuming. He was turned down with the admonition that "many distinguished and successful Americans in the professions and in the banking and mercantile world (who) have proudly borne the name of Cohen, one of whom now graces the Bench of the Supreme Court of the State of New York with distinction and ability, while another was elected to the House of Representatives from New York City . . . The name 'Cohen' (spelled in various ways and sometimes as 'Kohen') comes down through the centuries signifying the respected descendants of the priestly caste in ancient Israel, the priests of the temple in the Old Testament. Thus may the petitioner know he bears a traditionally old and honored name and the court will not aid him in his desire to forswear his original identity by assuming another and totally different one . . . "

and the brogue of old Erin from the immigrant cities of the Atlantic coast—what a confusion rivaling all the tongues of Babel! Casting off the traditions, errors and restrictions of forsaken homelands to win to a new and broader life, as part of a new, democratic nation fighting ancient prejudices, uniting all blood with new hopes and ambitions that our America may emerge a people united under the fatherhood of God in a brotherhood of man, what matters the name? If new names make the bearers feel more intimately part and parcel of this American life who is there to say them no?

REFORMS AT TEMPLE EMANUEL OF NEW YORK

1860 - 1890

By HYMAN B. GRINSTEIN

Brooklyn, New York

I

BEGINNINGS OF REFORM

IN APRIL, 1945, Temple Emanuel of New York will celebrate the one hundredth anniversary of its formation. In 1845, a small group of Jews, believing that a reform of Jewish worship and ritual was necessary, joined together and founded the Congregation Emanuel in the City of New York.

The beginnings of Temple Emanuel were on a very modest scale. Rented quarters were secured on the top floor of a small building at the corner of Grand and Clinton Streets, on the lower East Side. Here the traditional services were conducted in orthodox fashion, with men and women seated separately and with the cantor, G. M. Cohen, singing in *Scarbovo* manner, both the *Shaharit* and *Musaf* services. A choir composed of men and boys took part in the service in an attempt to enhance its beauty. The Rev. Leo Merzbacher, the rabbi, delivered sermons in German on the need of religious change.

Elsewhere[1] the writer of this article has given a lengthy account of the changes which the congregation introduced as it moved from these small rented quarters into a remodeled church on Chrystie Street and made progress towards a reform of the ritual. Within a few years the congregation moved once more to an imposing church which it had pur-

[1] In the forthcoming volume, *The Rise of the Jewish Community of New York, 1654-1860.*

chased on 12th Street and where further and more radical changes were introduced.

By 1860, Congregation Emanuel observed only one day of the two-day holidays. Men and women sat together in family pews and an organ was played during the services. A prayer book, *Seder Tefillah,* composed originally by Leo Merzbacher in 1854 and revised in 1860 by Dr. Samuel Adler, second rabbi of the congregation, was in use. This book eliminated many prayers including the *Musaf,* and shortened the service considerably.[2] But the prayers were still recited in Hebrew. The reading of the Torah followed a three-year cycle and was modified in that the rabbi read the week's portion without calling any worshipers to the reading.

In 1859, the congregation was almost disrupted over the question of removing the hat in the Temple. After considerable discussion the congregation permitted those who desired to do so, to remove their hats during the sermon period, but not during the remainder of the service; the cantor and the rabbi did not remove their hats at all. This compromise produced confusion. Some people removed their hats during the entire service, while others refused to remove their hats even during the sermon period. It was obvious that this mixed and confusing practice could not last very long.

Accordingly, in April 1864, some twenty years after the formation of Emanuel, the following resolution was offered and adopted at a meeting of the Board of trustees:

> Resolved that in the opinion of the Board it is an offence to harmony and decorum that part of the Congregation have during divine service their heads covered and part have their hats off, therefore . . .
>
> Resolved to recommend urgently at the next general meeting of the Congregation to adopt the rule and make it a binding law that all attending divine service at the Temple Emanuel have their heads uncovered during such service.[3]

[2] The author will publish shortly an article on the Merzbacher prayer book in the *Journal of Jewish Bibliography.* Therein the reader will find an analysis of the first edition of the book as well as of the two revisions by Adler, the one in 1860 and the other in 1864.

[3] *Minutes of Trustees,* Manuscript in the Archives of Temple Emanuel, April 3, 1864.

At a meeting of the membership in May, this resolution was ratified with only one dissenting vote. But it was not until 1874 that the cantor and the ministers of the congregation removed their hats as well.[4]

II

ABOLITION OF HEBREW PRAYERS

With the problem of wearing the hat solved, the congregation turned its attention to the substitution of English for Hebrew prayers. In anticipation of this change, efforts were made in 1867 to have a uniform prayer book introduced into the several reform congregations in New York. But Dr. David Einhorn, who had removed from Philadelphia to New York in 1866 to minister to the congregation Adat Jeshurun, refused to join in the movement. Emanuel was thus forced to continue to use its own prayerbook *Seder Tefillah* wherein Hebrew prayers predominated.[5]

It is quite possible that this desire to have more prayers in English depended upon securing the services of an English-speaking minister who was competent to make these changes. Dr. Adler's knowledge of English was limited. The congregation, moreover, was now about to enter its Fifth Avenue home and the need for an English-speaking minister was felt very keenly. Accordingly a search was made for an assistant to Dr. Adler and the changes in ritual were delayed.[6]

Early in 1868, Dr. Max Lilienthal arrived from Cincinnati for a visit in New York and an attempt was made to engage him as the English-speaking rabbi of the congregation. After long negotiations, Lilienthal agreed to become junior rabbi and it was anticipated that the hoped-for changes in the service would now materialize. But Lilienthal

[4] *Ibid.*, May 1st, 1864; Apr. 20, 1874. It is quite possible that those who opposed the removal of the hat had by 1864 left the congregation to join more conservative synagogues in the city. Otherwise the one negative vote in 1864 and the great opposition to the measure only a few years earlier cannot be explained.

[5] *Ibid.*, June 3, 1867.

[6] *Ibid.*, May 4, 1868.

returned to Cincinnati and cancelled his acceptance of the Emanuel pulpit. The plan for a new type of service again had to bide its time.[7]

In June 1868, with James K. Gutheim engaged as "English minister," the ritual committee took the matter up once again. It proposed to the board of trustees,

> that an addition of english (*sic*) prayers be composed consisting of a literal translation of certain Hebrew prayers now being read in our Temple, such as *Shemah Yisrael, ahabah, etc., etc.* which english (*sic*) prayers are to be read by the english (*sic*) minister . . . and furthermore that the prayers *ashrey* and *alenu* be only read by the english (*sic*) minister in english (*sic*); *ashrey* to be in responses as now by the Congregation, and in *alenu* that part *veanahnu korim umishtahavim* in hebrew (*sic*) by the reader and choir.
>
> Furthermore that all these english (*sic*) prayers be printed in pamphlet form and given to our members and the whole time for such additional prayers be so composed that they may not take more than 8 minutes . . . [8]

Apparently the congregation still continued to use the *Seder Tefillah* prayer book but with many Hebrew prayers eliminated and some of them recited either by the minister or the congregation in English. Hymns, originally sung in German, now began to be sung in English as well. Some of these new hymns were composed by Dr. Felix Adler, others by the new minister, James K. Gutheim.[9]

In 1874 a new movement developed to eliminate most of the Hebrew prayers still recited and to draw up a new prayer book in which English would predominate. Gustav Gottheil, assistant rabbi, favored this step, but nothing was done. In 1874, the trustees sought to induce the worshipers to take a more active part in the singing by organizing a volunteer "Choral Union," to sing at the services. What success this plan had if any is unknown.[10]

In 1884 Dr. Gottheil came again before the board of trustees proposing the adoption of a new prayer book which

[7] *Ibid.*, Feb. 10, 1868 ff.

[8] *Ibid.*, June 8, 1868.

[9] See Merzbacher, *Seder Tefillah*, printing of 1891; *Minutes of Trustees;* Oct. 10, 1870.

[10] *Ibid.*, April 20, 1874; June 4, 1876, printed leaflet inserted into Minutes.

he would compose. The membership seems to have desired this change and the Ritual Committee also voted to revise the ritual "and that said revision be based on the principles that the services be shortened and be conducted mainly in the english (*sic*) language." But Gottheil's plan was not brought to consummation. Merzbacher's prayer book still continued to be used, with the modifications of the 1860's.[11]

In March of 1890, finally, Gottheil and Joseph Silverman, the assistant rabbi, placed the manuscript of a new prayer book before the board of trustees for their approval. But several difficulties now intervened. The question whether the congregation should continue to employ a cantor or leave the entire service in the hands of the ministers, was debated and not fully settled. Another was whether it would not be advisable to wait until the Union of American Hebrew Congregations adopted a uniform prayer book for all American reform congregations before deciding on a new prayer book for Temple Emanuel. Again Temple Emanuel conferred with representatives of Temple Beth El in an attempt to work out at least a uniform prayer book for the New York reform congregations, with no results. Within a few years though, the congregation adopted the Union Prayer Book, and thus the problem was solved.[12]

The question of employing a cantor in 1890 grew out of the gradually diminishing need of his services during the preceding three decades. Adolph Rubin had served the congregation as cantor since 1852, but during the 1860's his role had gradually decreased in importance. The English prayers were recited by the ministers. Some of the prayers which he himself offered were read rather than sung. Rubin died in 1889, and for some time the entire service both in English and in Hebrew was read by the ministers. There was thus no real need for a cantor in 1890. But the congregation still considered the position important and decided to continue the office. Mr. Simon Schlager was thereupon chosen to fill Rubin's position. But Mr. Schlager was more

[11] *Ibid.*, May 5, 1884; Nov. 1, 1886.

[12] *Ibid.*, Mar. 3, May 8, 1890; Mar. 2, 1891.

a soloist for the choir than a cantor, properly speaking. The position had by now lost most of its original meaning.[13]

III

INTRODUCTION OF SUNDAY SERVICES

Sometimes after 1860, Temple Emanuel began to conduct a late Friday evening service. The early service at sundown had been abandoned since it was poorly attended. But the attendance at the Friday night service was not satisfactory either, and it seems to have been abolished in the late 1870's. By 1880 the Friday evening service was placed again at an earlier hour, at 5 or 6 o'clock.[14]

The Saturday service in the early days, when the congregation was young, had some following. But the 1870's and 1880's witnessed a great decline in the number of worshipers. On several occasions the congregation tried to stimulate interest in this Sabbath service, but it was not very successful.[15]

With the interest in both the Friday night and Saturday morning services on the decline, a movement now gained ground to conduct a service on Sunday morning when members of the Temple were at leisure and could attend. As early as 1875, Myer Stern offered a resolution to hold a "lecture" on Sunday morning, since "our young men and members fail to attend the regular public worship on the Jewish Sabbath, compelled as they are to neglect Divine Service from necessity." But the resolution was voted down by the board of trustees.[16]

The very next year a new demand for Sunday worship arose only to be defeated again. In 1878 the School Committee tried to induce the board to inaugurate a Sunday School lecture and service to which the advanced classes "and

[13] *Ibid.*, Oct. 3, Nov. 7, 1881; Jan. 6, Apr. 7, 1890.
[14] *Ibid.*, Mar. 30, 1874; Sept. 6, Dec. 8, 1875; Mar. 7, 1887.
[15] See Grinstein, *Rise of the Jewish Community of New York; Trustees' Minutes*, Nov. 7, 1882.
[16] *Ibid.*, June 15, 1875.

the public in general" would be invited. But once again the board refused to sanction this change.

In the 1880's Dr. Gottheil came forward and advocated the institution of a Sunday service in addition to the one on Saturday. By 1884 the Ritual Committee was won over to the proposal. In an announcement that year they pointed out that though adhering to the principles of Judaism they felt that the holding of a divine service on Sunday would further enhance rather than harm Judaism. But the congregation as a whole could not agree with them, and voted against such Sunday services.[17]

Private discussion of this moot question continued for several years; with the older members apparently refusing to give ground. Finally in 1888, the board of trustees, the Ritual Committee and the membership at large agreed to hold a "lecture" on Sunday morning. This "lecture" was to be accompanied by three hymns, an opening prayer and a benediction. But to lessen its importance and to preserve the rightful priority of the Sabbath service, no *Kaddish* was to be recited on Sunday morning. The service was to be conducted from November to May and was to last one hour. In the resolution on this subject the board pointed out that,

while recommending to institute Sunday lectures . . . at the same time [they] unanimously pledge their good faith that the observance of the Sabbath service as heretofore practiced in the Temple continue inviolate.

But soon this "lecture" period was termed a service. Apparently the membership at large could see no difference between it and the Sabbath service. To them, both were periods for worship.[18]

In 1890, with the Sunday service in full swing, Lazarus Rosenfeld, one of the old members of the Temple and a staunch supporter of the retention of the Sabbath service, saw in the growing success of this service a denial of the original wishes of the congregation. He wrote to the board that in conformity with the resolutions of the congregation

[17] *Ibid.*, May 1, 1876; Apr. 26, 1878; May 5, Dec. 1, 1884; Oct. 18, 1886.
[18] *Ibid.*, Jan. 2; Feb. 7, 21, Mar. 5, Apr. 2, 1888; May 6, 1889.
[19] *Ibid.*, Oct. 25, 1889; Jan. 6; Feb. 3, 1890.

no worship must take place on a Sunday morning. The period must be devoted solely to a lecture. The board, however, rejected his strictures and claimed that they had not exceeded their authority in this matter. The Sunday lecture-service thus continued at Temple Emanuel for many years.[19]

IV

ADMISSION OF PROSELYTES, AND MIXED MARRIAGES

The admission of proselytes before 1860 was already provided for in a revised ritual by Dr. Adler which eliminated immersion in the *mikvah* and circumcision, but which stressed instead a study of the principles of Judaism and a declaration that conversion was desired through conviction and not from any ulterior motives.[20]

All told some seven people were admitted to Judaism at Temple Emanuel between 1860 and 1890 and all of these were women. The congregation assumed a very definite attitude in refusing to admit anyone who desired to embrace Judaism in order to marry a Jew. Dr. Adler made the stand of the congregation clear in a letter which he wrote to the board of trustees in the case of J. G. M., a male who wished to be admitted to the fold so that he could marry a Jewess. "Das Judenthum," he wrote, "buhlt nicht um Proselyten und gibt sich nicht zum Heiratsvermittler her." J. G. M. was not admitted. But despite this stand several of the women who were admitted to the fold, married Jews soon after their conversion. Perhaps the synagogue had no way of controlling such matters, for once a person was admitted, the rite of marriage had to be performed upon request.[21]

By the late 1870's the necessary declaration on the part of the proselyte and the certificate by the rabbi were standardized. The following is a declaration of L. A. B. who was accepted in 1879:

[20] For the ceremony in the Temple in connection with the admission of a proselyte, see Grinstein, *Rise of the Jewish Community*.

[21] *Trustees' Minutes*, Feb. 14, May 5, 1864; Sept. 6, 1866; May 8, 17, 1871; Nov. 1, 3, 1879; Feb. 11, Apr. 7, 1884; Nov. 2, 1885; Mar. 5, 1888.

Declaration. I, L. A. B., declare by this present that I have of my own account and in the exercise of my own free will and deliberate judgment requested at the hand of Rabbi Dr. G. Gottheil admission in the community of the Jewish faith, that no persuasion or external influence of any kind has been brought to bear on me in this matter, that on the contrary Dr. Gottheil has repeatedly dissuaded me from the step, and that only after my persistent demands consented to instruct me in the tenets of the Jewish faith and finally to grant me my request that I hereby accept all the responsibilities in the step I am about to take and that it shall be my sincere and constant endeavor hereafter to live in accordance with the teachings of the Jewish religion and consider myself in all respects a Jewess placing my entire trust for life and death in the One Holy and Merciful God of Israel.

The following certificate was issued by Gottheil in connection with this admission:

This is to certify that Mrs. L. A. B. has this day, after having been sufficiently instructed in the tenets of Judaism, been received into the Community of Israel by the undersigned and is henceforth to be considered as a Jewess in every respect like one that is born in the house of Israel.[22]

Although the congregation admitted proselytes, mixed marriages were not performed. In 1870 a couple applied to Dr. Einhorn of Congregation *Adat Jeshurun* to be married. The man was a Jew; the woman's father was Jewish but her mother was not. Dr. Einhorn, in keeping with Jewish law, considered the woman Gentile, since the progeny of a Gentile mother is always Gentile. Einhorn suggested instead that the young lady be admitted first to Judaism. The couple refused to go through with such a ceremony, since the lady in question was brought up as a Jewess and always considered herself as such.

Thereupon the couple turned to Congregation Emanuel for permission to receive the marriage rite. James K. Gutheim, before he heard of the Einhorn refusal, decided that the couple could be married. Since the young lady was reared as a Jewess and observed Jewish customs, he considered her better than "a good many of our own." But upon hearing of Einhorn's decision, he had a change of heart and was re-

[22] *Ibid.*, Nov. 7, 1879.

luctant to perform the ceremony. Thereupon the board of trustees of Temple Emanuel stepped in and insisted that Gutheim perform the marriage rite. Here was a case of interference on the part of laymen in a matter of Jewish law with which they were not familiar.[23]

In this case it appears that the board of Temple Emanuel had some grounds for considering the young lady a Jewess. But in other cases where a person was known to be Gentile, the board never permitted the giving of the marriage rite. Such a case occurred in 1887 when a descendant of an old Jewish family of New York applied to Temple Emanuel to permit its rabbi to marry him to a member of the Russian Catholic Church. The president informed the applicant that Congregation Emanuel permitted no mixed marriages; that all parties to a marriage must be Jews or converts to Judaism and that no conversion would be made where marriage to a Jew was in view.[24]

V

OTHER CHANGES IN THE RITUAL

Several other matters of religious change in this period should be recorded. Prior to 1860 the congregation had prohibited hasty burials and had insisted on a twenty-four hour wait between death and burial. In 1868, on the initiative of Dr. Adler, a forty-eight hour wait was ordered for all interments, in order, as Dr. Adler phrased it, to prevent "persons from being buried too soon and especially to prevent [the] apparent dead from being buried alive." Moreover, no body was to be placed on ice unless written instructions were received from the attending physician.[25]

Opposition to the *Bar Mitzvah* ceremony was expressed a number of times during the period under discussion. In

[23] *Ibid.*, Jan. 3, 1870.

[24] *Ibid.*, Nov. 7, 1887.

[25] Grinstein, *Rise of the Jewish Community; Trustees' Minutes*, Dec. 7, 1868; Apr. 10, 1871.

1869, Dr. Adler recommended the abolition not of the *Bar Mitzvah* ceremony itself but of the *mi-sheberakh* blessing which accompanied it. To this the board replied that it would permit the abolition of the blessing provided Dr. Adler consented to the abolition of the *mi-sheberakh* which was made for new-born children. In 1868 the Ritual Committee informed the board of trustees of its willingness to abolish the *Bar Mitzvah* ceremony completely and rely only on the *Shebuot* confirmation of both boys and girls. But no action was taken at this time. Once more in 1871 the Ritual Committee sought to bar the ceremony and again it was rebuffed. Just when this ceremony was abolished is not clear in the Minutes. Because of its appeal to the membership at large this ceremony seems to have continued at Temple Emanuel for many years.[26]

For a number of years the *Haftarah* portion from the prophets was read by the minister of the congregation. In 1870 this reading of the *Haftarah* was abolished. Somewhat later an attempt was made to reintroduce its recital since its abolition was felt to have been "a distinct loss." But no action was taken to reintroduce the portion from the prophets.[27]

VI

CONCLUSION

From its formation until 1864, Temple Emanuel of New York may be considered a "conservative" synagogue. Between 1864 and 1890 it was definitely transformed into a reform congregation.

The founders of the congregation, while desiring some change in ritual, were really quite conservative in their attitude and frowned upon all radical changes. However, with the arrival of new members and with the death of the older ones, Temple Emanuel went through a complete change.

[26] *Ibid.*, June 8, 1868; Apr. 6, 20, May 24, 1869; May 1, 1871.

[27] *Ibid.*, Mar. 8, 1870; loose-leaf minute of Ritual Committee attached to Minutes.

The newer members appear to have had little concern for the perpetuation of old forms. They were probably brought up in an atmosphere of change and the old forms had little appeal to them. Still with all of these changes Temple Emanuel remained on the conservative side of the reform movement. Some of the ideas of the founders of the congregation still linger on until this very day.

PROLEGOMENA TO A BIBLIOGRAPHY OF JEWISH MUSIC

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I

To attempt a bibliography of Jewish Music one must first determine the scope of this highly controversial term. There are two ways open: (1) to give an "airtight" scientific definition of Jewish Music, which is possible, but would limit the field of study very considerably; or, (2) to give a working definition, scientifically not as exact, but encompassing all subjects which, rightly or wrongly, are linked with the study of Jewish Music. Since this domain is part of the Science of Judaism, the scholar should consider analogous cases before making his choice of definition. The realm of Jewish literature offers perhaps the best comparison.

Moritz Steinschneider gives the most comprehensive statement about the scope of Jewish literature; I may be permitted to quote some of his still valuable remarks:

"The literature of the Jews in its widest sense comprehends everything written by Jews from the most ancient times up to the present day, regardless of contents [substance], language or country [of the authors] . . . It is the element of transition through so many countries, languages, and subjects which makes both the conception and appraisal [of Jewish literature] so very difficult. Yet this seemingly mere aggregation of writings has organic continuity, inasmuch as its creative spirits form an entity of a particular kind. It is, moreover, not sufficient to define this organism as a religious body; nor is its definition as 'nationality' anything more than approximate. The term Hebrew literature . . . is least appropriate for the entire literature of the Hebrews and Jews, even during the two periods when there was a Jewish state; for the Judeo-Greek literature outside of Palestine must not be excluded . . . The same holds true for the content: Jewish literature, just as Arabic or Chinese literature, is

by no means only theological and its study cannot be viewed as a mere auxiliary of theology . . . "[1]

We may now return to a consideration of the two possible definitions or rather descriptions of Jewish Music. Any definition presupposes the existence of the matter to be defined; yet the very existence of Jewish Music has been questioned time and again. The strictly scientific description might be: Jewish Music is the sum total of all music which was or is *performed* by the Jewish people *exclusively*—regardless of the ultimate origin of that music.[1a] Obviously, this definition encompasses only the traditional and folk music, both sacred and secular. The more practical, although inexact, description would include all music *composed* by Jewish groups or Jewish individuals. When comparing this latter statement with the strictly scientific one mentioned before, one can readily perceive its wider scope and its broader practical applicability. Moreover, the analogy with Steinschneider's idea of Jewish literature becomes quite obvious. In accordance with this universalistic principle, the different attitudes held by the various composers toward Judaism are to be ignored entirely. Indeed, it is as absurd to banish composers like Mendelssohn, Mahler, Rubinstein, *et al.*, from such a list as it would be to exclude poets like Heine or Sassoon from a comparable list of Jewish writers. Yet one fundamental difference between the spheres of literature and music remains and makes itself felt: the bulk of Jewish literature deals with subject matter which bears a more or less clear relation to Judaism. The same cannot be said of music; here it is well-nigh impossible to discriminate between musical works on the basis of their "Jewishness." Genuine music knows no subject matter, unless an added text or libretto or program states a biblical or Jewish subject.

[1] Steinschneider, article "Jüdische Literatur," in Ersch and Gruber's *Allgemeine Encyklopädie der Wissenschaften und Künste*, Section II, Part 27 (Leipzig, 1850), p. 357.

[1a] This definition follows a phenomenological trend of thought; in order to avoid sterile discussions and controversies about "what Jewish music ought to be," or what it is meant to be, or in which form it exists, *etc.*, all of which leads nowhere, the writer asks here: what does really exist as an intelligible entity?

After this rather broad and general delimitation of the field of Jewish Music, the problem will be how to approach the task of a general bibliography.

II

The usual procedure calls for a division of the material under three heads: (a) actual music; (b) writings about music; and (c) biographies of or monographs on individual personalities, *e. g.*, composers or performers.

A. Musical Works

This division presents no serious difficulties; the most practical arrangement seems to be a sub-division into (a) sacred and semi-liturgical works; (b) secular folk-music; and (c) art-music by Jewish composers. In all three sections the alphabetical order is preferable to any other, *e. g.*, chronological, stylistic, geographical, etc. A more elaborate scheme of the bibliography will be found at the end of this article.

B. Writings on Music, Sources, References, Etc.

This section confronts the student with many problems of arrangement, of definition, and even of terminology. The first and most important task of a scientific bibliography must always be the listing of all, or of as many as possible, available sources.

While engaged in writing a comprehensive study on medieval Jewish music theory, my friend Dr. I. Sonne and I had a difficult time in establishing and locating the primary sources. Since in the Middle Ages music belonged to the propedeutic sciences, being a part of the *quadrivium educationis*, references to music occur mostly in unexpected places, and conversely, are conspicuously absent where one would look for them. Hence, it would be the task of a systematic bibliography to prepare a comprehensive list of authors and titles of both printed works and manuscripts which deal with music by way of description, philosophy, theory, practice, or even law. In this respect, the rabbinic *responsa* (*Teshubot*) provide a not insignificant source.

There is an abundance of passages and utterances referring to music buried in ancient, particularly medieval, Jewish literature. In order to serve practical as well as scholarly ends, the bibliographer must separate primary sources, *i. e.*, historical records, laws, descriptions of instruments, etc. from secondary statements, such as paraphrases, explanations, commentaries, *etc.*, which are based upon primary material. Thus, the same work may include both primary and secondary sources at the same time, depending upon the subject matter treated. To give an example: the description of the musical service in the Second Temple, to be found in the *Mishna,* is obviously a primary source; on the other hand, comments of the *Mishna* or *Gemara* on biblical statements about the music of the *First Temple* must be considered secondary material.

Such a list would of necessity encompass a complete index of rabbinic passages concerning music. Cabbalistic literature has dealt with music in a peculiar way, that is, at once cosmic in its amplitude and pedantic in its detail. Hence it will be a hard and delicate task to unearth the pertinent passages. The same holds true of the semi-cabbalistic and hasidic sphere of writings; *e.g.*, a book so widely read and generally influential as Isaiah Horwitz' *Shney Luhot ha-Brith.*[2] It will therefore be desirable and useful to compile several lists, each excerpting an entire collection of works, be they representative of a historical period or of a particular school of thought. The sum total of all these references to music would constitute the complete source material to be classified under the following headings:

A. *Primary Sources*:
Biblical references
Mishnaic-talmudic references
Masoretic references
Geonic decrees and responsa
Tosafot and responsa
Writings on philosophy and theory of music
Descriptions of hasidic *practice* of music

B. *Secondary Sources*:
Midrashic passages
Bible commentaries
Talmudic exegesis of biblical passages
Cabbalistic theories of music
Hasidic references to cabbalistic theories
Commentaries on hasidic musical practice.

2 שני לוחות הברית (Amsterdam, 1649).

The compilation of these lists will be the work of scholars, conversant with Hebrew literature. While it is bound to be an onerous task, it still seems to be the only way to produce definite and comprehensive results. Also, it is inevitable that a good many items would have to appear two or three times under different headings, but in a bibliography which contains so many overlapping subjects, repetitions can hardly be avoided. Moreover, it is better to repeat some items than to omit them, or to arrange them under misleading headings.

The search for a workable system of such a bibliography is identical with the problem of arrangement. Subject-matter, chronological arrangement, and alphabetical order of the authors have to be considered. It seems to me that a chronological order of the subject would perhaps serve best the scientific purpose of the enterprise. Within the individual categories, however, an alphabetical arrangement of the authors should prevail. Here is an illustration of this method:

B. WORKS AND STUDIES ON DIFFERENT FIELDS OF JEWISH MUSIC

I. *Music in the Bible*
- a. Comprehensive works on the music of the ancient Near East.
- b. Music before the First Temple.
- c. Music of the First Temple.
- d. Music of the exilic and postexilic period.
- e. The Psalms and "Songs" of the Bible.
- f. Secular music in the Bible.

II. *Music of the Postbiblical Period*
- a. Music of the Second Temple.
- b. Early Christianity.
- c. Talmudic period.
- d. Masora, Cantillation, and Psalmody of the old Synagogue.
- e. Geonic period.
- f. *Hazzanuth* and Lectorate.
- g. The different traditions (Ashkenazic, Sephardic, Yemenite, Byzantine, NorthAfrica, *etc.*)
- h. Choral and instrumental music of the Synagogue before the Emancipation.

The individual items within each of the headings, *e.g.*, early Christianity, should be arranged in the alphabetical order of the authors' names, *e.g.*,

EARLY CHRISTIANITY

Abert, Hermann: *Die Musikanschauungen des frühen Mittelalters und ihre Grundlagen* (Halle, 1905).

Benedictines of Solesmes: *La Paléography Musicale* (Solesmes et Tournai, 1889-1936).

Besseler, Heinrich: *Die Musik des Mittelalters,* in Buecken's *Handbuch der Musikwissenschaft* (Potsdam, 1935).

Birnbaum, Eduard: "Über den Ursprung der Tradition im Synagogengesang," in *Jüdisches Literaturblatt,* 1899, Nos. 39, 40.

Bonvin, Ludwig: "On Syrian Liturgical Chant," in *Musical Quarterly,* IV (New York, 1918), p. 593.

Combarieu, Jules: *Music et Magie* (Paris, 1911).

Scholars outside the strictly musicological sphere are seldom aware that the study of Jewish music occupies a common area, (*Grenzgebiet*) in which music, liturgy, philology, and rabbinics overlap. Indeed one of the most striking peculiarities of musicology is its abundance of facets reflecting the manifold relations of music to bordering sciences. These *Grenzgebiete* (proceeding from unorganized sound to recorded musical performance) encompass among other domains: anthropology, archeology, acoustics, folklore, ethics, comparative religion, liturgy, philology, paleography, *etc.* These sciences and auxiliary disciplines must not be neglected in a really comprehensive bibliography; sometimes they offer necessary and illuminating material. In order to give a concrete instance of the necessity of coordinating information from many fields of study, I shall, in the following lines, outline the areas pertinent and necessary to the understanding of the single problem, "The interrelation between the music of the Synagogue and of the Church in the First Millenium." The various domains involved are:

(1) The Temple and the Synagogue. (Common musical tradition?)
The Church and the Temple.
The Church and the Synagogue.
Jewish and Christian sources (Greek Latin, Hebrew, Syriac, Armenian, Arabic, Coptic, Ethiopic).

(2) History of secular relations between Jews and Christians in the most important centers.

(3) Comparative liturgy, in particular psalmody, lesson, liturgical acclamations, litany, and fast-rites.

(4) Forms of religious poetry:
The problem of the strophe.
Rhyme, assonance, parallelism, *etc.* in music.
Metrics.

(5) Tradents and performers:
Priest, *hazzan, lector, anagnostes, psalmista, magister choralis, etc.*
The development of the Christian hierarchy.

(6) Notation.
The ecphonetic notation and its origin: paleography of the Byzantine *codices* of the LXX and of the earliest Roman lectionaries.
The paleography of masoretic sources (accentuological studies).
Grammatical and phonetic aspects of the cantillation of Church and Synagogue.

(7) Philosophical and theological attitudes toward music in Judaism and Christianity.
Music and ethos.
The harmony of the spheres.

These are only the non-musical auxiliaries of a comprehensive work on the musical elements common to Church and Synagogue. There are, on the other hand, certain categories of authors within the specific field of Jewish music which, though often neglected, deserve special consideration. Some of them may be mentioned here: (1) The early writers on Hebrew cantillation; they are mostly grammarians of the late Renaissance, like Reuchlin, Sebastian Muenster, Vallensis *et al.* In the last decades more attention has been paid to their musical transliteration of the accents of Scripture, as performed by their Jewish contemporaries. (2) The Christian theologians of the 17th to the 19th century who dealt extensively and intensively with questions pertaining to our study. (3) Their successors in the realm of Bible criticism and Semitics. (4) Numerous authors of the Haskalah movement, of whom a few have expressed sound and original ideas on the music of the Bible, musical tradition of the Synagogue, secular Jewish folksong, and related subjects.

Another section of the bibliography, which should not be overlooked by any means, is antisemitism in music. Since music has been made a particular battlefield of racial theories and a playground for pseudo-scientific fanatics, resounding with the clamor of the Boeotians, all publications of this kind must be watched carefully, both old and new, however tiresome and tedious such work might be. This is not only a just demand of Jewish apologetics, but also an important requirement for the understanding of musical fashions and changes in musical taste.

III

There are not many preparatory works upon which a bibliography can build, and only a few worth mentioning: (1) The bibliography in Ugolinus' *Thesaurus,* Vol. XXXII,[3] (2) Johann N. Forkel's bibliography in his *Allgemeine Geschichte der Musik;*[4] (3) P. Giambattista Martini's list of references in his *Storia della Musica;*[5] (4) a short list in Carl Engel's *The Music of the Most Ancient Nations;*"[6] (5) references in the various encyclopedias of music and theology; (6) Ackerman's notes in his study on the music of the Synagogue in Winter and Wünsche's *Die jüdische Literatur;*[7] (7) Zunz's remarks in his works *Die synagogale Poesie des Mittelalters* and *Die gottesdienstlichen Vorträge der Juden;*[8] (8) J. Kaufmann, *Katalog der Synagogenkomponisten und ihrer Werke;*[9] (9) Catalogue of the *Stadtbibliothek* in Frankfurt am Main;[10] (10) W. Sparger, "Literature on the Music of the Jews," in *American Hebrew* Vol. 52, 1892; (11) "History of Hebrew Music," in *Bulletin of the New York Public Library,* Vol. 12, 1908; (12) Jules Sachs *Der Jüdische Musikalienkatalog.*[11] Much better bibliographical spadework has been done for actual Synagogue music; these bibliographies are also better known, so that it is not necessary to list them here.

As for catalogues and collections of manuscripts containing traditional music of the synagogal service, the Heb-

[3] Blasius Ugolinus, *Thesaurus Antiquitatum Sacrarum,* Vol. XXXII (Venice, 1767).

[4] Two vols. (Leipzig, 1788).

[5] Three vols. (Bologna, 1757-81).

[6] (London, 1864 and 1908); also Martin Gerbert von Hornau, *De cantu et musica sacra,* two vols. (St. Blasien, 1774).

[7] A. Ackerman, "Der synagogale Gesang," in Winter and Wuensche, *Die jüdische Literatur,* III (Berlin, 1897).

[8] Also in Leopold Zunz, *Die synagogale Poesie des Mittelalters,* ed. A. Freimann, (Frankfurt a.M., 1920).

[9] (Frankfurt a.M., 1919).

[10] A. Freimann, *Katalog der Hebraica und Judaica* (Frankfurt, 1932).

[11] (Breslau, 1936), listing the most important works of Jewish composers. Also two important "incipient" bibliographies: Adolf Aber, *Handbuch der Musikliteratur* (Leipzig, 1922), cols. 30-33; Gustave Reese, *Music in the Middle Ages* (New York, 1940), pp. 426-27; 431-34.

rew Union College Library possesses an enormous thematic catalogue containing more than 8000 entries, compiled by the late Cantor Eduard Birnbaum of Königsberg, Germany (1855-1920), the first cataloguer, bibliographer, and lexicographer in the field of Jewish Music. This monumental work, covering the entire synagogal music of Europe, written or printed, from 1600 until 1910 is still in manuscript, but here is a manuscript that should have been edited long ago. It is a perfect *Thesaurus* of the synagogue music of Europe. In addition, the library of the Hebrew Union College has a good many of Birnbaum's scholarly indices in which musical passages in Hebrew books and articles are compiled. These indices cover more than one thousand references, mostly of medieval, rather rare, literature.[12] Birnbaum's scientific heir, the late Professor Idelsohn, has not provided a full bibliography, but his *Thesaurus,* his *Jewish Music in its Historical Development,*[13] and his *Toledoth ha-Neginah*[14] contain many valuable notes. Moreover, he has made two limited bibliographical attempts in his article on collections of Synagogue songs[15] and in his study "Songs and Singers of the Synagogue in the Eighteenth Century."[16] This writer may be permitted to mention here his own contributions to the subject, which contain some notes of bibliographical interest.[17] Recently, Dr. A. Szendrey has attempted to outline the principles and methods of a complete bibliography of Jewish Music.[18] I have had the opportunity of surveying his work cursorily,

[12] A bibliography of Birnbaum's essays on Jewish music will be contained in this writer's article, "The Birnbaum Collection of the Library of the Hebrew Union College," in the forthcoming volume of the *Annual of the Hebrew Union College,* (1944).

[13] (New York, 1929).

[14] (Berlin, 1924).

[15] Idelsohn, "Collections of and Literature on Synagogue Song," *Freidus Memorial Volume* (New York, 1929), pp. 388-404.

[16] *H. U. C. Annual,* Jubilee Volume (Cincinnati, 1925).

[17] Eric Werner, "Die hebräischen Intonationen des B. Marcello," *MGWJ.,* LXXXI (1937) ; "The Attitude of the Church Fathers towards Hebrew Psalmody," *Review of Religion,* VII (1943); "Neannoe," *The Musical Quarterly Review* (January, 1942); "Jewish and Catholic Musical Punctuation," *H.U.C. Annual* (1940); together with I. Sonne, "The Philosophy and Theory of Music in Judaeo-Arabic Literature," in *H.U.C. Annual* (1941, 1943).

[18] *The Jewish Music Forum Bulletin,* III (December, 1942).

and found it meritorious and thorough. It is a promising beginning.

In the last years, some limited bibliographies on certain aspects of Jewish Music have been published, of which Herbert Loewenstein's study of the early printings of the musical transliteration of scriptural cantillation is the most interesting. The author even endeavored to cover all Hebrew music up to 1800. The study is good, but far from complete; up to 1600 it is valuable, beyond that date frequently misleading.[19]

Finally, a word about the tasks which lie ahead for the student of Jewish Music. It can be predicted without hazard that the coming decade will confront the bibliographer with additional problems, chiefly in the field of manuscripts. The many Hebrew, Syriac, Byzantine, Armenian, *etc.* manuscripts unearthed in the last twenty-five years seem to include considerable material of inchoate musico-ecphonetic notation. Even cuneiform texts might become involved, as the controversy among Curt Sachs, Cannon Galpin, and Benno Landsberger has indicated.[20] It will take the united efforts of musicologists, paleographers, and semitists to master the material accumulated in the last generation, and we ought to be ready for it. The bibliographer of that literature will have to be even more versatile and alert than heretofore.

PART I

LITERARY WORKS AND DOCUMENTS

A. SOURCE WORKS

I. Sacred

Biblical Period.
The Era of the Early Church.
Talmudic Period.
Eastern Churches up to the Nicean Council.
The Era of the Gaonim and the Masoretes.

[19] Henoch (Herbert) Loewenstein, "Notations for Jewish Melodies before 1800" (Hebrew), in *Kiryath Sefer*, XIX (1942).

[20] The thus far last word in the not always pleasant debate was spoken by Curt Sachs, *Musical Quarterly* (No. 3, 1943).

Western Churches up to the Lateran Council.
Symbiosis with Islam (until 1492).
The Period of Responsa and Tosafists.
The Cabbala and its Branches.
The Period of Renaissance in Europe.
Hasidism and its Branches.
Western "Enlightenment."
The Period of Emancipation.
The Haskalah Movement.
Zionism and Recent Developments.

II. Secular

Biblical Period.
Talmudic and Geonic Period.
Jews in Yemen, Arabia, Spain, etc.
European Jewry from the Crusades to the Renaissance.
Period of "Klesmorim" and "Spielleute."
Haskalah and Folklore.
Folk and Art-Music from 1850-1920.
Secular Music by Modern Jewish Composers.

B. WORKS ON THE INDIVIDUAL FIELDS

I. Comprehensive Works on Jewish Music, Encyclopedias, Dictionaries, etc.

II. Music in the Bible
- a. Instruments in the Bible.
- b. Music of the First Temple.
- c. The so-called Songs of the Bible.
- d. Secular Music in the Bible.
- e. Musical Terminology of the Psalms.

III. Synagogue Music in the Postbiblical Period up to the Emancipation
- a. Music of the Second Temple.
- b. Cantillation and Psalmody; Songs of the Judaeo-Christians.
- c. Hazzanuth and Recitative (Cantillation, Piyyutim).
- d. Choral and Instrumental Music before the Emancipation.
- e. The Development of Formal Structure in Jewish Musical Liturgy.

IV. Synagogue Music from the Time of the Emancipation up to the Present
- a. East European Jews.
- b. Central European Jews.
  - (1) Orthodoxy.
  - (2) Liberalism.
- c. Sephardim in Europe and America.

d. America.
   (1) Orthodoxy.
   (2) Conservative.
   (3) Reform.
e. Palestine and the Near East.
   (1) Sephardim.
   (2) Yemenite and Babylonic-Persian Jews.
   (3) Ashkenazim.

V. Secular Music up to the Emancipation
   a. In the Near East.
   b. In South, Middle and Western Europe.
   c. In Eastern Europe.

VI. Secular Music of East European Jewry up to the Present
   a. In Russia and Poland.
   b. In America.

VII. Secular Folk Music of New Palestine
   a. In Hebrew.
   b. In Yiddish.

C. HISTORICAL AND THEORETICAL WORKS

I. Philosophy and Aesthetics of Music
   a. In the Bible.
   b. In the Middle Ages.
   c. In the Renaissance and Later.
   d. During and After the Emancipation.
   e. Antisemitism in Music; Pro et Contra.

II. Theory of Music in Jewish Literature
   a. In the Middle Ages.
   b. In and After the Renaissance.

III. Personalities of Jewish Music
   a. Synagogue Composers.
   b. Hazzanim.
   c. Secular Composers.
   d. Singers and Instrumentalists.

IV. Comparative Musicology
   a. Comparative Studies on the Music of the Synagogue, of the Churches; Relationship to Arabic, Byzantine, Armenian Music, etc.
   b. Studies on Musical Paleography.
      (1) Accentuology; Neumes, Ecphonetic Notation, etc.
      (2) Systems of Cantillation, Psalmody, etc.
      (3) Bibliography of Collections of Pericopes, Lectionaries, etc.

D. AUXILIARY WORKS

I. General History of Music
   a. Works on Liturgical or Sacred Music.
   b Works on Music in Religion.
   c. Works on Folklore.

II. History of the Jews and their Sects

III. History of Liturgy.
   a. Jewish.
   b. Christian.
   c. Moslem.

IV. Poetry of the Near East
   a. Hebrew, Arabic, Syriac, etc.
   b. Interrelationship with European Poetry.

V. Paleography
   a. Bible.
   b. Bible Translations.
   c. Lectionaries, Sacramentaries, etc.

VI. Antisemitism
   a. Judaism and Music.
   b. Apologetic Writings.

VII. Psychology of Music
   a. Individual Psychology.
   b. "Group" or Ethnical Psychology.

PART II
MUSICAL WORKS

A. SACRED MUSIC

I. Collections of Traditional Music
   a. Individual Editions.
   b. Catalogues of Tunes, Cantillations, etc.

II. Hazzanuth, Psalmody, and Related Fields.

III. Services
   a. Orthodox Liturgy.
   b. New Adaptations.
   c. Conservative and Reform Liturgies.
   d. Services for the Home. (Passover Haggadah, Zemiroth, Circumcision, Wedding, Funeral, etc.).

IV. Collections of Hymns and Responses

B. FOLK-MUSIC

I. Collections and individual Editions
- a. of Eastern Jewish Folk-Music.
- b. of the Central European Ashkenazim.
- c. of the Sephardim.
- d. of American-Jewish Folk Music
  - (1) Yiddish.
  - (2) Hebrew.
  - (3) English.
- e. of Zionists.
  - (1) in Hebrew.
  - (2) in Other Languages
- f. of Palestine Jewish Folk Music.
- g. of Socialistic-Revolutionary Folk-Songs.

II. Jewish Popular Operettas
- a. in Yiddish.
- b. in Other Languages.

III. Jewish "Popular" Songs
- a. in Yiddish.
- b. in English.
- c. in Hebrew.
- d. in Other Languages.

C. ART MUSIC

I. Sacred

(1) Vocal Music (Choir with or without Accompaniment, Solo with Accompaniment)
- a. Psalms, Prayers, etc.
- b. Cantatas, Oratorios, etc.

(2) Instrumental Music
- a. Organ Solo (for the Synagogue).
- b. Orchestra and Chamber-Music Ensembles.
- c. Transcriptions of Traditional Songs for Piano.

II. Secular Art Music by Jewish Composers

(1) Vocal Music
- a. Solo or Ensemble Songs.
- b. Choral Works.

(2) Instrumental Music
- a. Piano.
- b. Chamber Music.
- c. Orchestra Music.
- d. Dance Music.

(3) Dramatic Music
- a. Opera.
- b. Incidental Theater Music.
- c. Film Music.
- d. Radio Music.

THE UNITED STATES AND THE INTERNATIONAL JEWISH QUESTION

A Book Review*

By Guido Kisch
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"NO class of people," according to Oscar S. Straus, well-known jurist, American diplomat and for decades member of the Permanent Court of Arbitration in The Hague, "have been compelled more often to invoke the humanitarian diplomacy of civilized states than the Jews, because no people have, since time immemorial, by reason of race hatred and religious persecution, suffered as they have from inhumanity and oppression in every form and degree."[1] The diplomatic intercession by civilized states on behalf of Jews persecuted or threatened with expulsion is a very worthwhile subject for scholarly investigation, as fascinating and instructive as it is timely. Although some scholarly effort has been devoted to the historical, political, and sociological problems involved,[2] much more still remains to be done. In Europe, Holland and England distinguished themselves early as champions of right, freedom, and humanity when they intervened with Empress Maria Theresa of Austria in an effort to prevent the expulsion of the Jews from Prague, in 1745,[3] the last official mass-expulsion of Jews in Central Europe, prior to the era of German barbarism.[4] No similar intervention by European governments in favor of oppressed Jewry is recorded for the period between 1933 and 1939. The gradual abolition of the rule of law with respect to German Jewry was then considered merely as an internal German problem

* Cyrus Adler and Aaron M. Margalith, *American Intercession on behalf of Jews in the Diplomatic Correspondence of the United States* 1840-1938. Publications of the American Jewish Historical Society, Number 36. New York, 1943. XXXV and 419 pp.

[1] *Op. cit.*, p. XIII.

[2] For full bibliography, see Salo W. Baron, *A Social and Religious History of the Jews*, III (1937), p. 164, note 14.

[3] The bibliography concerning these diplomatic (and some private) intercessions is listed in Salomon Hugo Lieben, "Briefe von 1744-1748 über die Austreibung der Juden aus Prag," in *Jahrbuch der Gesellschaft für Geschichte der Juden in der Czechoslovakischen Republik*, IV (1932), pp. 355 f.

[4] On other international interventions of a similar kind, see Baron, *op. cit.* (*supra*, note 2); in addition, Baron, "The Jews and the Syrian Massacres of 1860," in *Proceedings of the American Academy for Jewish Research*, IV (1933), pp. 3 ff.; Baron, "Great Britain and Damascus Jewry in 1860-61," in *Jewish Social Studies*, II (1940), pp. 179 ff.

or a purely Jewish affair. And this at a time when that trend in European affairs could have been checked with comparative ease.[5] American tradition, firmly established, has been quite different. Throughout its history the United States, conceived in freedom, founded in respect for human rights and the dignity of man, gave assistance, in word and in deed, to oppressed peoples everywhere. The championship of humanitarianism, freedom of conscience, and civil liberties was enunciated again and again in American diplomatic relations with other nations. The extension of the fight for religious freedom and the equality of man before the law to include also Jews, American as well as foreign, is only one chapter, though an extremely important one, in this glorious—indeed unique—tradition.

To this writer's knowledge, the publication under review, *American Intercession on behalf of Jews in the Diplomatic Correspondence of the United States* 1840-1938, has no equal in the entire literature of modern Jewish history. The book is based on Cyrus Adler's monograph, *Jews in the Diplomatic Correspondence of the United States*, published in 1906 as No. 15 of the *Publications* of the American Jewish Historical Society. The latter comprised 122 pages and included chapters on Turkey, Switzerland, Morocco, Rumania, Russia, and Persia. It presented "excerpts" from the diplomatic correspondence of the United States made public up to that time, affecting Jews in foreign countries and the legal treatment of Jewish American citizens abroad. The present work, to some extent a revised and completed edition of the former, much expanded and including material published until 1938, although consisting of "excerpts," too, counts 419 pages. It was finished before the outbreak of the Second World War. New chapters have been added dealing with Austria, Germany, Italy, Poland, and Palestine. The material on Russia has so increased that it now fills three chapters. The text of the 1906 monograph, for the most part, has been incorporated in this volume, its individual sections were rearranged, and even the wording was extensively retained. Some documents of minor importance have been omitted; *e.g.*, the letter of May 20, 1897, published in full on p. 116 in 1906, is only summarized on p. 17 of the new edition. The latter, however, is evidently more comprehensive than its precursor, though not exhaustive in every respect. As far as this reviewer can see, no investigation of the *unpublished* records in the National Archives at Washington was made. Such investigations, no doubt, would have brought to light additional material in considerable volume.

Needless to say American Jewish history is greatly enriched by this book. It presents comprehensive information about well known international actions and developments, such as the famous abrogation, in 1912,

[5] Cf. Guido Kisch, "Jewry-Law in Central Europe, Past and Present," in *Journal of Central European Affairs*, II (1943), pp. 418-422.

of the Treaty of 1832 with Russia because of discrimination against Jewish American citizens, or the conflicts and negotiations concerning a commercial treaty with Switzerland (1857-1864), where abolition of legal restrictions against Jews was stubbornly opposed. In addition to the voluminous documents of Russia and Rumania, there are some entirely unknown or almost forgotten "diplomatic incidents" which attract the historian's attention. To mention only two instances: first, the denial of the *agréement* (acceptance) to Mr. Anthony M. Keiley, who had been appointed American envoy to the imperial court at Vienna by President Cleveland, on account of his marriage to a Jewess (pp. 323 ff.); secondly, a report by Mr. Andrew D. White, United States Minister to Germany, dated Berlin, April 29, 1881, analyzing the contemporaneous situation of the Jews in Germany, very much resembling that of the period between 1923 and 1933 (pp. 354 ff.). His description and personal judgment are particularly interesting. In spite of all the agitation in the Stöcker era, the rule of law was still dominant in the German Reich in those days so that the ambassador's concluding sentence remained justified for more than half a century. He wrote (p. 362):

> But larger and more hopeful ideas are also at work. Thinking men can hardly fail eventually to see that the services of Jews to Germany have been very great; that harsh dealings are attributable to Christians as well as Jews; that the characteristics complained of are mainly due to ages of wrong; that time will steadily work an amalgamation of races; and that the result of such a union will be to increase German vigor. The present anti-Semitic movement is to be regretted as a temporary hindrance to the process, but that it will result in any new constitutional or legislative barriers, I see no reason to believe.

This extensive letter of eight full pages in small print also offers evidence that American diplomatic correspondence contains a great deal of important information on the history of the Jews in foreign countries. In spite of his detailed studies on "The Yellow Badge in History," to give another example, this reviewer was unaware until now that, as late as 1894, the Jews of Persia had to wear a badge on their clothes (p. 11), and that, even in 1905, the Jews of Morocco had to wear a peculiar garb according to official prescription (p. 35). These examples could easily be multiplied.

All told, American diplomatic correspondence provides ample material for a voluminous work on the Jewish question as a modern international problem. The proper method to prepare such a work, meeting modern standards of historical research, would be, first of all, to select all pertinent documents, published and unpublished, and to arrange them systematically (according to countries) in chronological order under appropriate headings (*Regesta*). Such a collection in itself, as every historian knows, is indispensable for the critical evaluation of the material

and a scholarly achievement.[6] The evaluation is a separate task. To meet the requirements of modern scholarship the historical-political background must be studied first in general and then in particular with regard to the detail-problems involved. The entire literature on each individual problem must be utilized and appropriately placed at the reader's disposal for his information as well as for the furtherance of subsequent researches. In modern historical research all this goes without saying.

For the work under review, unfortunately, a different method has been chosen. This was appropriate in 1905, when the comparatively scant materials permitted little more than the preparation of an historical address. The documentary material for each country was selected exclusively from the published records. The none-the-less considerable mass of documents appears interspersed among connecting text which is intended to link it together and to tell the story. The disadvantages of this method of presenting history and its documentation, today somewhat antiquated, are obvious. Neither of the aims is attainable. The strictly chronological order of the documents hampers a full and penetrating analysis and discussion of historical events and developments, their causes and effects, the interplay of all the different and often intricately interwoven factors. The style becomes heavy, due again to the strict observance of the chronological order.[7] Moreover, very often it is left to the reader to summarize lengthy documents, a task which does not make reading easier. The attempt to help the reader, on the other hand, by excluding some documents, turns out to be more harmful than helpful. Mr. Schiff's letter on the disabilities of Moroccan Jewry, for example, mentioned but not reproduced on p. 38, it seems, would have shed more light on the situation described there. Similarly, Mr. Keiley's review of his own case should have been published in full instead of giving mere excerpts from his "lengthy summary." The reader thus would have been enabled to judge for himself whether merely the question of *Hoffähigkeit*,[8] or the rising tide of anti-semitism in Austria, or Austria-Hungary's regard for Italy as a member of the Triple Alliance, was the issue in that case. At any rate the connecting text should follow as closely as possible the wording of the original documents. If it is intended merely to carrying over from one document to the next it is extremely

[6] Such work was done in Albert M. Hyamson's *The British Consulate in Jerusalem in Relation to the Jews of Palestine* 1838-1914 (The Jewish Historical Society of England, two vols., London, 1941).

[7] *E.g.*, certain introductory clauses recur constantly, such as, "Nothing further occurred in connection with Turkey until 1867" (p. 5); "Another reference to Turkey occurs . . . " (p. 8); "The next time that references to Persian Jews appear in American diplomatic correspondence is in . . . ." (p. 18); *etc., etc.*

[8] By the way, in none of the documents is it stated that Mrs. Keiley "was of Jewish blood" (*sic*, p. 332). An expression such as *unhoffähig* (*ibid.*) is non-existent in the German language.

difficult, if not impossible, to offer an adequate and exhaustive historical presentation. Referring again to Mr. Keiley's case, it is remarkable that as early as 1885 both the immediate victim of Austrian antisemitism and the then Secretary of State, Mr. Bayard, had the right grasp of the atmosphere which, a few decades later, was to become the nurturing soil of Hitler and Hitlerism. The one expressed his "astonishment that in an era of advanced civilization" such things could happen, the other designated them straightforwardly as "an insult to the American people" (pp. 341 f.). To discover all this is left to the ingenuity of the reader whose attention should also have been directed to an important utterance on this case made by Oscar S. Straus in his memoirs.[9] Discussing his nomination as Minister to Turkey, Straus regards Austria-Hungary's concern for Italy as the real reason behind the Keiley case, while the antisemitic feelings in Vienna had been used only as a pretext. The report in Straus' memoirs would certainly have helped clarify the complex problem involved. This leads again to another remark. An historical presentation requires full use and citation of the entire literature on the individual problems discussed, as has been pointed out already, and must not be content with casual references, for the most part restricted to articles in the *Publications* of the American Jewish Historical Society, or in the *American Jewish Yearbook*, and to some official documents in the published diplomatic correspondence. It is not necessary to go into further detail. The deviations of the method used in presenting the historical material from that recommended by the reviewer are clearly recognizable. Only one more omission of a specific nature should be pointed out here. The Board of Delegates of American Israelites in New York, formed as "a national organization for the purpose of securing and maintaining civil and religious rights at home and abroad," is not even mentioned with a single word. And this, in spite of the fact that this meritorious organization, the many activities which would deserve an adequate historical treatment,[10] was instrumental in a number of the political affairs and actions contained in this volume.

All this notwithstanding, there is no doubt that the volume, even in its present form, makes important and valuable documents known and accessible to interested historians and will, it is hoped, stimulate further research.

[9] Oscar S. Straus, *Under Four Administrations* (Boston and New York, 1922), pp. 46 f.

[10] Some archival material concerning this subject was published by Max J. Kohler, "The Board of Delegates of American Israelites, 1859-1878," in *Publications of the American Jewish Historical Society*, XXIX (1925), pp. 75-135. The archives of the Board are preserved in the manuscript collections of the American Jewish Historical Society in New York. For bibliography, see most recently Ismar Elbogen, *A Century of Jewish Life* (Philadelphia, 1944), p. 699 note 6.

BOOK REVIEWS

MEDIEVAL PANORAMA: THE ENGLISH SCENE FROM CONQUEST TO REFORMATION. By *G. G. Coulton.* The University Press: Cambridge. The Macmillan Company: New York. 1944. Pp. XIV + 801.

"TO-DAY'S public thirsts more than ever for history that shall be picturesque, yet reasonably accurate." This statement in the author's Preface is doubtlessly correct. Thus an American edition of G. G. Coulton's *Medieval Panorama,* which first was published in 1938 and went already through three printings in Europe, must be welcomed and greatly appreciated.

Two chapters (XXVIII and XXIX), both entitled "The Ghetto," treat of medieval Jews in England. Two illustrations are added: the familiar representation of the Synagogue with head bent, bandaged eyes, and a staff breaking in her hands, from the Rochester Cathedral; and a picture of an Auto-da-Fé of Jews, from a fourteenth-century manuscript.

The first chapter (pp. 346-355) offers a brief survey of English-Jewish history in the Middle Ages; the second (pp. 356-365) presents briefly some cultural aspects of medieval Jewish life (usury, Jewish pursuits, and ethics), and dwells for the most part on the great Jewish massacres, giving lengthy quotations from contemporary sources. Although these are utilized also in the first chapter, its presentation is based extensively on older secondary literature, such as Joseph Jacob's article "England," in the *Jewish Encyclopedia,* V (1903), pp. 161 ff., and Pollock and Maitland's *History of English Law,* I (1895), 451 ff. James Parkes and Cecil Roth are mentioned only in passing. The author of the book, *Jewish Self-Government in the Middle Ages,* referred to on p. 741, ch. XXIX, note 3, is Louis Finkelstein, not A. Berliner, as erroneously given there.

The author's own interpretation of the peculiarity of the Jewish status in the Middle Ages is as follows: "The key to this mystery, in so far as it can be explained in a few words, lies in two facts: the Jew was exclusive, and the Jew was proselytizing, from the earliest stages of history at which we can see him distinctly . . . . Thus the Jew's injustice to outsiders, and the Gentile's injustice to the Jews, have acted and reacted upon each other for eighteen centuries." True, Jewish "exclusiveness" was based on Jewish law. It must not be overlooked, however, that it was forced on the Jews also from the surrounding world in which

they had to live. To explain the latter's attitude by the assumption that "Christianity took over from Judaism not only its trust in One Good and Almighty God but also its combination of exclusiveness and proselytism," seems to be an oversimplification of the problem at issue. As far as the second factor, proselytizing, is concerned, the statement is evidently inaccurate since Judaism did not and does not encourage or favor proselytism. As to the Jews' legal status, the author quotes Pollock's and Maitland's description of their relationship to the king including the well known reference to Bracton's analysis in his treatise, *De Legibus et Consuetudinibus Anglie,* composed before 1256 (cf. G. Kisch, "The Jewry Law of the Medieval German Law Books," in *Proceedings of the American Academy for Jewish Research,* X, 1940, p. 156 note 104). The fact that the Jew was to be dealt with generally as though he were a gentile, if his royal master's interests were not concerned, finds its parallel in continental European law (cf. G. Kisch, *ibidem,* VII, 1935-36, p. 129 ff.). With regard to usury the author adduces documentary proof for the interesting fact that at times 60 per cent. interest were charged per year,—and this at a time when the civil law prohibited Jews from charging more than 43 per cent. (p. 337). Thus he states: "The worst sinners of all were the Caursins" (money dealers named after the French city Cahors), and not the Jews. This was previously also observed by the prominent Belgian historian, Henry Pirenne, who pointed out: "Compared with the efflorescence and ubiquity of Italian credit, that of the Jews appears a very small affair and the part which they played in the Middle Ages has certainly been much exaggerated" (H. Pirenne, *Economic and Social History of Medieval Europe,* New York, 1937, p. 133). With the author's remark that "the Ghetto was something of a precedent for the modern Nazi 'protective arrest,' " this reviewer cannot agree. In fact what has been perpetrated in the last years behind the barbed wires of concentration camps and Nazi-made ghettos leaves the medieval persecution of the Jews far behind.

Jewish Institute of Religion GUIDO KISCH

THE IDEA OF NATIONALISM: A STUDY IN ITS ORIGINS AND BACKGROUND. By *Hans Kohn.* The Macmillan Company. New York, 1944. Pp. XIII + 735.

NATIONALISM has been the outstanding force shaping history in the nineteenth and twentieth centuries. Everywhere, to a growing degree, it has decisively influenced the political, economic, and cultural life of all men. Yet so far few books in any language have attempted to trace comprehensively the rise of the idea of nationalism, to analyze its content, and to discuss its world-wide implications.

This has now been accomplished in Professor Kohn's remarkable

book, which traces the long period of incubation from ancient times to the outbreak of the French Revolution. Another volume will deal with the rise of nationalism from 1789 to 1832, and with its growth and spread, simultaneously with democracy and industrialism, in the fast expanding world from 1832 to 1919. It is impossible here to offer a survey of the rich contents of the 735 closely printed pages, 150 of which are notes in still smaller print. Nor is it intended to write a review in the customary way. This would require at least a hundred pages. The modest aim of these lines can only be to direct attention to this remarkable work, which every historian and sociologist should place at the top of his reading list.

It is, in fact, a masterpiece of scholarship, knowledge and interpretation of sources, methodology, presentation, discerning historical evaluation, and literary style. It is nothing less than a comprehensive history of civilization viewed under the aspect of nationalism. The admirable mastery of the voluminous material scattered over centuries and continents is best revealed in the notes, which are an excellent guide for the scholarly reader and for further research. They substitute happily for the customary bibliography, the critical-bibliographical method used being much superior to an alphabetical listing of titles. The reader gains the unfailing conviction that every book cited (and doubtlessly many more) was carefully and critically read by the author. Even if one is unable to follow his line of reasoning or to accept his final evaluation, the discussion is always thought-provoking, instructive, and interesting. In this reviewer's opinion, to give an example, the significance of the conflict between nationalism and universalism at the Council of Constance for the development of nationalism is underestimated by the author, and likewise the similar situation a few years earlier among the various "nations" at the University of Prague (1409) (pp. 107 f.). True, not the contemporary concept of "natio" is decisive, but the symptoms of a new "nationalism" struggling into the foreground.[1] He also cannot agree with the author's designation of Sentencia-Estatuto of 1449 as the first "racial" legislation (p. 623).[2] Many a stimulus or clarification for the historical development of nationalism could be derived from a detailed

[1] Cf., for the present, Guido Kisch, "Nationalism and Race in Medieval Law," in *Seminar* (An Annual Extraordinary Number of *The Jurist*), I (1943), p. 42, another essay on this subject being in preparation.

[2] Cf. G. Kisch, *loc. cit.*, p. 71 f. and note 63. The following addition should be made to the latter: Cf., however, Roth's contradictory remarks on the "deliberate misbelief, considered typical of the New Christians," in Cecil Roth, "The Medieval Conception of the Jew," in *Essays and Studies in Memory of Linda R. Miller*, ed. by Israel Davidson (New York, 1938), p. 176. The fact also deserves attention that the term "race" in Henry Charles Lea's days had a meaning quite different from its present day implications.

study of the history of law viewed under the aspect of the rise of nationalism.[3]

The Jewish historian will be especially attracted by the second chapter, "Israel and Hellas." Here the roots of ancient Jewish nationalism and democracy are historically analyzed and interestingly compared with the development in Greek civilization. This is, however, not in the province of this journal nor in the competence of the reviewer. There are numerous problems of Jewish interest also in the medieval, Renaissance and modern sections of the book. The idea of nationalism, including Jewish nationalism, is so forceful a factor in modern Jewish history that no historian, sociologist, or intelligent layman can refrain from studying the complete volume. No doubt it will quickly become a standard work in modern historical literature.[4]

Jewish Institute of Religion,
and University of Notre Dame GUIDO KISCH

THE JEWS IN SPAIN, THEIR SOCIAL, POLITICAL AND CULTURAL LIFE DURING THE MIDDLE AGES. By *Abraham A. Neuman.* Vol. I: A Political-Economical Study, Pp. XXXI+226; Vol. II: A Social-Cultural Study, Pp. XI+399. The Jewish Publication Society of America. Philadelphia, 1942.

JEWISH HISTORIOGRAPHY in the United States has in the last few years been enriched by several works of outstanding value, one of which is the book under review. Its author, Abraham A. Neuman, is president of the Dropsie College for Jewish and Cognate Learning in Philadelphia, and professor of Jewish history in the same institution.

The first volume deals with the political-economic foundations of Spanish Jewry. The problems treated are: the political foundations of the Jewish settlement in Spain; the Spanish-Jewish community (the aljama), its organization and functions; taxation, its system and administration; Jewish jurisdiction, Jewish courts and the king's courts; the economic situation; the role of the Jews in the economic life of medieval Spain, Jewish occupations and trades; Jewish participation in Spanish finances, Jews as financiers, etc .

In the second volume the social-cultural life of Spanish Jewry is described: the moral conditions; family morals and polygamy; concubines and slave-maids; gambling; Jewish sexual ethics, early marriages; wedding ceremonies and customs, the two phases of marriage: *erusin* and *nisuin,* problems of the *kethuba,* the position of women, divorce problems; problems of inheritance; education and educational ideals, rabbinical

[3] Cf., e.g., the charter by Duke Sobieslav II of Bohemia for the Germans in Prague (1176-1178), quoted in G. Kisch, *loc. cit.*, p. 58 and note 19.

[4] For reference use an Index more detailed and complete than the present index, is desirable for future editions.

culture, attitude toward secular education, linguistic and medical education of the Spanish rabbis; the controversy over philosophy, particularly between the Maimonists and anti-Maimonists; the synagogue and its auxiliary institutions, charitable activities; social relations between Jews and Christians; the Church and the Jews; Jewish physicians and their influence at the royal court; Jews in the service of the king and the state, as financiers, administrators, and diplomats.

Each of the twenty chapters of the book treats the problems mentioned during the whole period of Jewish settlement in Spain. One must remember that Spanish-Jewish history covers a period of about 800 to 1,000 years, and developed in a country where two great religions and civilizations, Christianity and Islam, had lived together side by side, and fought and influenced each other for centuries. One must also remember that Jewish history cannot be written without a thorough knowledge of the general background and of the history and culture of the country in which Jews lived. Thus Dr. Neuman had to study not only Jewish history in Spain, but also Spanish history, and in general to become well acquainted with the history and culture of the Middle Ages. One example will suffice. In order to discuss the question of "usury," which played such an important role in the economic life of the Jews during the Middle Ages, the author was compelled to study the attitude of the Church and of Islam to usury.

Neuman has for the first time in Jewish historiography given us a thorough investigation of the Spanish Jewish community and of the most important forms of Jewish self-government in Spain. His treatment of the tax system and the economic life of the Spanish Jews is very detailed. Also for the first time the social and cultural life of the Spanish Jews is so fully described. In the future, no historian interested in Spain can afford to omit a thorough study of these volumes.

Neuman drew a great deal of his information from the rich *responsa* literature of the Spanish rabbis. He sifted through almost the whole of this literature, beginning with the Rif (Rabbi Isaac Alfasi, 1013-1103) and his disciple, Joseph Ibn Migas (1077-1141), and ending with the rabbis of the time of the expulsion. The richest collection of *responsa* was left by Rashba (R. Solomon ben Abraham Adret, 1235-1310) and Ribash (R. Isaac ben Sheshet Barfet or Perfet, 1326-1408). From Adret alone over 3,000 *responsa* are printed. In order to evaluate Dr. Neuman's work, one must remember that very often it takes hours and hours of digging and delving into the legalistic material of the *responsa* in order to find a small kernel of relevant historical information. Other literary sources were also utilized, not to say exhausted. Of non-Jewish material Dr. Neuman used everything that Spanish historiography, beginning with the works of Fidel Fita until today, has produced. Needless to say Fritz Baer's two volumes of documents were thoroughly worked up. In his formulations the author is cautious and avoids arguments with other

scholars. He does not touch on questions that cannot be answered and does not indulge in speculation. Thus, for example, he does not discuss the problem of the origin of the Spanish Jews, the claims of their Babylonian origin being based more on speculation than on historical evidence. Dr. Neuman endeavors to give only well established results of research based on unambiguous sources.

Not being an Arabist, Dr. Neuman could not devote as much time to the Islamic period as to the Christian period. As a result, the literary activity of the Spanish Jews under the Moslems during the Golden Age is practically neglected. Solomon Ibn Gabirol is not even mentioned. Judah Halevi is dismissed with a few lines. The *Kusari* receives no mention. The author dwells very little on other branches of Jewish literary activities in Spain, for example, Hebrew lexicography. From an historian like Dr. Neuman one would also expect parallels from Jewish history in other countries to illumine the situation in Spain.

In the reviewer's opinion the book lacks, furthermore, a clear philosophy of Jewish history. If it is to serve as a mirror, in which the present is reflected,—as the author states in his too short introduction,—the question must be asked, what can we learn from the past? It is impossible to face such a tragic drama in Jewish history as the massacres of 1391 and the expulsion from Spain, especially today when we are going through an even greater and bloodier tragedy, and not to express an opinion about Jewish history in general. The author's optimism over the progress of the Catholic Church during the last few centuries is small consolation. The Church exercised little influence in mitigating the present tragedy of European Jewry.

These shortcomings do not detract from the importance of Dr. Neuman's work, which displays a real love for the subject. The author is justly enthusiastic over the high social and cultural position which the richer strata of Spanish Jewry reached, and horrified by the bitter end. Jewish participation in the general culture of Spain is proudly described. The last chapters concerning Jews in the diplomatic service of the kings, are thrilling and yet full of tragedy. This book is written by a man who not only knows history but also knows how to write history.

College of Jewish Studies, Chicago JUDAH ROSENTHAL

THE DEVIL AND THE JEWS: The Medieval Conception of the Jew and its Relation to Modern Anti-Semitism. By *Joshua Trachtenberg*. Yale University Press. New Haven, 1943. Pp. xiv+279.

THE half-humorous, slightly shocking title of this book means exactly what it says. It stands at the head of a sober, scientific study of one of the psychological aberrations of the Middle Ages: the belief that the Jews were the devil's emissaries and representatives on earth. A sub-title further elaborates the theme—*The Medieval Conception of the Jew and*

its Relation to Modern Antisemitism. The author explains that, since modern antisemitism is also largely a psychological phenomenon, an investigation into the sources of prejudice in the past may help us understand the parallel disorder of the human spirit in modern times. Actually, however, the discussion of similarities between the emotional bases of anti-Jewishness in the past and in the present is confined to the Preface and the Epilogue of the book; the rest is straightforward, authoritative historical investigation.

Part One, "The 'Demonic' Jew," traces the growth of the idea which identified the Jew with the devil. It outlines the efforts to persuade the masses of Christians that the Jews had willingly and knowingly become the devil's men. The Jews were—so it was said—well aware of the truth of Christianity; they knew that the Talmud was wrong; they even showed physical signs of being Satan's property. Out of this grew the idea of "The Jew as Sorcerer," which is the title of Part Two. Long tradition, both Jewish and Christian, attributed supernatural wisdom to Jewish worthies, notably to King Solomon. It was assumed that the Jews had kept such wisdom secret, intending to use it for fighting Satan's battles. The supposition of secret powers among the Jews was strengthened when the existence of cabalistic writings became more widely known. Jewish proficiency in medicine, which was obvious during the Middle Ages, was accounted for in the same way. Host and image desecrations seemed to the believers in the Jew's subserviency to the devil to be open manifestations of the devil's war against Christianity and the Jew's need for magic-working material. The like was true of ritual murder. In this way the blood accusations, and the mass murders to which they led, were justified.

The title of Part Three, "The Jew as Heretic," is not a very apt one. The author knows and admits that the term heretic was applicable only to Christians who had abandoned Christianity; it could not be applied to believing Jews who had never been baptized. What the author implies is rather what has been referred to above, namely, the belief that the Jews were aware of Christianity's truth but fought against it. For this reason, the author points out, the Church strained truth and logic to brand every manifestation of heresy as the result of Jewish influence. Thus revolts within and against the Church could be condemned as the work of Satan. The Church, in its struggle against usury and sorcery, likewise took advantage of the convenient equation which worked both ways: Jewish, therefore devilish; or, devilish, therefore Jewish. This is the equation which under a variety of names, the present has inherited from the past.

The argument briefly outlined above is not merely stated; it is backed by numerous references to sources in the nature of exempla, miracle-plays, sermons and Church writings of all kinds. Quotations are liberally interspersed in the text. There can be no doubt that Dr. Trachtenberg

has given us a superb study of a phase of medieval life hitherto almost neglected in ecclesiastical history in general and in the history of the relations between Christians and Jews.

Whether he has touched the core of medieval anti-Jewishness is a different matter. At certain points he admits that this cannot be the whole explanation. Is it even the most important part of the explanation? Had this interpretation of the Jew's role been as constant and as widespread as this study might lead us to believe it would be hard to explain the long periods of interfaith peace and the failure of the Christians to exterminate the Jews at the height of the Middle Ages. During the witchcraft crazes which now and then afflicted Europe, the Jews were usually left unmolested. One must assume that, often as preachers and writers permitted their fancy to play around the identification of Jew and devil, the idea nevertheless failed to take deep root. It may be that personal relations between ordinary Jews and Christians, even during the Middle Ages, were so intimate and that the Jews made so good an impression on their close neighbors that the Christians refused to take this identification seriously. The situation would change occasionally when economic or religious problems upset the mental balance of a population. Then the demagogues would come along and offer this Jew-devil relationship as a welcome method of relief or as a means of turning popular wrath away from the guilty ruling forces. Anti-Jewish arguments were helpful to whatever it was that the Church, the State, or the ruling class desired.

Dr. Trachtenberg himself is modest in his claims for this volume. He has done more than fulfill his aim of shedding new light on Jewish-Christian relations. His book will long continue to be indispensable for any study of these relations. It will serve, moreover, to make us more optimistic as to the future. For if, after many centuries of hostile propaganda, the devil-Jew idea could be dislodged in one or two generations of liberalism, there is hope that contemporary attempts to muddy interfaith relations will in the long run prove equally unsuccessful.

The Jewish Publication Society of America SOLOMON GRAYZEL

THE JEWS AND MEDICINE: ESSAYS. By *Harry Friedenwald*. Publications of the Institute of the History of Medicine, The Johns Hopkins University: Monograph Series. Two volumes: I: Pp. XXIV + 390; II: Pp. IX + 427. The Johns Hopkins Press. Baltimore, 1944.

IN HIS historically fine and humanely touching Preface to these volumes, Professor Henry E. Sigerist, head of the Johns Hopkins Institute of the History of Medicine, offers an inspiring description of the Baltimore milieu that produced and, for more than half a century, has kept alive enthusiasm for the history of medicine. Baltimore became and remained a lively center of studies in the field of medical history. "I do not think,"

writes Professor Sigerist, "there have ever been so many collectors of old medical books together at one time in one town." One of these distinguished collectors and readers of books on medical history is the author of the present collection of *Essays*. Doctor Harry Friedenwald made medicine among the Jews the special field of his collecting hobby and bibliophile and bibliographical studies. "This activity has been going on for almost half a century," the Preface relates. "The result is a superb collection of books dealing with all aspects of Jewish medicine, including many rarities, manuscripts and incunabula." The essays, *The Jews and Medicine*, another result of that hobby, mirror these activities which have furnished to their author "relaxation and diversion and relief from the cares of medical practice and the anxieties of two world wars" (Foreword).

Though most of the forty-two essays appeared previously in various publications of a scholarly or popular character, some are published here for the first time, notably the voluminous treatise on the history of Jewish physicians of Spain, Portugal, and Southeastern France. The subjects are of great variety. Volume I opens with a general sketch of Jewish book lovers, offers sections on the practice of medicine among the Jews, and on the Jews and the universities, and concludes with a section "Biographical Studies." The latter are continued in the second volume which, beside the aforementioned treatise on Jewish physicians in Spain, contains notes on individual physicians, particular diseases of Jews, Jewish hospitals, etc. Both volumes are profusely illustrated with reproductions from manuscripts and rare prints.

The interested layman will derive much pleasure from perusal or study of the extensive historical material, especially since it is presented in a typographically excellent form owing to the care of the Johns Hopkins Press. For the discerning scholar these volumes also represent a treasure-house of historical names, facts, data, and notes which certainly will prove to be informative and useful. This refers particularly to the numerous lists of names, bibliographies, and bibliographical descriptions of individual historical items. The historian and sociologist, however, will not be content with the accumulation of raw material, lists, excerpts or even interesting *Lesefrüchte*. In the one hundred years since the publication of Eljakim Carmoly's *Histoire des médecins juifs anciens et modernes* (Brussels, 1844) so much splendid work from primary sources has been accomplished that the time seems to have come for a systematic and comprehensive work on the history and sociology of medicine among Jews and on the Jewish contribution to the development of medicine. None of the essays gathered in these volumes makes an attempt to approach even a single small problem under such an aspect. To give only one example, the essay no. XIV, "The Jews and the Old Universities," is completely antiquated. The extensive monographic literature on the

subject including abundant source material as listed in this reviewer's book, *Die Prager Universität und die Juden* (Mährisch-Ostrau, 1935) remained unknown to the author. In his list of reference works one finds Zangwill's *Dreamers of the Ghetto* and *Without Prejudice*. But important works on the Jews' relation to medicine are missing. To mention only a few titles: Richard Landau, *Geschichte der jüdischen Ärzte* (Berlin, 1895); Samuel Krauss, *Geschichte der jüdischen Ärzte vom frühesten Mittelalter bis zur Gleichberechtigung* (Vienna, 1930); Adolf Kober, "Rheinische Judendoktoren, vornehmlich des 17. und 18. Jahrhunderts," in *Festschrift zum fünfundsiebzigjährigen Bestehen des jüdisch-theologischen Seminars in Breslau*, Vol. II (Breslau, 1929); L. Glesinger, "Beiträge zur Geschichte der Pharmazie bei den Juden," in *Monatsschrift für Geschichte und Wissenschaft des Judentums*, LXXXII (1938), pp. 111-130, 417-422. A very great number of additions to this brief list of desiderata could be made from the bibliographies and notes in the above mentioned books.

In large sections thus the work under review lags considerably behind the necessary requirements of modern historical research. But in view of the genesis and purpose of these two volumes, it would perhaps not be fair to judge them by the strictest standards of scientific research. The comprehensive work on the history of medicine among the Jews still remains a desideratum. Since these volumes only "*et prodesse volunt et delectare*," reader and reviewer will gratefully acknowledge that this more limited goal has well been reached.

Jewish Institute of Religion and
University of Notre Dame GUIDO KISCH

HA-HEDER B'HAYYE AMENU [The Heder in the Life of the Jewish People]. By *Zevi Scharfstein*. Shilo Publishing House. New York, 1943. Pp. XIII + 301.

THE CENTRAL PART of this book describes the *Heder* in the nineteenth century, the personality of the *Melammed*, the curriculum, educational methods, and discipline of the elementary and Talmud schools, the school festivals and "extracurricular activities." The description is based mainly on over forty autobiographies and memoirs. This part is preceded by an essay on the Jewish school from Antiquity until the age of Emancipation. The concluding chapters discuss the advantages and disadvantages of the Heder education, compare this system with general European schools, describe the attitude of the "enlightened" (*Maskilim*) to the *Heder*, the fight of the Russian government against it, etc. Appended is a sketch dealing with the Jewish schools in Yemen, in the Caucasian Mountains, in Iraq, Morocco, and Tunis.

Professor Scharfstein has succeeded in presenting a vivid and colorful picture. He avoids any idealization of the *Heder* and the *Melammed*, and endeavors to give an unbiased evaluation. This aim, however, should have prompted the learned author to a stricter application of scholarly methods.

He realizes the necessity to take into consideration the cultural environment of the Jews (p. 4). But his own attempts in this direction (*e.g.*, pp. 193 ff.) are too fragmentary to further a historical comparison. On p. 183 he speaks of intellectual independence through the study of the sources as the aim of the *Heder* in contrast to the general modern school that is described as concerned with outlines, digests and formal examinations. Such a treatment does not do justice to this complicated issue. The author adopts the custom of some contemporary Hebrew educators in identifying the study of religion with recitation of a dogmatic catechism. Thus "religion" is viewed as a result of assimilation and a special domain of Reform (p. 186). The remarks on the educational activity of the ancient *Hakamim* (p. 8 f.) generalize some negative traits but do not offer a clear appreciation of that group. In speaking of the education of girls (pp. 120 ff.) the author quotes one negative talmudic remark on the subject (*Mishna, Sota* III. 4) and leaves the impression that this is the general rabbinic attitude.

It is unfortunate that the actual characterization of the Jewish school is limited to Eastern Europe. Thus, *e.g.*, Bohemia and Moravia are disposed of with a few sentences on the salary and the qualifications of the teacher (p. 41). Important material such as the introduction to the *Likkutim* of R. Hiskia Feiwel Plaut (died 1894) has been overlooked. The problem of the poor salary of the teacher, referred to countless times throughout the book, appears somewhat overstressed. The remark (p. 39) that in the thirteenth century a teacher earned about forty or fifty *Thaler* (*Zehubim*) a year is meaningless for the layman.

Errors in the use of name abbreviations are apt to confuse the reader. R. Judah Loew b. Bezalel, the famous sixteenth century rabbi of Prague, is several times (*e.g.*, pp. 40, 43, 46, 47) quoted as *Maharil* which is the abbreviation for R. Jacob b. Moses Moelln of Mayence (died 1427); the correct form, *Maharal*, appears on p. 111. In the chapter "Middle Ages" the author notes the poor educational methods of German Jewry and remarks (p. 41) that these conditions persisted for centuries "up to the great political change in the days of *Ramban*" (Moses ben Nahman; thirteenth century). The reader will wonder to what change the author alludes in the time of Pope Innocent III and Emperor Frederick II. Yet apparently not Moses ben Nahman is meant, but Moses Mendelssohn!

On the whole, however, the volume is a valuable contribution to the history of Jewish culture.

Boston Hebrew Teachers College NAHUM N. GLATZER

JUDARNAS EMANCIPATION [Jewish Emancipation]. By *Kurt Stillschweig*. Hugo Gebers Förlag. Stockholm, Sweden, 1943. Pp. 63.

DET JUDISKA MINORITETSPROBLEMET, EN EFTERKRIGS-FRAGA. [The Jewish Minority Problem: A Post-War Question]. By *Kurt Stillschweig*. Hugo Gebers Förlag. Stockholm, Sweden, 1944. Pp. 62.

UP TO the Second World War Sweden counted among her population a very small Jewish minority which having been emancipated only late in the nineteenth century, enjoyed full civil and political equality. There was (and still is) no "Jewish problem" in the well-known meaning of the term, in Sweden. Public interest in the international Jewish question arose only when this small Nordic democracy offered and granted refuge to considerable numbers of Nazi-persecuted Jews from Norway and Denmark. In order to satisfy this interest, a series of pamphlets, scholarly in content though popularly written is being issued in the Swedish language, with the purpose of providing unbiased information on the historical development of the Jewish problem in the nineteenth and twentieth centuries.

Both of the pamphlets under review are written by a specialist in international law and expert on the history and theory of minority rights, Doctor Kurt Stillschweig, known to the readers of this journal through several contributions in this field (see *Historia Judaica*, VI, 1944, pp. 27 ff.). The first pamphlet offers an instructive historical survey of the *Vorgeschichte* of Jewish Emancipation in Europe, and of its gradual progress from Western Europe over Central Europe to Poland, Russia, and the Balkan countries. The second booklet describes the Jewish status in Europe before the First World War, and the complex Jewish problem at the peace conferences in 1919, its "solution" through the introduction of minorities treaties, their deficiencies and failure in practice from 1919 until 1933, the attempts at reform in the League of Nations, and finally, the abandonment of every basis of law by National Socialist Germany as a result of her "Herrenvolk" doctrine.

The author is well acquainted with all the historical details and juridical intricacies which once more have entered the focus of general interest and public discussion all over the civilized world. From his masterly insight into the innumerable phases of special development he has succeeded in presenting a lively picture illuminated by characteristic examples from past experience. These should not be forgotten in the preparations for the new peace conferences. The author's second pamphlet, in particular, is a valuable contribution to post-war planning which deserves to be made available to the American reader through an English translation.

GUIDO KISCH

HITLER'S TEN YEAR WAR ON THE JEWS. Institute of Jewish Affairs of the American Jewish Congress and the World Jewish Congress. New York, 1943. Pp. 311.

THE FULL STORY of what has happened to European Jewry under Hitler and the rule of the Axis cannot be told at this time. Some of its most terrible pages are still being written, from day to day, wherever the power of the Axis has not been broken. An interim balance is possible, however, of the effects of Hitler's war against the Jewish people since January 30, 1933, and, more especially, since September 1, 1939, when his armies invaded Poland. That balance sheet is presented in the volume under review. It is the result of the cooperative researches of the members of the Institute of Jewish Affairs and several outside contributors. It is based on an examination of Axis and other sources collected by the American Jewish Congress, the World Jewish Congress, and the Institute of Jewish Affairs. These materials include the official law gazettes of all Axis and Axis-dominated countries, decrees of the occupation forces and of the puppet regimes, official newspapers of the Axis-supervised Jewish communities, reports of diplomats and foreign correspondents from European lands, Axis-dominated as well as neutral, published and unpublished documents of the governments-in-exile, the underground press, including documents and letters smuggled out of occupied Europe, as well as eye-witness reports. All Axis and Axis-dominated countries are covered. Each of them received a chapter of its own, organized however according to a common scheme. Under the heading "Background," first, in more or less detail, a historical survey is presented of the general cultural development and political as well as legal status of the Jewries in the various states, prior to 1933. It is supported by demographic and statistic data which, in turn, serve also to explain to what extent Hitler-domination affected Jewish life and culture. Under headings differing from country to country then the path of destruction and horror taken by the Nazis is briefly described. All phases in their attempt to annihilate modern civilization as reflected in acts of warfare (even before the outbreak of the war) or effects of "legislation" come here to light. The sum-total is given in a "Summary" the first paragraph of which may find a place here.

> Some 3,000,000 Jews of Europe have perished since the war began four years ago. In the areas occupied or dominated by the Axis, there now remain a little over 3,300,000 Jews, compared to the former Jewish population of 8,300,000. Some 1,800,000 have been evacuated into the interior of the Soviet Union, and about 180,000 have emigrated. But 3,000,000 *are dead*. They have been destroyed by deliberate means: by planned starvation, forced labor, deportation, pogrom and methodical murder in the German-run extermination centers of Eastern Europe.

Explanatory statistical tables appended supply much-telling illustration.

This book is remarkable for its calmly presenting facts and figures,

events and developments, causes and results. The Jews had been the first victims of the most recent outbreak of the *furor Teutonicus*. For a long, all too long period, the abolition of the rule of law with regard to the Jews was considered either as an internal German problem or a purely Jewish affair. Neither the League of Nations nor any individual nation realized what was going on in Germany at a time when this trend could have been stopped with comparative ease. Hitler's ten-year war on the Jews as documented in this work gives evidence that it was only the beginning of the greatest and most fateful assault upon civilization, in human history. This book will be of good service to the historian, sociologist, and statesman, but should be read by everyone interested in the survival of modern civilization.

Jewish Institute of Religion,
and University of Notre Dame GUIDO KISCH

THE LAW OF GRECO-ROMAN EGYPT IN THE LIGHT OF THE PAPYRI 332 B.C. - 640 A.D. By *Raphael Taubenschlag*. Herald Square Press, Inc. New York, 1944. Pp. XV+488.

SINCE LUDWIG MITTEIS'S epoch-making *Grundzüge der Papyruskunde* (Juristischer Teil; two vols., 1912) juridical papyrology has not produced any comprehensive study of the law in the Greco-Egyptian papyri. The collection, *Juristische Papyri*, by Paul M. Meyer (1924) with its excellent juridical commentary was a very meritorious attempt to evaluate the legal contents of the papyri, but remained an anthology of selected documents rather than a systematic presentation. It was left to the voluminous work under review to enrich the papyrological literature with a precise survey of the law and legal practice of Greco-Roman Egypt over a period of almost one thousand years. Far from being a revised or enlarged edition of Mitteis's work, Professor Taubenschlag's book represents an original manual, in the real sense of the word, of juridical papyrology disclosing the legal institutions of the law of Egypt from the establishment of the Greek rule on through the Roman domination to the Arabic conquest. Taking into consideration the papyri edited in the last three decades after Mitteis's publication, and the papyrological literature as well, the author succeeded in building up a text-book as complete as the fragmentary character of the legal information offered by the papyri makes it possible. Private and criminal law and legal procedure are covered. Administrative law is reserved for the second volume. Source material and literature in many languages were utilized exhaustively.

The book is a real and reliable guide through legal problems arising from the coexistence and interrelation of three legal systems, the Egyptian, Greek, and Roman, which followed one another on Egyptian soil

in the course of ten centuries, and entered into conflict in various fields. Frequent references to other ancient legal systems increase the value of the presentation. Particularly Jewish law in its different phases of development, biblical, talmudic, and rabbinic, is not infrequently touched upon for purpose of comparison. Some details from the law of slavery, marriage, pledge, and contracts are mentioned. Their enumeration in the Index of Subjects under "Law-Jewish" and "Law-Talmudic" (p. 472) is to be supplemented by the following references: p. 7 n. 28, p. 53 n. 23, p. 69 n. 122, p. 71 n. 133, p. 72 n. 138, p. 74 n. 158, p. 78 n. 4, p. 208 n. 21, p. 260 n. 7, p. 279 n. 10, no claim being made by this reviewer of presenting a full list.

The usefulness of Taubenschlag's work is not limited to the domain of papyrology. Legal problems of interest to papyrologists are often of a general nature and similar in all fields of ancient legal history. Therefore students of Jewish law and comparative legal history will consult this book with much profit.

École Libre des Hautes Études, New York. ADOLF BERGER

NECROLOGUES

MOJZESZ SCHORR
1874—1941

MOJZESZ SCHORR, the great scholar, teacher and educator, and highly esteemed rabbi of Warsaw, the greatest Jewish community in Poland, died on July 8, 1941, according to official information, as "a prisoner in the Fifth Correctional Labor Camp of the Uzbek Soviet Republic in the Soviet Union." He escaped from the Polish capital shortly before the entry of the Germans in September 1939, but was later arrested by the Soviet authorities in a small frontier village in Eastern Poland. Separated from his family he was then dragged from one prison to another, and finally interned as a political prisoner in the labor camp which he was never to leave.

Schorr enjoyed high appreciation as an expert in Semitic philology, as historian of the Ancient Orient, and as editor of several publications of Babylonian legal documents which he provided with a valuable philological, historical, and juridical commentary: *Altbabylonische Rechtsurkunden aus der Zeit der ersten babylonischen Dynastie,* published in *Sitzungsberichte der Wiener Akademie der Wissenschaften* (1907-1913), and *Urkunden des altbabylonischen Zivil- und Prozessrechts,* in *Vorderasiatische Bibliothek,* V (1913). These editions have been highly praised as the best of their kind, by the most competent orientalists and legal historians.[1] This is all the more remarkable since Schorr was not a jurist.

Schorr was also the author of a series of studies of Jewish history, and particularly the history of the Jews in Poland. His doctoral dissertation "Zur Geschichte des Don Joseph Nasi," published in *Monatsschrift für Geschichte und Wissenschaft des Judentums,* XLI (1897), gave evidence of his understanding of and superior capacity in research work in archives, which became the foundation of his later works and articles on the history of Polish Jewry. His book, *The Organization of the Jewish Communities in Poland until the First Partition,* which appeared in 1899, in Polish, was also published in Russian (1900), and in an enlarged and revised German edition, *Rechtsstellung und innere Verfassung der Juden*

[1] See Martin David, "Schorr als Rechtshistoriker," in *Ksiega Jubileuszowa* (Warsaw, 1935), a collection of essays offered to Schorr at his sixtieth anniversary. In the same volume a bibliography of Schorr's publications was compiled by Majer Balaban, pp. 2-23. Cf. A. Berger, *Annuaire de l'Institut de Philologie et d'Histoire Orientales et Slaves,* VII (New York, 1944), pp. 538-540.

in Polen, ein geschichtlicher Rundblick (Vienna, 1917). This monograph was the first attempt at describing the organization of the Kahals and the *Congressus Judaicus* in Poland.

Realizing that a comprehensive history of Polish Jewry must be built upon researches in the history, organization, and cultural life of the greater Jewish centers, Schorr began with a study of the Jews in his native town, Przemysl, to the end of the eighteenth century (1903, in Polish). The work was honored by the University of Lwow with a prize and appeared later in a German edition, *Aus der Geschichte der Juden in Przemysl* (Vienna, 1912). It was the first presentation of the history of a Jewish community in Poland based on documentary sources from Jewish and non-Jewish archives. Schorr's methodology exercised a great influence on Jewish historiography in Poland, and particularly on the later literary activity of the historian, Majer Balaban. At the invitation of the Polish Academy of Sciences in Cracow Schorr wrote a "History of the Hebrew Language and Literature in Poland," published in the *Polish Encyclopaedia* of that Academy, volume III.

The ancient period of Jewish history and culture was, of course, particularly attractive to Schorr, the semitologist and orientalist. Only some of his more important contributions can be mentioned here: *The Biblical Antiquities in the Light of an Egyptian Archive of the Fourteenth Century B. C.* (1901, in Polish); *Babylonian and Ancient Hebrew Culture* (1903, in Polish); "Einige hebräisch-babylonische Redensarten," in *Monatsschrift für Geschichte und Wissenschaft des Judentums*, LII (1908); an article on biblical law in the Russian *Jewish Encyclopaedia*, XII (1909); an essay, "Phraseology in the Biblical and Babylonian Psalms," in the Polish Orientalistic Year Book, *Rocznik Orientalistyczny*, I (1915).

Schorr was lecturer and, from 1916 on, professor of Semitic philology and history of the Semitic Orient in the University of Warsaw. As a founder and professor of the Polish Institute of Jewish Sciences in Warsaw he was elected its first Rector. From 1923 on Rabbi of the Tlomackie Synagogue in Warsaw, he was for several years also a member of the Senate of the Polish Republic as a representative and guardian of Jewish interests. The Polish Academy of Sciences in Cracow honored him by electing him a member, The Jewish Theological Seminary and the Jewish Institute of Religion in New York conferred upon him the doctor's degree *honoris causa*.

Schorr's merits as an orientalist claim for him a place in the first rank of scholars in Semitic philology and history. Even in Nazi Germany his editions remained the most frequently cited works in the pertinent

literature. But in the history of Polish Jewry of our century a special place of honor is due him as scholar, rabbi, and man.

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MAJER BALABAN

1877—1943

THE decease of Majer Balaban, who succumbed to physical and psychical torments in a Nazi concentration camp in Poland in January 1943, deprived us of a modest, painstaking and indefatigable scholar whose research work was almost exclusively devoted to the history of the Jews in Poland. Balaban spent all the time he could spare from his professional duties as a teacher of Jewish religion in several high schools, in Polish archives and museums occupied with official documents, registers, private deeds, and other manuscripts. Thus he acquired a thorough knowledge of archival material concerning Jews and Jewish matters. His first articles in various Jewish periodicals, mostly edited by himself, and in the daily press, were of a more popular than scholarly character. Soon, however, he approached more serious topics, not disregarding any subject connected with Jewish history in his native country. First it was the history of the Jews in the Austro-Hungarian Monarchy, then in his birthplace, Lwow, and finally in the reborn Poland to which his researches were devoted. Balaban's scholarly achievements were adequately appreciated in the New Poland: he was director of the Rabbinical School in Warsaw, professor of Jewish history and history of the Jews in Poland at the University of Warsaw, and, moreover, professor, and finally rector of the Institute of Jewish Sciences in Warsaw.

It is not easy to give a survey of Balaban's extensive literary activity. A biliography of his essays published in his Historical Studies, (*Studja Historyczne*, 1927, in Polish) listed 87 books, pamphlets, and articles, scattered in encyclopedias, periodicals and dailies, in Polish, German, and Russian. Even the very limited notes possible here must indicate his exceptional competence in the field of Polish-Jewish history.

Balaban's work was not restricted to the analysis of historical, political or legal events; he wrote on rabbis, scholars, and artists as well as on artisans or lay leaders of Jewish autonomous bodies. He treated the economic, social, and cultural life of the Polish Jews in different epochs and centers. Monographs on renowned Jewish families and individuals are as frequent among his essays as studies on the organization, education, courts, and finances of Jewish communities. Of these comprehensive studies embracing the whole of Jewish life in the larger Jewish

centers only the most important ones can be mentioned here. *The Jews in Lwow at the End of the Sixteenth and in the Beginning of the Seventeenth Century* (two editions 1906, 1909; in Polish), including a collection of documents, a volume of more than 600 pages, was a prize winner in a historical contest of the Philosophical Faculty of the University at Lwow. It was followed by several monographs, *The Jews in Austria and Galicia under Francis Joseph,* 1848-1908 (1910); *History of the Cracow Jewry* (first volume in two editions, 1913, 1931); *History of the Jews in Galicia and the Republic of Cracow,* 1722-1868 (1916), all in Polish; and *Die Judenstadt von Lublin* (Berlin, 1919; in German). The period prior to the war was covered in the works, *The Jews in Reborn Poland* (1933, in Polish), of which probably the first volume only appeared, and *History of the Progressive Synagogue in Lwow,* an exemplary presentation, richly illustrated (1937, in Polish). Some of his earlier essays and studies, revised and enlarged, were collected in *Skizzen und Studien zur Geschichte der Juden in Polen* (Berlin, 1911) and in two books in Polish (1920, 1927).

Balaban's studies in the field of Jewish art: synagogues and their appurtenances, cemeteries, and ritual objects such as Torah crowns, embroideries, Hanukkah lamps, etc., always profusely illustrated with photographs, old etchings, or drawings, are today of particular value, since most of these irreplaceable objects have surely disappeared during the war, destroyed or stolen by the invader. Balaban's publications may prove to be the only record of these objects. The same is true of the documents published in his books, for most of the archives of Jewish communities disappeared during the war. Detailed descriptions of them are found in Balaban's monographs on the cities of Lwow, Cracow (1935), and in his general work *Jewish Historical Monuments and Antiquities in Poland* (1929, in Polish), which contains a particularly notable history of Jewish handicrafts in Poland. It is not known whether Balaban succeeded in finishing his work, *History of Jewish Art in Poland,* which he had been invited to write by the Polish Academy of Sciences.

A special group among Balaban's papers is devoted to the history of different sects in Poland. Here should be mentioned a study on the Karaites in Poland, published in his *Historical Studies* (1927), and his "Studien und Quellen zur frankistischen Bewegung in Polen," in *Livre d'hommage à la mémoire de Samuel Poznanski* (Warsaw, 1927), which were preparatory to his two-volume work on the history of the Frankist Movement, *Toledot ha-Tenuah ha-Frankit* (Tel-Aviv, 1934-1935). His contribution to the anniversary volume offered to Moses Schorr deals with a sector of Jewish mysticism, namely Sabbatianism in Poland (Warsaw, 1935).

Balaban's *Jewish History and Literature* (three volumes of more than 1200 pages, first vol. in third ed., 1925), a textbook for Polish high-schools approved by the Polish Ministry of Public Education, should also not be forgotten here, since it testifies to the high level of instruction in Jewish religion and history in Poland. This work includes an abundant anthology of historical texts and excerpts from Jewish law-books and rabbinic literature until Maimonides.

The three most eminent representatives of modern Jewish historiography in Poland, Balaban, Schipper, and Schorr are no more. Their death is an irreparable loss to Jewish scholarship.

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CONTENTS

ARTICLES

FRIEDMAN, Lee M.: American Jewish Names (with one plate) 147-162
GRINSTEIN, Hyman B.: Reforms at Temple Emanuel of New York 1860-1890 163-174
KISCH, Guido: The Jews' Function in the Mediaeval Evolution of Economic Life 1-12
KISCH, Guido: Mediaeval Italian Jurisprudence and the Jews 78-82
KISCH, Guido: Czechoslovak Jews and America (with one plate) 123-138
KISCH, Guido: The United States and the International Jewish Question 189-193
LANDSBERGER, Franz: Rembrandt's Synagogue (with four plates) 69-77
RABINOWITZ, Louis I.: The Psalms in Jewish Liturgy 109-122
ROSCHER, Wilhelm: The Status of the Jews in the Middle Ages Considered from the Standpoint of Commercial Policy (translated by Solomon Grayzel) 13-26
STILLSCHWEIG, Kurt: Nationalism and Autonomy Among Eastern European Jewry 27-68
STILLSCHWEIG, Kurt: Legislative Proposals Against Anti-Semitic Propaganda in Sweden 139-146
WERNER, Eric: Prolegomena to A Bibliography of Jewish Music 175-188

BOOK REVIEWS

Adler, Cyrus, and Margalith, Aaron M., *American Intercession on behalf of Jews in the Diplomatic Correspondence of the United States* 1840-1938 (G. Kisch) 189-193
Baron, Salo W., *The Jewish Community* (L. Wirth) 83-86
Coulton, G. G., *Medieval Panorama* (G. Kisch) 194-195
Epstein, Louis M., *Marriage Laws in the Bible and the Talmud* (B. Cohen) 87-90
Friedenwald, *The Jews and Medicine* (G. Kisch) 201-203
Institute of Jewish Studies, *Hitler's Ten Year War on the Jews* (G. Kisch) 206-207
Kohn, Hans, *The Idea of Nationalism* (G. Kisch) 195-197
Lea, Henry C., *Minor Historical Writings* (G. Kisch) 86-87
Neuman, Abraham A., *The Jews in Spain* (J. Rosenthal) 197-199
Scharfstein, Zevi, *The Heder in Jewish Life* (N. N. Glatzer) 203-204
Sheedy, Anna T., *Bartolus on Social Conditions* (G. Kisch) 78-82
Stillschweig, Kurt, *Judarnas Emancipation* (G. Kisch) 205
Taubenschlag, Raphael, *The Law of Greco-Roman Egypt* (A. Berger) 207-208
Trachtenberg, Joshua, *The Devil and the Jews* (S. Grayzel) 199-201

List of Abbreviations, see Volume I 1-2
Notices of Recent Publications ..... 103, 214f.
Bibliography of Periodical Literature 1943 104-106
Necrologues 91-102, 209-213