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PhD DISSERTATION

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THE PRACTICE OF *TESHUVAH* (PENANCE) IN THE MEDIEVAL
ASHKENAZI JEWISH COMMUNITIES

[A *tesuva* (vezeklés) gyakorlata a középkori askenázi zsidó közösségekben]

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TABLE OF CONTENTS I

| | |
|--|-----------|
| ACKNOWLEDGEMENTS | 2 |
| TABLE OF CONTENTS | 3 |
| INTRODUCTION | 7 |
| 1. The Purpose of the Present Study | 7 |
| 2. Sources | 8 |
| 3. Methodology and Terminology | 10 |
| 4. Medieval Transformations of the Concept of Teshuvah | 17 |
| PART I. GEONIC PRECEDENTS FOR <i>TESHUVAH</i> (PENANCE) | 25 |
| I.A. Introduction | 25 |
| I.B. Punishments of the Bet-din as “Extra-Legal Punishments” | 25 |
| I.C. The Different Functions of the Viddui in the Penal Process and in the Process of Penance – Rav Naṭronai’s Decision | 28 |
| I.D. The Function of Ḥerem, Shamta, and Niddui in the Process of Bringing about Repentance | 30 |
| I.E. Public Shaming as “Para-Judicial Punishment” | 33 |
| I.F. Ascetic Practices in Mystical–Magical–Pietistic and in Penitential Contexts; and Their Transfigurations in the Sources of the Geonic Period, Ḥaside Ashkenaz and 13–15 th Century Responsa | 33 |
| PART II. | 35 |
| THE PRACTICE OF <i>TESHUVAH</i> IN THE ASHKENAZI JEWISH COMMUNITIES IN THE 12–15TH CENTURIES | 35 |
| II.A. Introduction: The Concept of Teshuvah of Ḥaside Ashkenaz and Its Effects | 35 |
| II.A.1. Sage-Confession, Personalist Atonement, Atonement by Self-Mortification | 35 |
| II.A.2. The Public Aspects of Penance in the Teaching of Ḥaside Ashkenaz | 39 |
| II.A.3. The Penitentials of Ḥaside Ashkenaz in Context | 40 |
| II.A.4. The Use of the Penitentials of Ḥaside Ashkenaz by Mystical-Ascetic Trends Influenced by Ḥaside Ashkenaz in the 13 th Century | 46 |
| II.A.5. The Jurisdiction of Criminal Cases in the Jewish Communities of Germany after the Black Death and the Role of Penance in this System | 51 |
| II.A.6. The Use of the Penitentials of Ḥaside Ashkenaz by the Rabbis in Criminal Jurisdiction and in Imposition of Penance after the Black Death in Germany | 56 |
| II.B. Transgressions | 56 |
| II.B.1. Murder | 58 |
| II.B.2. Fornication and Adultery | 74 |
| II.B.3. Injury, Wound, Beating, Corporal Damage | 89 |
| II.B.4. Theft, Usury and Dishonesty | 96 |
| II.B.5. Cursing | 106 |
| II.B.6. Slander | 112 |
| II.B.7. Arson. Desecration of the Sabbath in Times of Fire; Accusation of Arson against the Fellow Jew before the Gentile Court | 116 |
| II.B.8. Contempt of Court and “Contempt of Rabbi” | 119 |
| II.B.9. Perjury and False Testimony | 133 |
| II.B.10. Transgression of a Vow | 139 |
| II.B.11. Offences against Kashrut, Offenses of the Ritual Slaughterer | 144 |
| II.B.12. Drinking the Wine of Gentiles | 149 |
| II.B.13. Transgression by Dressing, Behavior, and Benediction in Vain | 151 |
| II.B.14. Speaking or Behaving Irreligiously in the Synagogue as Blasphemy | 152 |
| II.B.15. Desecration of the Sabbath | 157 |
| II.B.16. Informer | 161 |
| II.B.17. Jewish Apostate | 170 |
| II.C. Forms of Penance | 172 |
| II.C.1. Suicide for Sins and the Death Penalty | 176 |
| II.C.2. Mutilation, Maiming; Tormenting, Self-Affliction as Penance | 183 |
| II.C.3. Flogging | 187 |
| II.C.4. Fasting | 194 |
| II.C.5. Incarceration | 205 |
| II.C.6. Excommunication (Niddui and Ḥerem) | 207 |
| II.C.6a. Removal of the Ritual Slaughterer | 227 |
| II.C.7. Exile, Banishment, Decree to Change the Dwelling Place | 229 |

| | |
|---|------------|
| II.C.8. Pilgrimage | 232 |
| II.C.9. Legal Disqualification and Loss of Rights | 234 |
| II.C.10. Loss of Honor, Titles, Service, and Functions | 240 |
| II.C.11. Public Disgrace, Forms of Humiliation, Shame Sanctions | 243 |
| II.C.12. Other Prohibitions and Interdictions | 249 |
| II.C.13. Prayer, Begging Pardon Publicly, Crying, Daily Private Confession | 251 |
| II.C.14. Monetary Penalties, Fines, Commutation of Penalties into Money | 256 |
| II.C.15. Alms, Charity for Torah Studying and Ransom for Captives | 261 |
| II.D. The Process of Penance | 264 |
| II.D.1. Viddui | 264 |
| II.D.2. Institutions: The Role of the Rabbi and Bet Din | 267 |
| II.D.3. Place | 275 |
| II.D.4. Time | 280 |
| II.D.5. The Public and Private Character of Penance | 284 |
| II.E. Penitent and Community, Rituals and Symbols | 285 |
| II.E.1. The Status of the Ba'al Teshuvah (Penitent) in the Jewish Communities | 285 |
| II.E.2. Case-specific Signs of the Status of the Individual Penitent and their Place in the System of Symbols of the Respective Rituals | 292 |
| II.E.3. Common Rituals for Penitents, Community Rituals of Yom Kippur | 294 |
| II.E.4. Typology of Rituals | 298 |
| PART III. CHRISTIAN ANALOGIES | 308 |
| III.A. Introduction | 308 |
| III.A.1. The Question of the Influence of Christian Penance on the System of Teshuvah of Ḥaside Ashkenaz | 308 |
| III.A.2. Developments in Christian Penance in the 12 th Century | 312 |
| III.A.3. Comparison – Preliminary Remarks | 316 |
| III.B. Transgressions | 320 |
| III.B.1. Murder | 320 |
| III.B.2. Fornication and Adultery | 330 |
| III.B.3. Injury, Assault and Battery | 335 |
| III.B.4. Theft, Usury, Falsification of Documents and Coins | 337 |
| III.B.5. Cursing and Slandering | 341 |
| III.B.6. Arson | 344 |
| III.B.7. Contempt of Court | 345 |
| III.B.8. Perjury | 346 |
| III.B.9. Transgression of a Vow | 348 |
| III.B.10. Transgressions in Eating and Drinking | 351 |
| III.B.11. Irreligious Behavior | 353 |
| III.B.12. Blasphemy | 354 |
| III.B.13. Political Crimes | 358 |
| III.B.14. Heresy | 360 |
| III.B.15. Magic | 364 |
| III.C. Modes of Penance | 365 |
| III.C.1. Death Penalty | 369 |
| III.C.2. Mutilation, Maiming, Harsh Self-mortification | 370 |
| III.C.3. Flogging, Beating, Self-flagellation | 371 |
| III.C.4. Fasting | 373 |
| III.C.5. Incarceration | 376 |
| III.C. 6. Excommunication | 377 |
| III.C.7. Exile | 381 |
| III.C.8. Pilgrimage | 384 |
| III.C.9. Public Humiliation and Shame Sanctions | 386 |
| III.C.10. Infamia | 391 |
| III.C.11. Prayer | 393 |
| III.C.12. Fines and Charity | 394 |
| III.D. The Process of Penance | 397 |
| III.D.1. Christianity | 397 |
| III.D.2. Comparison | 400 |
| III.D.3. Differences | 402 |
| III.D.4. Possible Influences | 402 |

| | |
|--|------------|
| III.E. Penitent and Community, Rituals and Symbols | 402 |
| III.E.1. The Status of the Penitent | 402 |
| III.E.2. Case-Specific Signs | 406 |
| III.E.3. Common Rituals for Penitents, Community Rituals of Penance | 408 |
| III.E.4. Typology of Rituals | 409 |
| III.F. Conclusions | 413 |
| CONCLUSIONS | 416 |
| ABBREVIATIONS | 417 |
| BIBLIOGRAPHY AND BIBLIOGRAPHICAL ABBREVIATIONS | 421 |
| TRANSCRIPTIONS OF HEBREW LETTERS | 453 |
| APPENDIX 1: TRANSLATIONS AND EXTRACTS | 454 |
| APPENDIX 2: CRITICAL EDITIONS | 509 |
| MAGYAR NYELVŰ ÖSSZEFOGLALÓ [HUNGARIAN SUMMARY] | 509 |

INTRODUCTION

1. The Purpose of the Present Study

The present study is an analysis of medieval Jewish sources relevant to the laws and practices of the *teshuvah*¹ in the medieval Ashkenazi Jewish communities. *Teshuvah* as a central religious idea and practice in these communities appeared and was developed in the circle of *ḥaside Ashkenaz*, a pietistic and mystic religious and social “movement” between the second half of the 12th century and the first half of the 13th century. Subsequently the *teshuvah*-doctrine of *ḥaside Ashkenaz* as a “movement” has disappeared; the literature of the *teshuvah* of *ḥaside Ashkenaz*, however, had great impact not only on subsequent Jewish “literature” in general,² but also, more specifically, on legal literature and practice. A vast amount of scholarship is available on the *teshuvah*-doctrines of *ḥaside Ashkenaz*.³ The main questions that the present study focuses on are as follows: Were there any roots or antecedents for the *teshuvah*-doctrine of *ḥaside Ashkenaz* in previous Jewish tradition, legal, philosophical or other? How did the *teshuvah* of *ḥaside Ashkenaz* develop in the Ashkenazi Jewish communities and what was its role in the jurisdiction and social life of these communities? How did its private and public aspects manifest themselves in the various communities? How did the *teshuvah*-doctrine of *ḥaside Ashkenaz* and its later developments relate, if at all, to the Christian environment? The study will discuss on the analysis of the categories of sins which required *teshuvah*, on the modes of atonement, on the process of the *teshuvah* and its institutions, and on the relation between *ba'al teshuvah* and community, as well as the system of symbols and the rituals which expressed this relation.

The first part will discuss some traces or antecedents of the *teshuvah*-concept and *teshuvah*-practice of *ḥaside Ashkenaz* in earlier (Geonic) sources. The second part will deal with the *teshuvah* in the Ashkenazi communities, according to categories of sins, modes of *teshuvah*, process of *teshuvah*, its rituals and symbols. The third part discusses the Christian parallels, according to these criteria along the same lines.

¹ In its primal meaning it means repentance, in medieval context both penance and repentance. See for definition Introduction 3.2.

² The literary impact of the *teshuvah* literature of *ḥaside Ashkenaz* is attested, by the vast and varied manuscript tradition of the penitentials of *ḥaside Ashkenaz*, and traceable on fields such as ethics, religious philosophy, etc.

³ The main scholarly accomplishments and differences of opinion are summed up in the introductory chapters of Part II and III. References to scholarly literature are also frequently made in the course of the discussion.

2. Sources

2.1. Geonic Sources

According to literary genres, our Geonic sources can be divided into three categories: (1) normative legal sources, including *responsa* of theoretical character, which relate to contemporary normative law; (2) Geonic *responsa* relating to concrete cases or documents issued by *bet-dins*; (3) *midrashic* and *Hekhalot* texts relating to ascetic practices in the Geonic period. We will also discuss later (post-Geonic) printed and manuscript sources which attest Geonic practice. Only occasional references will be made to theological-philosophical works on repentance (by Saadiah Gaon), because here we are interested only in possible Geonic precedents for medieval Ashkenazic practice of *teshuvah* and not in the development of Geonic philosophical doctrines about repentance.⁴

2.2. Ashkenazi Jewish Sources

The Ashkenazi Jewish sources are to be divided into three categories, according to their type: (1) sources concerning *teshuvah* in SHP⁵; the problem with this type is that in the majority of cases we can not tell whether they are real or not; (2) normative rules of *teshuvah* (e.g. HTR); (3) *responsa* which relate to concrete cases of penance.

According to another classification, namely, by the authors who composed or rabbinic institutions or authorities which issued the sources, they belong to the following three categories:

2.2.1. Enactments from the *Tosafist* Period (*Taqqanot*, 12–13th centuries)

The enactments of R. Tam and the 150 rabbis, (Troyes, 1160) and the enactments of “Shum” (1196, 1220) are relevant in connection to penance: (1) for the enactments themselves, which broaden the subcategories of transgressions; (2) for the process of penance as developed in the medieval Ashkenazi communities, since in the majority of cases, the enactments were issued under threat of excommunication. Thus the offender had the choice of excommunication or repentance when called to account by the *bet din* or community leadership.

2.2.2. *Haside Ashkenaz*

⁴ See Kaddari, "מקום שבעלי תשובה עומדים", *עיוני תשובה. הלכה, הגות והלכה*.

⁵ See Abbreviations.

(1) *Sefer Ḥasidim* (two recensions: SHP and SHB): paragraphs in SHP and SHB that are relevant to *teshuvah* are of two types: (a) those reflecting the stage of Sage-confession⁶ in the development of *teshuvah*; (b) those which are not relevant to confession, but are relevant to the mode of atonement.

(2) Penitential tractates written by Eleazar of Worms or by others on the basis of his tractate(s): they belong to the second stage of the development of *teshuvah*: to the “personalist atonement”⁷.

(3) Other manuscript sources in the name of Judah Ḥasid. They belong to different literary genres, and reflect the stage of “Sage-confession” in the development of *teshuvah*.

2.2.3. *Responsa* Literature

(1) *Responsa* by rabbis who lived before the 15th century. They mention penance, sometimes penitential process, but detailed schedules⁸ are not found in them.

(2) *Responsa* written by rabbis who lived in the 15th century. They constitute a separate category within medieval *responsa*, due to detailed and developed penitential schedules they contain, absent from most earlier *responsa* related to *teshuvah*.

2.3. Christian Sources

Christian sources can be divided into two categories, according to their content: (1) normative rules of penance (penitentials, canonical and secular law collections and *summa confessorum*); (2) different types of sources (Episcopal registers, court decision collections, city registers, chronicles of all kinds etc.) presenting concrete cases of penance or shame sanctions.

According to the type of source, they can be divided into four categories:

(1) Penitential tractates before 1200: they belong to the types of *tariffed* penances.

(2) Canonical collections, collections of secular law: only some paragraphs are connected with penance; they do not differ much from contemporary penitentials regarding their content.

(3) *Summa confessorum* (for pastoral use) between 1200 and 1500: they employ *tariffed penitentials*, but are relevant to the process of penance and explanations related to the contemporary practice of the internal forum.

⁶ See II.A.1.

⁷ See II.A.1.

⁸ See glossary, “Penitential schedules”.

(4) Other sources concerning individual cases of penance and shame sanction from secular and ecclesiastical law (from primary sources and secondary studies): this type is of central importance for Christian public and private penance in the 12–15th centuries, and for the analogies to Jewish public and private penance in this period of time.

3. Methodology and Terminology

3.1. Methodology

(1) The investigation of the Geonic sources shows that we can not speak about *teshuvah* (penance) for the Geonic period in the sense in which it is understood in the present study.⁹ There are some isolated elements in the system of sanctions of the jurisdiction of the Geonic period which could be regarded as antecedents for the *teshuvah* in medieval Ashkenazi communities. Only these will be discussed and analyzed in Part I, to the extent they can be related to the later Medieval Ashkenazic phenomenon of *teshuvah*.

(2) In the study of the *teshuvah* in the Medieval European Ashkenazi Jewish communities I analyze the *halakhic* sources, first, focusing on seventeen categories of sins, second, on the modes of atonement, third, on the process of the *teshuvah*, and fourth, on the public rituals of *teshuvah* and their symbolism. Within one chapter¹⁰, the sources are analyzed under three headings: the enactments of the communities from the 12–13th centuries, the sources of *ḥaside Ashkenaz* – usually divided into two subgroups, SHP and HTR – and finally, the *responsa*-sources. Communal enactments, introduced in the 12–13th centuries, were still valid in the 15th century. Transgressions against these enactments – sanctioned usually with excommunication – were relatively frequent, and the reestablishment of peace and the vindication of justice was a result of the performing of the *sefer teshuvah* by the *ba'al teshuvah*. Such cases are helpful to understand the relationship between individual and community and therefore it is appropriate to treat them in our discussion as a category of their own. The analyzed sources of SHP contain not only *halakhic* rulings and cases relevant to *teshuvah*, but also novel interpretations of traditional Jewish sources, and *exempla*. The HTR and its recensions are at the core of the analysis, because they constitute the authoritative systematic sourcebooks, the *ḥibbure teshuvah*, on which the later relevant *responsa* rely.¹¹

⁹ See 3.2.

¹⁰ “Chapter” is called in this study the unit which is designated by an Arabic number after a capital letter, e.g. II.B.1 or III.C.9.

¹¹ See more in detail about the literary and juridical context of the *teshuvah* in II.A.

(3) For the comparison of the Jewish and Christian penance in the High and Late Medieval European communities the methodology builds on the fact that no literary influence of the one on the other was ever demonstrated. Nevertheless, the possibility of mutual influences can not be easily dismissed; everyday contact and discussions with each other in the vernacular language between individuals of the two communities may have served as a medium of these influences. The possibility of literary influence also can not be excluded. The purpose of this investigation is a systematic, comparative phenomenological description of the practice of penance in the two religions at this time: the categories of sins and atonements, the character and process of penance, the rituals of the Jewish and Christian penance and the establishment of similar and different motives in the practice of penance of the two religions. The analysis is followed in every section by a brief assessment of possible influences.¹²

3.2. Terminology for the Analysis of Jewish Sources

Medieval Ashkenazic notions of *teshuvah* differed from that of the Talmudic notion in some respects. The following glossary defines key Hebrew terms used in medieval rabbinic discourse pertaining to *teshuva*/penance, as well as terms coined or adopted in modern scholarship in discussing *teshuvah* in medieval Ashkenazi communities.

Definition of *Teshuvah*

Our central term, *teshuvah*, designated a predominantly mental-psychical process (repentance, contrition, regret) in Talmudic literature, while in medieval Ashkenazi sources it could mean both repentance and penance (see below).¹³ This special usage is first attested in the literature of *ḥaside Ashkenaz*.¹⁴ It was maintained also in the medieval Ashkenazi *responsa* literature analyzed in this study, a literature influenced by *ḥaside Ashkenaz*. The most important novelty of this usage in this literature was that it designated the whole process

¹² See more in detail about possible models of Jewish-Christian interaction related to penance in III.A.1, III.A.3, III.A.4.

¹³ The classical Talmudic passage for the meaning of *teshuvah* is the teaching of R. Ishmael (bYoma 86a), where the sins are classified according to the ways they can be atoned for. The *teshuvah* atones alone or accompanies the three other ways of atonement: the Day of Atonement, (physical) suffering and death. In this passage it is unambiguous that *teshuvah* means repentance, that is, only a mental process, the core element of which is contrition (regret). However, in the teaching of *ḥaside Ashkenaz*, *teshuvah* means firstly penance, that is, concrete ways and deeds to achieve atonement, and only secondly contrition. From the four ways of *teshuvah* of *ḥaside Ashkenaz*, the first two (*teshuvah ha-ba'ah* and *teshuvat ha-gader*) designate the “way of life” of the penitent in permanent struggle with his own *yezer* (evil inclination), which is not only a mental “struggle”, while the other two (*teshuvat ha-katuv* and *teshuvat ha-mishqal*) designate unambiguously physical suffering willingly performed by the penitent in order to atone for the sin committed.

¹⁴ For the terminology related to the concept of *teshuvah* of *ḥaside Ashkenaz* see Marcus, *Piety*, Appendix III, pp. 144–5.

of penance (*sefer teshuvah*) imposed on the penitent or prescribed to him at his initiative, with its private and public aspects. The private aspects of the *sefer teshuvah* had a quite well-defined time-table (which included first of all fasts, connected with private confessions, prayers, and sometimes private flogging); its public aspects had ritualized, or, at least, formalized public procedures which expressed in a symbolic manner the debased status of the *ba'al teshuvah* in the community, and his or her contrition and willingness to return to good.

The basic terminology we will use in the analysis of Christian penitentials follows standard terminology in modern research. There are overlaps in the terminology used in scholarship for the description of Jewish and Christian penitence and penance in the European Middle Ages: general terms borrowed from the history of religions.

'Adrahe' (= "on the contrary"): the reversal of the sentence of excommunication by the excommunicated person on the excommunicator

Atonement (= *kapparah*): In the Bible, "atonement" is the reconciliation of the sinner with God through sacrifices. The expiatory sacrifice was accompanied by a confession of sin. The atonement idea was spiritualized in the course of time; in the terminology of *haside Ashkenaz* and the literature inspired by it, as well as in this study, it is used as a synonym for penance¹⁵. Defined thus, it retains its original meaning of "reconciliation" with God.

Borerut (= "arbitration"): court of arbitration, constituted of two judges chosen by the two litigant parties, and a third chosen by the two judges or by the community.

Confession (= *viddui*): confession of sins, admission of sinfulness. There is a distinction between the liturgical and religious sense of the term as (1) a confession to God, which is called "private confession" in this study, whether it is performed within a liturgical frame or not; and (2) a confession before the community or to a rabbinic court, which is called "public confession". A special meaning is the confession to a sage or rabbi in order to receive from him instructions for penance, or to a court in order to express a willingness to do *teshuvah*. The "first confession", that is to say, expression of willingness to do penance, whether "private" and "public", can be the core element of penitential process, demarcating its beginning.

Confessor (= *hakham, moreh, yo'ez*): in the Sage-penitential of the SHP the sage to which the penitent confesses and who administers penance.¹⁶

¹⁵ For this term see below.

¹⁶ See II.A.1.

Din shamayim – din Torah in penitential process: In SH the distinction “*din Shamayim*” – “*din Torah*” designates the differentiation between subjective and objective notions of sin, punishment, penance. “*Din Shamayim* is often a synonym for *lifnim mi-shurat ha-din*. In the *responsa* of the 15th century, this distinction played an important role dealing with cases in which no punishment could be given, although the culpability of the judged person was clear. In these cases, the rabbi imposed penance “according to the law of Heaven”, by which justice was vindicated.¹⁷

Evil instinct/inclination (*yezer ha-ra'*): central notion in the *teshuvah*-concept of *haside Ashkenaz*, according to which the root of every sin is man’s evil inclination. The struggle with it is a high demand for the pious. The performance of two of the ways of *teshuvah* (*ba'ah* and *gader*) by the penitent is victory over the evil instinct.¹⁸

Excommunication (= *herem*, *niddui*): the exclusion of the person from the Jewish community by prohibiting all intercourse between the two. During Talmudic times and the Middle Ages it was a rabbinic “legal institution” to enforce obedience with flexible rules of application. In due course it became, practically, one of the modes of legal punishment by the court. While it did not entirely lose its arbitrary character, since individuals were allowed to pronounce the ban of excommunication on particular occasions, it became chiefly a legal measure resorted to by a judicial court for certain prescribed offences. Ber. 19a, Yer. M. K. speaks of 24 offences punishable by excommunication. Talmudic terms used in the sources:

***Niddui*:** imposed for a period of seven days (in Palestine thirty days). If it was inflicted on account of money matters, the offender was first publicly warned (*hatra'a*) three times, on Monday, Thursday and Monday successively, at the regular service in the synagogue. During the period of *niddui* no one, except the members of his immediate household was permitted to associate with the offender, or to sit within four cubits of him, or to eat in his company. He was expected to go into mourning and to refrain from bathing, cutting his hair, and wearing shoes, and he had to observe all the laws pertaining to a mourner. He could not be counted to the *minyan* (the number necessary for the performance of a public religious act). If he died, a stone was placed on his coffin, and the relatives were not obliged to observe the ceremonies customary at the death of a kinsman. It was in the power of the court to lessen or to increase the severity of the *niddui*.¹⁹

¹⁷ See II.B.1 and other chapters referred to there. See also Soloveitchik, *Three Themes*, p. 320, n. 26, pp. 354–355.

¹⁸ See Soloveitchik, “Three Themes”, p. 324 about the Hasidic idea that the significance of religious act lies in thoughts and feelings, not in the deed.

¹⁹ This is the Talmudic definition of *niddui*. See on medieval definitions II.C.6, II.B.8.

Herem: the most rigorous form of excommunication. If the excommunicate showed no sign of penitence or remorse, the *niddui* might be enforced again, and finally the *herem* might be pronounced. This extended for an indefinite period, and no one was permitted to teach the offender or work for him, or benefit him in any way.

Extra-legal punishments: Punishments not contained in a legal code are called extra'legal punishments, which a court inflicts as "emergency measures".²⁰

Halakhah: Jewish religious law.

Hora'at sha'ah (= emergency decree): the right of the *bet-din* to punish and impose fines if the situation demands even in cases when according to Talmudic law it is not entitled to do so.

Institutions of teshuvah: *responsa* reflect a reality in which the *teshuvah* became an institutionalized process of reconciliation between offender/penitent and community. The *bet din*, the rabbi, the community council and the community itself can play a part in this process. In cases when the sin was a transgression between man and God alone, or when the *teshuvah* had a "private" character, or even in several other cases, the penitent received the penance from the rabbi, or performed it alone on the basis of a penitential book.

'Iqquv tefillah (= delaying the prayer): a legal means in the hands of the individual against another individual or community for the remedy of injustice; the individual asks the prayer leader to suspend the community prayer in the synagogue; the community remains in the synagogue until a proposal for remedy is found.

Le-migdar milta' (= to make a "fence"): to guard the Jewish community against sin and sinners by stringent interpretations or applications of Jewish religious law.

Lifnim mi-shurat ha-din in penitential process (= before/beyond the strict line of law²¹): a stringent interpretation or application of Jewish religious law; in the terminology of SHP related to *teshuvah* it refers to sins which are not punishable according to the Law or *halakha*, but punishable or punished according to the "law of Heaven". It very often designates the sins committed only mentally.

Modes of penance/atonement (= *teshuvot*, *kapparat*): individual acts of self-punishment within the frame of an "order of penance" for a particular transgression, which may include corporal, social, monetary and liturgical components.

²⁰ See e.g. Farber, "Extra-Legal Punishments". See I.B.

²¹ See bBM 30b for the expression "*lifnim mi-shurat ha-din*" and Jastrow Dictionary vol. 1 p. 301 for the opposition of strict law and "inside the line of the law, equity".

Para-judicial procedures: A public ritual or procession outside (or/and instead of) the ordinary legal frame.²²

Penitential schedule (= *seder teshuvah*): a prescribed set, a “regime” of penitential acts for a penitent for a fixed period of time.

Penance (= *teshuvah, kapparah, din*): acts of self-mortification (fasting, payment of money, excommunication, exile etc.) prescribed for a repentant sinner in order to receive forgiveness from God and the community. It is a voluntary act of the penitent (at least formally) to take upon himself to do the penances. However, religious and judicial authorities of the community can exert pressure on the sinner in order to make him repent and do penance. The term means also the act of penances that a penitent takes upon himself, without the intermediation of any communal institution – secretly or publicly, with or without the guidance of a rabbi, sage, or other fellow.

Penitent (= *ba'al teshuvah*): the offender who repented, confessed and willingly accepted the penance on himself. The status of the penitent during his penance was a special one, something between that of anthe excommunicated and a full member of the community. This social status had its external symbolic signs.

Penitential process (= *seder teshuvah, teshuvot*): acts of penance as successive steps on the way toward reconciliation with God and the community, from the moment of the confession and the expression of a willingness to do penance, until the full forgiveness of the sin and the readmission of the penitent back into the community. The status of the penitent changes during the process, something which is marked usually by symbolic acts or external signs.

Penitential tractate (= *hibbur teshuvah, sefer teshuvah, seder teshuvah*): special compositions, manuals, which contain enumeration of sins and their penances for the use of the sinner himself or for the use of rabbinic authorities or religious leaders. They are sometimes supplemented with liturgical sections or quotations from rabbinic sources.

Private penance (= secret penance): penance executed non-publicly²³. It is frequently (but not always) used in cases of transgressions committed secretly.

Public penance: public acts of penance and disgrace/self-disgrace with the knowledge or in the presence of the “entire” community or its representatives²⁴ with the purpose of humiliating

²² See e.g. Moeglin. « Pénitence publique », 226–227. See I.E.

²³ Cf. next entry.

²⁴ See “rituals of penance”.

the penitent²⁵. Publicity had several forms and degrees. The community could be represented by two, three, ten adult men, or by “the whole community” gathered in the synagogue. Beyond the expression of his or her status as penitent, public penance also stresses that the transgression committed by the penitent is dangerous for the “integrity” of the community. It is frequently (but not always) used in cases of transgressions committed publicly, particularly in cases of *hillul ha-Shem*²⁶. Public acts of penance involve public rituals performed by the penitent alone, or by both the penitent and the community.

Punishment (= *onesh, din*): a judicial sanction for transgression, independent of subjective factors on the part of the offender (whether he is penitent or not).

Quasi-legal process: A “ritual” process in which one finds “roles” similar to that of the judge and of the convicted, but which has no legal consequences. In the literature of Christian penance, the confession in the forum of the conscience²⁷ is called a “quasi-legal process” by Mary Mansfield. See I.C.

Ritual of penance (= *seder teshuvah*): ritualized forms of public penance, in which representatives of the community participated.

Sin (= *avera, avon, het, pasha*): Frequently, there is a distinction in this study between sins in a religious sense and sins – insofar as they are – punishable by rabbinic courts and between those which are not. The term “sin” is often used indiscriminately, without any explicit distinction of this sort, especially, when it is clear from the context whether it is a crime punishable by the *bet din* or not. The two meanings of the term “sin” in the sources is also not always clearly demarcated. In this study the term is always connected with the notion of penance. Whether the sin is voluntary or involuntary, the penance is always voluntary (at least formally, if it is coerced by the court, which is frequently the case).

Teshuvah: The term *teshuvah* means both repentance and penance; in this study, it is used mostly in the latter sense.²⁸

Four ways of penance (= *darkhe teshuvah, arba hilluqe teshuvah*)

Teshuvah ha-ba'ah: if someone transgressed, in the time of the penance he must search for situations in which he will be tempted to commit the sin again and in which he can and will demonstrate his perseverance in the repentance by not committing the sin again.

²⁵ Confession on Yom Kippur can not be called “public confession”, because although performed in public, it was not heard by the public, the addressee of the *viddui* being God. In the medieval *halakha* this distinction is made by differentiating between “*al da' at ha-qahal/rabbim*” and “*be-ma'amad ha-qahal/rabbim*”.

²⁶ ‘Desecration of God’s Name’, see Introduction 4.1, II.B.14, II.B.8.

²⁷ “*Forum internum*”, private confession, shrift. See III.A.2.

²⁸ See Introduction 3.2 and 4.

Teshuvat ha-gader: the sinner must make every effort to avoid situations in which he could commit the sin again.

Teshuvat ha-katuv: the penitent shall do penance by corporal suffering in proportion with the punishment for that transgression in the Torah.

Teshuvat ha-mishqal: The penitent shall afflict himself with corporal pains which are proportional to the pleasure experienced during the “illicit” act. The atonements prescribed by the *teshuvat ha-katuv* and *teshuvat ha-mishqal* are corporal afflictions which the penitents must undergo, such as being flogged privately or publicly, or self-flagellation, sitting in icy water or snow in winter, among ants or bees in the summer etc.

4. Medieval Transformations of the Concept of Teshuvah

In medieval Ashkenaz, during the period discussed – the 12–15th centuries – two major shifts took place in the meaning of *teshuvah* in Halakhic and ethical literature compared to the notion found in Talmudic and Geonic literatures: (1) while often retaining the old meaning of a “mental process”, it also accrued the meaning “penance” or (external) “penitential process”; and (2) while often referring to a voluntary act, it denotes also (with increasing frequency) a “substitute of punishment”, which is often involuntary in some ways (if done under communal pressure). The first shift took place with the appearance of the penitential system of *haside Ashkenaz* and was reflected in their special terminology. The second shift took place in the course of the application of the modes of penance introduced by *haside Ashkenaz* in legal procedures of criminal cases, in the enforcement of the community decrees enacted under threat of excommunication, as substitutes for punishments, in quasi- or para-judicial procedures, and also in processes of penance imposed on the penitent after choosing one of the alternatives: excommunication or penance.

4.1. The Shift from “Mental Process” to “Penance”

The first shift took place in the penitential system of *haside Ashkenaz*. In their terminology, *teshuvah* meant both repentance in the sense of a mental process and penance as an external process performed by the repentant sinner through physical self-mortification and eventually through public rituals of humiliation. The difference in terminology reflects a difference between Talmudic teachings about atonement and the teaching of *haside Ashkenaz*

not so much in the meaning of repentance as in the concept of atonement. *Teshuvah* (originally: ‘repentance’) and *kapparah* (originally ‘atonement’) are synonyms in the terminology of *haside Ashkenaz*, and both mean something other than their original meaning: an external process performed by the repentant sinner through physical self-mortification for the sake of reconciliation with God and the community.

According to Brewer, the teaching on atonement as found in the tannaitic sources has also developed gradually.²⁹ To the original biblical means of atonement – sacrifices and Yom Kippur – two others were added in the course of time: repentance before death and repentance at times other than Yom Kippur. This does not mean that in biblical time sacrifices and Yom Kippur did not require repentance or that repentance was not important, especially in the Book of later Prophets. It only means that it was not regarded as self-sufficing means of atonement.³⁰

In mYoma 8.8 there is an allusion to the fact that the role of *teshuvah* (= repentance) increased in the course of time:

“The sin offering and an undoubted guilt offering [*ḥaṭṭ’at ve-’asham vaddai*] atone. Death and Yom Kippur atone with *teshuvah*. *Teshuvah* atones for light transgressions, for the transgression of positive and negative commandments, and in case of grave transgressions suspends [the punishment] until Yom Kippur comes and atones.”

This *mishnah* contains two parts; the first one is earlier, but both originate from before 70. C.E. However, the second part became important only after the destruction of the Temple. The first part maintains:

(1) For lighter transgressions (transgressions not liable to the death penalty and inadvertently committed grave transgressions): the sin- and guilt offerings atone.

(2) For grave transgressions (transgressions liable to the death penalty or extinction): Yom Kippur and death atone, together with *teshuvah*.

The *teshuvah* is probably a later addition. In the second part of the *mishnah* the main component is the *teshuvah*, and the sacrifice does not play any role, except in relation to Yom Kippur:

(1) For lighter transgressions: only *teshuvah* atones.

(2) For grave transgressions: the *teshuvah* suspends [the punishment] and Yom Kippur (or death) atones.

²⁹ Brewer. *Traditions of the Rabbis*, 313–318.

³⁰ Although the prophets highlighted the importance of repentance above other means, however, sacrifices and Yom Kippur remained central in the cultic context for the process of atonement.

From this *mishnah* R. Ishmael has deduced the four categories of sins and the respective four means of atonement. We have R. Ishmael's teaching about atonement in four textual versions: (1) tYoma 4.5–8³¹ (2) *Mekhilta de-Rabbi Ishmael Yitro* par. 7³² (3) ySanh. 10:1³³ (4) bYoma 86a–b³⁴. The difference between mYoma 8.8 and tYoma 4.5–8 is that sacrifices play no role in atonement according to the tYoma 4.5–8. R. Ishmael's teaching can be summed up in the following way:

- (1) light transgressions of a positive commandment: *teshuvah* atones;
- (2) transgression of a negative commandment: *teshuvah* suspends [the punishment], Yom Kippur atones;
- (3) grave transgressions (liable to *karet* and to the four death penalties of the *Bet din*): *teshuvah* and Yom Kippur suspend [the punishment], and sufferings atone;
- (4) desecration of the Name – *hillul ha-Shem*: *teshuvah*, Yom Kippur and sufferings suspend [the punishment], death atones.

R. Ishmael's assumption in his categorization is that the grave sins of the mYoma 8.8 are those liable to *karet* and to the four death penalties of the *Bet din*. According to Brewer, R. Ishmael has two innovations in his teaching: (1) suffering atones (which is a consequence of the idea that death atones, this latter being not his innovation) and (2) he adds desecration of the Name as the gravest sin to the previous three categories.

In the system of R. Ishmael, *teshuvah* – meaning a pure mental process, the repentance of the heart and contrition – is a necessary requirement on each of the four levels of atonement, but beyond that, there is no subjective dimension in this teaching. Even the *teshuvah*, as defined in the teaching of R. Ishmael, has objective requirements: confession and not committing the sin for the second time, by which its sincerity can be verified. The other three requirements are objective ones. Yom Kippur, sufferings and death are less related to the sin committed than to the punishment it entails, and they all are lighter than the respective punishment when *teshuvah* is added: Yom Kippur corresponds to (i.e. a substitute for the punishment of) flogging, suffering corresponds to the death penalty or premature death, and death averts exclusion from the world to come.³⁵

³¹ Lieberman, *Tosefta ki-Fshutah*, pp. 251–252, lines 35–45 (vol. 4, pages, commentary: pp. 823–825).

³² Eds. Horowitz and Rabin, 228, 1.3–17.

³³ Talmud Yerushalmi ed. Venice, 17:1, 27c–d.

³⁴ See Analysis of the four variants by Porton. *The Traditions of R. Ishmael*. 20–27.

³⁵ About the development of texts on those who have no share in the world to come and the punishment and fate of sinners of different categories after death see Flusser. *Judaism*, Chapter 8 [“A Qumran Fragment (4QMMT) and the Second Blessing of the *Amidah* (the Benediction Against the *Minim*)”], 66–110. Esp. 71, where he quotes the *Seder 'Olam*, end of the third chapter (Milikowsky, *Seder Olam*, 229–231), for the judgment of the two types of sinners of Israel with two infernal punishments: the first will perish after a year, the second type, the graver

Unlike the four-step atonement system of R. Ishmael, in the teaching of *ḥaside Ashkenaz* – both in the *teshuvat ha-mishqal* and the *teshuvat ha-katuv* – the degree of suffering is the main – sometimes the only – principle in the imposition of *teshuvah*. This approach ultimately stems from the centrality of suffering in the teaching about atonement in the writings of *ḥaside Ashkenaz*. The importance of suffering is reflected in the idea that merits do not redeem sins, but suffering equivalent with the pleasure related to the sinful act atones (SHP 15). The rise of the ascetic ideals is connected with the devaluation of the body (SHP 13).

Nevertheless, the penitential system of *ḥaside Ashkenaz* does not disregard R. Ishmael's four-step system with respect to degrees of gravity of sins; it builds on that system. But it replaces almost every degree of atonement by a certain kind and degree of suffering.

Therefore, the concept of atonement of *ḥaside Ashkenaz* can be characterized as a system of physical self-mortifications and external processes of penance. For them, sin is bound together with pleasure and atonement with suffering. Consequently, they combined the original meaning of *teshuvah*, which in R. Ishmael's system only meant a mental process (repentance) with his requirement of physical ways of atonement for grave sins (suffering). But the circles who developed this new concept of *teshuvah* (and through it, “practical” ways of atonement for sinners) expanded its scope to include all transgressions, not only serious ones.

There are some precedents in the Geonic period for elements in the penitential system of *ḥaside Ashkenaz*. See I.B–D, and above all the precedents discussed in I.F.

4.2. The Shift from “Voluntary (Ascetic) Practice” to “Substitute of Punishment”

In another significant shift – which began in the 13th century and gained momentum in the 14–15th centuries – traditional punishments and halakhic punitive law in rabbinic judicial practice were increasingly substituted by penances and penitentials of *ḥaside Ashkenaz*. The sage-confession and Judah Ḥasid's ideals about a society of voluntary penitents only survived in a few mystical, magical, ascetic circles in the 13th century, and to some degree in Judah Ḥasid's family.

It is difficult to answer to the question why Ashkenazi rabbis and courts of the 13–15th centuries made use of the penitential writings of *ḥaside Ashkenaz* in this way. Many of the most prominent rabbis of the 13–15th centuries were spiritually close to ideals of a pietistic

sinners, will be punished there forever. See also Milikowsky: “Gehenna and ‘Sinners of Israel’”. Parallels to the *Seder ‘Olam* are tSanh. 13.4–5, bRH 17a.

way of life – it is enough to think of R. Meir b. Baruch of Rothenburg or of R. Israel Isserlein. They, however, were not followers of Judah Ḥasid in his rather “sectarian” concept of the functioning of penance in the Jewish society and in his extreme self-mortification.

Nevertheless, in several cases the Ashkenazi rabbis and courts of the 13–15th centuries preferred *teshuvah* (penance) rather than punishment for functional reasons, some features that characterized *teshuvah* were absent from the penal system. In the following, we briefly present some of these functional characteristics of *teshuvah* in contrast with punishment. Then, we will try to delineate the institutional prerequisites that characterized the juridical system of the time and made possible the adaptation of the penitential writings of *ḥaside Ashkenaz* to the necessities of the penal processes.

4.2.1. Functional Reasons for Preference of *Teshuvah* over Punishment in Jurisdiction in the 13–15th Centuries

4.2.1.1. Coercion or/and Repentance

The ambivalent phenomenon of *teshuvah* (which was originally understood as “voluntary repentance”) as a punitive religious-legal institution and in the enforcement of communal decrees can be explained with the procedure of the *bet-dins* and of other communal institutions (e.g. the community council, the community assembly in the synagogue etc.) in medieval Ashkenaz. This procedure was based on the idea of self-government and on the self-definition of the Jewish communities in Europe: the community belonged to God; the excommunicated transgressors were considered spiritually dead (that is to say: they did not belong any more to the Jewish community)³⁶. If the Jewish authorities had reasons not to apply penalties, they simply required the penitent to make his choice: excommunication or repentance (through penance prescribed by the judicial authorities). In case of lack of such reasons, punishments and physical force were applied. Excommunication itself was a coercive measure instead of physical force and power. Within the frame of penance (*teshuvah*) physical punishments (e.g. flogging) were also applied, but they were supplemented by rituals (“extra”-, “para”- or “quasi-judicial” punishments).³⁷

³⁶ If they converted to Christianity, they were not regarded as Gentiles, but apostates who endangered the existence of the community and therefore were excluded from the community.

³⁷ The situation was the same in the surrounding Christian society. See III.A.2.2. and III.C.6.

4.2.1.2. Avoidance of the Death Penalty

During the Middle Ages throughout Europe, the secular authorities often applied the death penalty for all kinds of transgressions committed either by a rich or a poor man, a layman or a clergyman, a nobleman or a slave, a king or an outlaw. But above all it was a punishment for the penniless and lawless – for example, for thieves. There was a certain cult, or culture, of executions, meant as deterrence. The death penalty was also applied to Jews by the secular authorities. However, ecclesiastical punishment and penance avoided the death penalty.

It is possible, even reasonable to assume that rabbis and rabbinical courts avoided the infliction of capital punishment not only because the Gentile authorities denied them this right and not only because there were also Talmudic prohibitions regarding capital punishment after the destruction of the Temple, but also because secular authorities fulfilled to some extent punishment functions, and the *bet-dins*, as religious institutions, preferred *teshuvah* instead of punishment.

4.2.1.3. Avoidance of Physical Punishment and Ritualizing Punishment

Physical punishments, especially flogging, in the medieval Jewish communities could be also avoided by commutations to different types of penances (e.g. fasting, paying for charity). In this case ritualized forms of public confession, asking for forgiveness from fellow Jew(s), processions to the grave of the harmed person were introduced. These ritualized forms, and the “milder” penances (fasting, paying money for charity) were substitutes for punishments or were added to punishments.

Physical punishments could very often be annulled simply by applying the “lesser excommunication” (“*niddui*”, for example, sitting outside the synagogue for some days).

4.2.1.4. Penitential Process Instead of Single-step Punishment

The preference for penance over punishment could also be due to the fact that penance and its deterrent public aspects were supposed to have a longer and stronger effect than punishment in its various aspects. The lengthy process of readmission into the community, a process carried out gradually, instead of a single-step punishment, had a “deterrent effect” both on the offender and on the community: publicly demonstrated that justice triumphed and governed the community. On the other hand, the lengthy penance subdued the lofty heart of the sinner and induced repentance.

4.2.1.5. Status and Trustworthiness

Not only excommunication, banishment from a town (or village, community, etc.) confinement, but also loss of status, titles and honor played a special role in this type of penitential process. As propounded by many historians dealing with the European Middle Ages³⁸, medieval man possessed a “capital of honor”, which increased or decreased – also, among others, as a consequence of (harmed honor) or humiliation through punishment (shame sanction). Status entailed trustworthiness and trustworthiness status.

Therefore, public penance could be much more effective in some cases than any kind of simple punishment.

4.2.1.6. Rituals and Shame

Humiliating public penitential rituals also served as quasi- or para-judicial procedures without any other kind of punishment, restriction, obligation of repayment, loss of function, status, service etc. Because shame in itself was harmful for a community member, the ritualized humiliation had punishing power.

4.2.2. Legal Institutions and Social Environment

Some elements of the medieval Ashkenazi judicial system and social environment were particularly important in facilitating the wide use of penance (*teshuvah*) instead of punishment. Here we only outline these elements which will be discussed more in detail in II.D.2.

(1) Power of Excommunication

Excommunication – and threat of excommunication – as already mentioned, served as a coercive means in the hands of the courts and rabbis. Excommunication meant total exclusion from the community, and therefore the loss of the possibility to continue a Jewish life. However, it also had its drawbacks from the point of view of the community: excommunication could push the excommunicated person to become an informer and/or apostate, which could endanger the whole community.

(2) Exceptional Rights of Courts and Rabbis and Lack of Rights and Possibilities to Punish

³⁸ Cf. Lindman. “Shame”, Schwerhoff. „Verordnete Schande?“, Schreiner. „Verletzte Ehre“ etc.

During the whole period (12–15th centuries), rabbis and courts had the right to excommunicate sinners and those who transgressed communal enactments or were disobedient to the law. They had the right to decide stringently, to punish and impose fines if the situation demanded, even in cases when according to Talmudic law they were not empowered (*hora'at sha'ah*). They were authorized to impose punishments and fines in order to make a “fence”, that is to say to guard the community against criminals and injustice (*migdar milta*).

(3) Rights of the Individual

The individual also had means by which he could compel another community member to repent (*iqquv tefillah* = delaying the prayer; *adrabe* = “on the contrary”, i.e. the reversal of the sentence of excommunication to the excommunicator). This will be discussed in II.D.2.

(4) Distinction between the Law of Heaven and Law of Men

The distinction between “divine law” and “human law”, as well as “divine court” and “human court” was often applied by the rabbis of the period for the justification of the requirement of *teshuvah*. The distinction was applied in cases in which no punishment could be imposed on an offender (e.g. there was no proper testimony), though it was obvious that the person in question was liable.

PART I. GEONIC PRECEDENTS FOR *TESHUVAH* (PENANCE)

I.A. Introduction

Penance as we know it in high and late medieval Ashkenazi Judaism was a distinctly European phenomenon and it was not an organic development of earlier Geonic theory or practice. There are, however, some elements in the Geonic penal system (punishments and ascetic practices) which may have served as precedents in medieval Ashkenazi penitential traditions. In this part, we discuss these elements: extra-legal punishments³⁹ (in B), confession as a precondition for qualifying a legal or quasi-legal process⁴⁰ as penance (C), excommunication as coercive measure for bringing about *teshuvah* (penance) (D), shame sanctions as para-judicial procedures (E)⁴¹, and elements of ascetic practices as constituents of (private) penance (F).

The penitential doctrines of *ḥaside Ashkenaz* (see Introduction 4.1), as well as the penal doctrines of the Geonim, relied partly on tannaitic traditions. These common “origins” themselves established some substantial connections between the two. All categories of sins discussed in parts II.B and III.B with respect to penances in medieval Ashkenaz are to be found in the Geonic penal law. The main categories of sins in Geonic literature are: (1) murder, (2) adultery and fornication (3) injury; (4) theft; (5) cursing; (6) disobedience; (7) perjury and false testimony; (8) offenses against *kashrut*; (9) *kohen* contaminated with the dead; (10) desecration of the Sabbath; (11) denunciation; (12) apostasy.⁴²

I.B. Punishments of the Bet-din as “Extra-Legal Punishments”

As mentioned in the Introduction (4.2), in 13–15th century medieval Ashkenazi Jewish communities *teshuvah* became predominantly a kind of substitute for punishments. It has also been mentioned that the shift in the development of *teshuvah* was due, on the one hand, to the sectarian character of the movement of *ḥaside Ashkenaz*, on the other hand, to the preference of *teshuvah* over punishment by the rabbis, for some functional reasons since some features that characterized *teshuvah* were absent from the penal system. The question discussed in the following is whether there are some precedents in the Geonic period for the phenomenon of

³⁹ See Introduction 3.2 and I.B.

⁴⁰ See Introduction 3.2 and I.C.

⁴¹ See Introduction 3.2 and I.E.

⁴² See App.I.A for Geonic sources for different transgressions and their punishment.

some (newly introduced) measures of punishment applied by courts as “substitutes for ‘old’ punishments” called “extra-legal punishments” in the scholarly literature.⁴³

I.B.1. Liability to Flogging (*Malqut* and *Makkat Mardut* – Rav Naṭronai’s Decision)

The problem of the applicability of corporal and other punishments after the destruction of the Temple and outside *Erez Israel* arose already in Talmudic times. The authority of the *Bet-din* to “impose flagellation and punish (with capital sentences, according to the context) even where not warranted by the Torah” was formulated in a famous *baraita* in the name of R. Eliezer b. Jacob (bSanh. 46a), with the comment or clarification that it should be done “not with the intention of disregarding the Torah, [but] to safeguard it”, (against offenders, viz. “to make a fence”). However, the legal permissibility of corporal punishments and capital punishment according to the Biblical norms remained a problem in the Geonic period, as Geonic *responsa* show. As scholarship has shown long time ago, both *malqut ’arba’im* and *makkat mardut* (disciplinary flogging of Rabbinic origin) were used as punishments in the Geonic period.⁴⁴ According to one of R. Naṭronai’s *responsa*, however, *malqut ’arba’im* (either for transgressions liable to *karet* or flogging for transgression of a negative commandment) was not in use in his time, only the *makkat mardut*.⁴⁵

According to the sources, R. Naṭronai’s statement reflects a minority view. The Geonic sources often mention both the *malqut ’arba’im* and the *makkat mardut*, or unspecified flogging (e.g. “*loqeh*” or “*malqin ’oto*”). These mentions show that in the Geonic courts both types of flogging were used.⁴⁶

According to the Geonic sources, mutilation as corporal punishment was not a typical penalty. Exception is the marking of a *kohen* who has transgressed (e.g. apostatized, or married a divorced woman etc.) and is suspected that he will flee to another place and deliver the (public) priestly blessing there. In such cases Geonic courts applied mutilation to prevent the *kohen* from saying the priestly blessing, since a *kohen* with a corporal defect was disqualified from performing the *mizvah* of raising the hand for priestly blessing.⁴⁷

⁴³ See e.g. Faber, “Extra-legal Punishments”.

⁴⁴ Aptowitz, “מלקות ומכת מרדות”. The practical difference between *malqut ’arba’im* and *makkat mardut* is that the first one consisted of 39 lashes and needed assessment before (i.e. whether the offender was able to bear it); the second one was inflicted without counting the lashes. See below.

⁴⁵ *ShaZ* 4.7.38, Assaf, העונשין par. 7. See App.I. for translation.

⁴⁶ In the above-mentioned examples there are many instances in which *malqut ’arba’im* was imposed for different transgressions. *Makkat mardut* was in use according to R. Naṭronai as well. In TRII41, in one of R. Hai’s *responsa*, there is a description how *malqut ’arba’im* and *makkat mardut* were carried out. See: Aptowitz, “מלקות ומכת מרדות”. For the later development as punishment and penance see II.C.3.

⁴⁷ HP 87, ShaT 177. There are examples for mutilation as punishment in the Bible (Judges 1,5–7), and in the Talmud (bSanh. 58b, bNiddah 13b, bSanh. 27a); Talmudic regulations contrary to the “eye for eye” principle

I.B.2. Liability to the Death Penalty of the *Bet-din* – Rav Naṭronai’s Decision

In another *responsum*, Rav Naṭronai gaon brings forward two arguments for the impossibility of inflicting *malqut ’arba’im* for transgressions punishable by the death penalty of the *Bet-din*: (1) transgressions liable to the death penalty of the *Bet-din* can not be atoned for by flogging; (2) *malqut ’arba’im* can not be executed today (according to the version in HemG20, because if the flogged person dies, the flogger has no place to run for unintentional murder, since there are no cities of refuge⁴⁸). Finally, he mentions that he has not heard that in the four courts of the two *yeshivot*, flogging from the Torah is in use.⁴⁹

Rav Naṭronai is aware of the fact that although the courts do not have the authority to flog someone who is liable to capital punishment, a criminal found guilty of a capital crime can not be acquitted. Therefore he proposes extra-legal punishments. These are excommunication and *makkat mardut*.⁵⁰

The text quoted in the name of Rav Naṭronai Gaon by the Ṭur is similar to the above mentioned version quoted from other sources, except that it mentions the impossibility of inflicting the two other punishments of the Torah besides flogging: exile and the death penalty.⁵¹

However, R. Jacob b. Asher adds an important comment to Rav Naṭronai Gaon’s decision:

“And it is possible that he [Naṭronai] has only written from a legal-theoretical point of view [*mi-ṣad ha-din*]; we can certainly not judge him [who is liable to the capital punishment of the *Bet-din*]. But he [Naṭronai] did not speak about what we should do to the transgressors in order to ‘make a fence’ [*le-migdar milta’*], to protect the community]. And who can contradict R. Eliezer⁵² who has said that the court is allowed to flog and punish them in order to ‘make a fence’ [*le-migdar milta’*].”

As a proof, R. Jacob b. Asher quotes the decision of an anonymous Gaon, in connection with a murder.⁵³

A similar decision to that of Naṭronai Gaon is quoted in the name of Rav Sherira Gaon in the *Or Zarua*.⁵⁴

(therefore, contrary to the mutilation as punishment): (mB.K.8,1; bT B.K. 83b–86a); (*Sifre Ki Teze* 293 p. 312; Sanh. 74a); See: Kirschenbaum “...עונשי גוף”, 726–731.

⁴⁸ Which is an argument from the *Gemara*, Mak. chapter 3.

⁴⁹ Assaf, *העונשין* par. 8; HemG20; ShaZ 4.7.39 (= Collected *responsa* HM 375). See App.I. for translation.

⁵⁰ See Farber, “Extra-Legal Punishments”, pp. 213–4, and n. 11.

⁵¹ It is similar to the *responsum* in the name of R. Sherira, therefore Assaf thinks that R. Sherira’s *responsum* is by R. Naṭronai. Ṭur HM 425. See App. I. for translation.

⁵² bSanh. 46a.

⁵³ See App. for translation.

⁵⁴ *Or Zarua* I.112. See translation in App.I.

Thus, according to a minority view (Naṭronai Gaon, Rav Sherira Gaon), in the Geonic period disciplinary flogging (*makkat mardut*) was applied instead of flogging mentioned in the Torah. According to the majority opinion, in the Geonic period both types of flogging were applied as punishments.

Excommunication remained the punishment for those liable to the death penalty (according to Naṭronai Gaon and Rav Sherira Gaon). This is also the decision of Rambam.⁵⁵

There are aggadic sources which allude to death penalty applied in the Geonic period, but the historical value of such sources is questionable.⁵⁶

In the Geonic penal system, what can be regarded as precedents for the medieval Ashkenazi Jewish system of penance? Even if we do not find explicit references to Geonic precedents in the European Ashkenazi sources (such as murder in OZ.I.112 and Ms. BL 477⁵⁷), a connection exists between the Geonic penal system and that of the medieval Ashkenazi system of punishment and penance. Firstly, (1) in the Geonic period certain kinds of extra-legal punishment (especially flogging and excommunication) were already widely used with the purpose of “making a fence” (*le-migdar milta*). The spectrum of the extra-legal punishments was widened in medieval Europe (more types of flogging [e.g. public ritual flogging, self-flagellation], fines were introduced). Secondly, (2) the imposition of certain penances was justified with the same purpose (that of “making a fence”; e.g. penances of social character: exile, pilgrimage, para-judicial and shame sanctions etc., more types of excommunication).

I.C. The Different Functions of the Viddui in the Penal Process and in the Process of Penance – Rav Naṭronai’s Decision

The meaning of *viddui* according to bYoma 86b is confession of sins to God. *Viddui* is one of the four means of atonement, according to the *baraita* in the name of R. Ishmael (besides Yom Kippur, sufferings and death). According to some Geonic sources, the problem

⁵⁵ *Perush ha-Mishnah le-Rambam, Hullin* ch. 1.

⁵⁶ In one of his *responsa* to a question from Kairowan (North-Africa), Rav Zemaḥ Gaon writes that when Eldad ha-Dani came to North Africa his report that the king who ruled over the tribes of Naftali, Gad and Asher used to punish by the four modes of the death penalty of the *Bet-din*, (stoning, burning, slaying, and strangulation), surprised his audience. (Eldad ha-Dani, Mantova, 1475, p. 27) According to the *Megillat Aḥimaaz* (written in 1054) a sage of Bavel, Abu Aaron, who came to Italy in the year 860–880, and was *av bet-din* in Babel, the punishment of the four deaths of the *Bet-din* were applied.

⁵⁷ See II.B.1.

of the different functions of *viddui* – within the frame of (1) atonement through punishment and (2) atonement through penance – existed already in the Geonic period.

(1) According to the “law of men”⁵⁸, confession (*viddui*) is a requirement for the transgressor to be pardoned by the court neither in *dine nefashot*⁵⁹ nor for having transgressed negative commandments punishable with *karet* or flogging. On the other hand, every punishment has an atoning character, even without *viddui*⁶⁰. *Viddui* is required in the Mishna before the carrying out of the death sentence.⁶¹ There is no such requirement before flogging (*malqut*) in Talmudic literature, and it is a matter of controversy among early commentators (the *rishonim*) whether *teshuvah* is required for atonement.⁶² In TshGHar 440, *viddui* is mentioned in connection with flogging, after the convict has received the 39 lashes:

“When the sash⁶³ is around his neck, he confesses: ‘I have transgressed, sinned, committed a crime [*hattati, ‘aviti, pashati*]. May the flogging be atonement for my transgressions’. And there are some who require of him to confess before flogging. Then the judges ask for forgiveness on his behalf.”

In these cases, *viddui* is asking for forgiveness from God, in addition to punishment which has also an atoning power.

(2) Another question is whether confession in court or public confession could be a part of *teshuvah* when someone confesses his sins (e.g. to the court) out of repentance. According to bSanh. 9b, self-incrimination for *dine nefashot* is not accepted in court. According to one of Rav Naṭronai Gaon’s *responsa*, it seems that if someone comes to the *bet din* and says that he committed grave and voluntary sins, the *bet din* will not accept his confession, because nobody can incriminate himself. But if someone comes to the *bet din* and says that he committed less grave transgressions or committed them involuntarily, and wants to make atonement for them, the *bet din* accepts his confession, and flogs him. In this ruling

⁵⁸ The distinction between the “law of men” and the “law of Heaven” has several meanings in the Mishna and Talmud. It can refer to the difference between the “transgressions between man and his fellow man” and “transgressions between man and God”; but it can also refer to the difference between the “earthly court” and “Heavenly justice”. Here we use these terms in the second sense: the *viddui* is not a requirement in the earthly court; the *viddui* is a requirement for achieving atonement “in the Heavenly Court”. In the Mishnah, this is only mentioned in connection with capital punishment. Asking for forgiveness from the harmed person could be a requirement according to the “earthly law” (“law of men”), but that is not *viddui* [= confession].

⁵⁹ Transgressions which are liable to the punishment of the *bet din* (of 23 or 71 members).

⁶⁰ The expression “atoning character” refers here to the “Heavenly justice”.

⁶¹ mSanh. 6,2: “When he is about ten cubits away from the place of stoning, they say to him, “Confess” [this and any other sins you may have committed], for such is the practice of all who are executed, that they first confess, for he who confesses has a portion in the world to come.”

⁶² mMak. 3,15, and the commentaries. According to Saadiah, *viddui* is not a requirement for *teshuvah*. The four *gidre teshuvah* are: (a) the renunciation of sin; (b) remorse; (c) the quest for forgiveness; (d) the obligation not to relapse (Saadia. *The Book of Beliefs*, “Concerning merits and demerits”). R. Samuel b. Hofni Gaon counts *viddui* among the *gidre teshuvah* (See: Grünbaum. גדרי תשובה), and Maimonides too.

⁶³ כשהאבנט תלוי בצוארו

the main distinction apparently is between grave and/or voluntary transgressions liable to the death penalty of the *Bet din* and less grave or involuntary transgressions liable to *karet* or flogging, and not that between confession as self-incrimination and confession out of repentance. The court accepts a confession and administers flogging (and here *makkat mardut* is meant probably) in cases when this lighter punishment can bring about atonement.⁶⁴ In any case, Rav Naṭronai Gaon admits the right of the sinner, in some cases, to initiate a court process (which may be called penance: punishment and atonement) by his confession.

So we see in this ruling elements which anticipate to some extent late medieval Ashkenazic penance doctrines and practices. As noted in the Introduction (4.2.1), there were functional reasons for the preference for *teshuvah* over punishment in jurisdiction in the 13–15th centuries. In the process of *teshuvah*, as developed in the 13–15th centuries, *viddui* was an opening declaration of readiness and commitment to do the penance (see II.D.1). This role of the confession appears already in Rav Naṭronai Gaon's *responsum* mentioned above.

I.D. The Function of Ḥerem, Shamta, and Niddui in the Process of Bringing about Repentance

As mentioned in connection with the *responsa* of Naṭronai Gaon and Rav Sherira Gaon for *dine nefashot* (I.B.2), excommunication (*niddui*) was applied when the offender was liable to the death penalty. The infliction of greater excommunication (*herem*) had a certain procedure, during which several types of excommunication were applied.⁶⁵ As to the different categories of excommunication in the Geonic period and their announcement we have the following *responsum*:

“*Responsum* of Rav Paltoi Gaon: You have asked whether the *herem* and the *shamta*’ are the same or not. What is *herem* and what is *shamta*’?”. *Shamta*’ is *niddui*, that is to say, they excommunicate him [*menaddin ’oto*] and write *petiḥa*⁶⁶ against him. Then they ban him for 30 days. If he is not willing to mend his ways, they write *herem* against him, and exclude him from the community of [all] Israel. They write it in this way: [...]”⁶⁷

These definitions follow Talmudic norms only partly. Excommunication was used not only for *dine nefashot*, but also in monetary cases for contempt of court. Aptowitzer has published six documents in connection to excommunication in *dine mammonot* from Ms.

⁶⁴ HP94. See Appendix for translation.

⁶⁵ See Libson, “גזירתא וחרם סתם”.

⁶⁶ A bill about the beginning of excommunication. See further Aptowitzer's texts and study.

⁶⁷ Assaf, הענישין par. 14; TshG Lyk No. 10; ShaZ 4.5.14; Aptowitzer, “Formularies”, 26 (from the Ms. Montefiori 115, *Sefer Assufot*) pars. 3, 4, 6.

Montefiori 155. Out of the six documents, one (No. 3 in his edition) is a decree of excommunication on account of the failure of the defendant to appear in court, *petiḥa* (פתיחא) which constitutes the opening of a procedure of excommunication, a kind of *niddui or shamta*. Another one (No. 4) is a *ḥaramta*, i. e. greater excommunication, and the last one (No. 6) is an *'aqlata*, i. e. lifting of the excommunication, in case of compliance. Decrees No. 3 and No. 6 have not been sent to the judge who presided the court but handed over to the plaintiff.⁶⁸ Decree No. 4 contains stringent excommunication and separation from all Israel. No. 6 is called (אקלתא) “decree removing the ban”⁶⁹, and Aptowitz writes that “when the refractory debtor becomes a penitent⁷⁰ and submits himself to the regulations of the court, the *petiḥa* is torn (reference to BK 113a) [...] the court revokes the ban [...] Such a decree is not known in Talmudic and Geonic literatures”. Here, Aptowitz makes reference to the aim of this multi-step process of excommunication: to bring about penance. As the terminology of the *responsum* of Rav Palṭoi Gaon and that of the documents published by Aptowitz regarding excommunication (viz. *niddui*, *petiḥa*, *ḥaramta*) is similar, except for the term *'aqlata*, which appears only in the latter source, it is possible that the procedure in *dine nefashot* and *dine mammonot* was similar in the the Geonic period. However, we can not say anything certain about the procedure of excommunication in *dine nefashot*. In the *responsum* of Rav Palṭoi Gaon it is not specified what sort of cases does the terminology refer to.

As discussed above (I.B.2), in case of *dine nefashot* excommunication is mentioned by R. Naṭronai and R. Sherirah as the only punishment at the disposal of the *bet din* “today”, contrary to capital punishment, flogging, exiling and fining which can not be inflicted. According to one of R. Naṭronai’s *responsa*, this is also the only sanction in case of liability to biblical flogging.⁷¹ In these sources the reason for applying excommunication as the only punishment is not explained. In one of R. Hai’s *responsa*,⁷² there is a statement that in his time excommunication was the only punishment, because the Gentile government prohibited the Jewish courts from inflicting other sanctions.⁷³

⁶⁸ Aptowitz, “Formularies”, 41ff.

⁶⁹ No. 7 is a decree under threat of ban for obtaining evidence.

⁷⁰ Aptowitz’s study is written in English and he uses this word; there is not correspondent word in the Hebrew (Aramaic) source.

⁷¹ OZI112, HP94, HemG20; ShaZ 4.7.39.

⁷² GMM 42.

⁷³ See translation in App.I.

About the lift of excommunication in the case of a *menuddeh* after being flogged, there is another *responsum* of R. Hai, mentioned already in connection with *viddui* after or before *malqut*.⁷⁴

Do we have antecedents for penance in Medieval Ashkenaz in the use of excommunication in the Geonic period? Yes, we do, it seems. Firstly, as mentioned in the Introduction (4.2.2.1), in the 13–15th centuries, excommunication and threat of excommunication were employed as coercive tools by law courts and rabbis when no other measures were available to them, or when they preferred this measure over others for some reason. This situation was anticipated to some extent in the Geonic age, when according to some Geonic authorities, excommunication was the only real coercive measure in the hands of rabbinic leadership. Secondly, in the Geonic period a certain procedure was worked out for applying excommunication (e.g. threatening, imposing lesser excommunication, imposing greater excommunication, lifting excommunication). The procedure (the terminology of which crystallized in the Geonic period) remained the same, more or less, in medieval Ashkenaz during the 13–15th centuries (see II.B.8 and II.C.6). In some medieval Ashkenazi *responsa* explicit reference is made to Geonic sources.

On the other hand, we find in the Geonic period some precedents also for other types of widespread social penances in medieval Ashkenaz, although they appear in that period as “social punishments” and not as penances proper. Besides excommunication, *responsa* literature attests incarceration⁷⁵ and legal disqualification.⁷⁶ The cases dealing with exile in Geonic *halakhic* sources are of doubtful authenticity, and there are *responsa* which state that exile as defined in the Torah, Mishnah and Talmud is no longer applicable. However, there are *aggadic* sources for another type of exile as penance in the Geonic period (e.g. the Scroll of Aḥimaaz, where exile is mentioned as atonement for the sin of rebellion against the exilarch in Babylon⁷⁷). We also have sources about pilgrimage – all of them are *aggadic*.⁷⁸

⁷⁴ TshGHar 440.

⁷⁵ Imprisonment: ShaT182, HP138 [Rav Palṭoi: He who transgresses on the Sabbath can be imprisoned on the Sabbath, so that he can not flee to the Gentiles; but can not be flogged, because of the desecration of the Sabbath. But Rav Kohen Zedeq has also allowed flogging (GMM 10; ShLB 60)]. Rav Sherira has decided that it is prohibited to imprison or flog the transgressor on the Sabbath and on holidays.

⁷⁶ Evil-doers who have not received their punishment yet (for beating, perjury etc.) are disqualified from giving testimony; apostates too; informers are disqualified even if they only threaten (see the *responsum* of R. Palṭoi, ShaZ 4.7.42).

⁷⁷ See II.B.1. and II.C.7.1.

⁷⁸ According to R. Brody, in Ms. London BL Add. 27075 (= Cat. Margoliouth 477, see II.B.1), the *seder teshuvah* is a later addition to a Geonic *responsum*, so the exile of the murderer in the first paragraph is not from the Geonic period. The other Geonic examples concerning exile, that in the ShL Ms. Monefiori p. 237=p.115, Tykocinski p. 119, are also doubtful. There is also the *aggadic* source in the *Megillat Aḥimaaz*. The two sources concerning pilgrimage to the Mount of Olives will be discussed in II.B.1, II.C.8. We do not know whether the

I.E. Public Shaming as “Para-Judicial Punishment”⁷⁹

According to Geonic sources, adulterers, adulteresses, fornicators of both sexes, evildoers were publicly announced in the synagogue, which also meant public shaming.⁸⁰ This type of punishment was not only a custom but constituted a part of the process of humiliating the offender. Already in the Geonic period, besides public announcement, other types of humiliations were applied as – or instead of – legal punishments, e.g. shaving off the beard and/or hair for adultery, fornication, and desecration of the Sabbath.⁸¹ This latter shame sanction was so widespread in every cultural environment in which Jews lived (from biblical times, through late antique, early and later medieval Christian shame punishments and penances) that one can not tell precisely whether in the sources of *ḥaside Ashkenaz* and the *responsa* of the 13–15th centuries they appear from Geonic sources, or are due to contemporary Christian influence. However, one of the sources (Ms. BL 477) connects this Geonic punishment with later penitential practices.⁸²

I.F. Ascetic Practices in Mystical–Magical–Pietistic and in Penitential Contexts; and Their Transfigurations in the Sources of the Geonic Period, Ḥaside Ashkenaz and 13–15th Century Responsa

Examples from the Geonic period for ascetic practices in mystical and magical initiation rituals are numerous: *Hekhalot* literature and magic spells, handbooks from the Cairo Genizah etc.⁸³ They certainly played a prominent role in the mystical (and magical)

two pilgrims mentioned in these two sources came from Europe or from the East. It is likely that in the source from the Ashkenazi Maḥzor, R. Zachariah came from a European Jewish community. There is however a reference to a punishment in the *She'iltot de-Rav Ah'ai*, parashat *Korah*, (Mirsky, *She'iltot, Bamidbar* pp. 52–55, question 147) that those who were excommunicated could be also banished.

⁷⁹ See Introduction 3.2.

⁸⁰ See examples in I.A.

⁸¹ TRI.29, II.18, HKY, ShaZ III. 6.13 (=HP94); TRI.32 (=HQY); TRII.20. See detailed discussion in II. See II.B.1.2.2, note. According to Kirschenbaum, shaving as a humiliation in Judaism has Byzantine Christian origins. In the *She'iltot de-Rav Ah'ai*, parashat *Korah*, (Mirsky, *She'iltot, Bamidbar* p 54, question 147), tearing up one's hair as punishment is mentioned.

⁸² See II.B.1.

⁸³ Schäfer-Shaked, *Magische Texte* 1–2, R. Lesses *Ritual Practices*, 117–160; Swartz, „Like the Ministering Angels ...”, *Scholastic Magic*, 158–162; I. Wandrey, *Das Buch des Gewandes*; J. Trachtenberg, *Jewish Magic*, 114, 243; R. Arbesmann, „Fasting”; Harari, „לעשות פתיחת לב”.

literature of *ḥaside Ashkenaz*.⁸⁴ It is more difficult to answer the question, whether they influenced the penances of *ḥaside Ashkenaz*. We are inclined to think that the ascetic penances practiced by *ḥaside Ashkenaz* were based on the *midrashic* and *Hekhalot* literature, but were also influenced by the Christian environment.⁸⁵

Examples from the Geonic period for fasting as atonement are fewer than examples for similar ascetic practices in mystical and magical initiation rituals, and – according to some scholars – even these sources are of doubtful authenticity.⁸⁶

Certain ascetic customs transmigrated through times. Some elements have had independent history and changed their context.⁸⁷ The following possible major stages of development or “reception” emerge: (1) ascetic practices of the Geonic period in mystical–magical context; (2) mystical-magical sources of *ḥaside Ashkenaz*; (3) penitential writings of *ḥaside Ashkenaz*; (4) later mystical-magical sources of *ḥaside Ashkenaz*, where penance was required; (5) penitential schedules applied by the rabbis of the 13–15th centuries to imposition of penances.⁸⁸

⁸⁴ See II.A.4.

⁸⁵ It is easier to trace the development of ascetic practices from the penitential writings of *ḥaside Ashkenaz* to the 13–15th centuries penitential schedules. This problem will be discussed in several chapters of the present thesis.

⁸⁶ Fasting for the sake of atonement in case of injury is mentioned in the name of R. Yehudai Gaon (8th c.) in OZ III B.K. 329, 347; in case of sexual intercourse with a Gentile woman in ShL Ms. Monefiori p. 237= p. 115, (Tykocinski p. 119, a quotation from a Geonic *responsum*) fasting for 49 days is prescribed, corresponding to the 49 measures (*middot*), by which the Torah is explained. According to Robert Brody (in private communication) all these mentions of fasting for the sake of penance can be later additions, and we can not know anything for certain as to their Geonic origin.

⁸⁷ For example, “Esther’s fast” has its roots in the *midrash*, which states that Esther has sinned by giving herself to a *goy*, and therefore has fasted for three days and nights continuously [*Shoher Tov* (to the Book of Psalms, to Psalm no. 22), see II.B.2.1.1.] At the second stage, that *midrashic* commentary is applied by Judah Ḥasid to penance for fornication with a Christian woman. Then the commentary makes its way to the mystical–ascetic initiation ritual of R. Moshe b. Eleazar (CShQ), and through another channel to the penitential schedules of the 13–15th centuries.

⁸⁸ For more in detail about individual ascetic elements, see especially II.C.4 and III.C.4.

PART II.
**THE PRACTICE OF *TESHUVAH* IN THE ASHKENAZI JEWISH COMMUNITIES
IN THE 12–15TH CENTURIES**

II.A. Introduction: The Concept of Teshuvah of Ḥaside Ashkenaz and Its Effects

II.A.1. Sage-Confession, Personalist Atonement, Atonement by Self-Mortification

At the end of the twelfth and the beginning of the thirteenth century R. Samuel Ḥasid (Speyer⁸⁹), his son, R. Juda Ḥasid (Speyer, Regensburg) and the latter's disciple, R. Eleazar of Worms (Mainz, Worms), who were known as the spiritual leaders of the “religious school” or “religious movement” later called *ḥaside Ashkenaz*, wrote about a practice of penance (*teshuvah*), which was unique and had no precedents in Judaism. The ideological framework on the basis of which this practice was developed, as well as the practical instructions and laws of this practice, are contained in the SH and the penitential writings, called *ḥibbure teshuvah* in the reception of *ḥaside Ashkenaz* literature. The idea of the penance developed by R. Samuel and R. Juda Ḥasid is part of a larger conception of their pietistic ideals and the pietistic movement.

The history of the scholarship about the concept of the *teshuvah* of *ḥaside Ashkenaz*, in particular, and about the pietistic school called *ḥaside Ashkenaz*, in general (from Moritz Güdemann, through Abraham Berliner, Israel Abrahams, Abarahm Epstein, Israel Kamelhar, Jacob Naftali Hertz Simhoni, Yitzhak Baer to Gershon Scholem), was outlined by Ivan (Israel) Marcus in the introduction to his book, *Piety and Society*. Marcus also edited a volume collecting the most important essays about *ḥaside Ashkenaz*, under the title *Dat ve-ḥevra be-mishnatam shel ḥaside Ashkenaz*. The collection presents the main differences of opinion between these scholars: whether, for example, *ḥaside Ashkenaz* was a small group (Simhoni) or a larger social and religious movement (Baer). In his own book, Marcus analyzes the sources related to the *teshuvah* in a critical way, and contrasts the views of the two central figures of *ḥaside Ashkenaz*, R. Judah and R. Eleazar. He maintains that they both taught that atonement is to be achieved by physical self-mortification, but concerning the procedure of penance their views differed. He describes R. Judah's (and his father's) concept of *teshuvah* as against the background of their broader doctrine of sectarian pietism. On the basis of the procedure prescribed for the penitent Marcus calls the penance “Sage-confession”.

⁸⁹ The place names after the name of the persons refer to their dwelling place(s).

This type of confession failed, according to him, and this was the reason why R. Eleazar invented the other type of penance – as Marcus calls it: the “personalist” atonement. In this type of penance the penitent confesses privately to God alone, and the penances which he performs are not imposed by a sage, but the penitent himself learns them from a penitential book, like HTR of R. Eleazar.⁹⁰ This function of the penitential books of R. Eleazar is indicated in the introductory paragraphs of the penitentials which survived in manuscript forms⁹¹ – and which were dropped in the printed version of SR. SHP contains fragments of the Sage-penitential of R. Samuel and R. Judah Ḥasid. The penitentials of R. Eleazar have many recensions, like HTR, HTRB, DT, MH-SK, IT. According to Marcus, the penitential books of R. Eleazar (the author of the “Roqeaḥ”) were the main channel through which the originally “sectarian” concept of *teshuvah* of R. Samuel and R. Judah Ḥasid *teshuvah* found their way into mainstream rabbinic *halakhic* literature. Beyond analyzing the sources of SHP and HT, I. Marcus prepared a catalogue of the penitential writings of *ḥaside Ashkenaz* (1982) and wrote another study about the penitentials (1986) in which he clarified the authorship of the fifth recension of Eleazar’s penitential work, which is preceded by a fragment of a *responsum* of Judah Ḥasid’s. Marcus’ views were basically accepted by J. Dan, the prominent scholar of the mystical writings of *ḥaside Ashkenaz*, in his recent book about R. Juda Ḥasid (2006). In his opinion, however, it is unlikely that the doctrines of *ḥaside Ashkenaz*, and especially their extremist *teshuvah*-doctrine were ever practiced, or that there was any “penitential movement” behind these writings.⁹² Regarding the problem of possible Christian influences, which he discusses in connection with the *mishqal*-penance, Dan argues that no literary evidence has been found yet for such an influence, and if there was such an influence, it is difficult to understand why no sources in Latin or German are found about penances similar to those included in HTR.⁹³

In the classical Talmudic passage about *teshuvah* in bYoma 86a in the teaching of R. Ishmael, it is unambiguous that *teshuvah* means repentance, that is, a mental process, the core element of which is contrition (regret).⁹⁴ In the teaching of *ḥaside Ashkenaz*, *teshuvah* means firstly the penance, that is, the process of atonement, and only secondly contrition.

⁹⁰ Marcus, *Piety and Society*, 121–124.

⁹¹ See II.A.1 below.

⁹² For the question of the term “popular movement” for *ḥaside Ashkenaz* see the remark of Haym Soloveitchik in “Three Themes”, p. 350 n. 126. To the number of *Ḥasidim* in towns idem, p. 336 and n. 75 there; Kanarfogel, *Peering*, p. 24 and n. 14.

⁹³ Dan, “יהודה החסיד, תורת התשובה”, See more detailed discussion on the problem of the Christian influence in III.A.1.

⁹⁴ See Introduction 3.2, terminology, *teshuvah* on the difference of the meaning of *teshuvah* in the Talmudic place and in the teaching of *ḥaside Ashkenaz*.

There are two basic “innovations” in the teaching of *ḥaside Ashkenaz* about *teshuvah*: the first pertains to the procedure of penance, the second pertains to the atonement through physical suffering. According to this pietistic view, the sinner, after he committed the sin and repents, must go to a Sage, confess, receive the penance meted out by the Sage, and perform it. In later developments of the teaching, known to us from the writings of Eleazar of Worms, four ways of penance are mentioned (and exemplified), the names of which are: *teshuvah ha-ba’ah*, *teshuvat ha-gader*, *teshuvat ha-katuv*, *teshuvat ha-mishqal*. The first “way” is that if someone transgressed, in the time of the penance he must search for situations in which he will be tempted to commit the sin again and in which he can and will demonstrate his perseverance in the repentance, and will not commit the sin again.⁹⁵ The second prescribes that, on the contrary, the sinner must avoid situations in which he could commit the sin again. The third orders that the penitent shall do penance by corporal suffering in proportion with the punishment for that transgression in the Torah. The fourth rules that the penitent shall afflict himself with corporal pains which are proportional to the pleasure experienced during the “illicit” act. The atonements⁹⁶ prescribed by the *teshuvat ha-katuv* and *teshuvat ha-mishqal* are corporal afflictions which the penitents must undergo, such as receiving flogging privately or publicly, or self-flagellation, sitting in icy water or snow in winter half an hour or an hour, and among ants or bees in the summer etc. There is no explicit indication how the penance ended, whether the penitent received “forgiveness” from the Sage at the end of the penance. But throughout SHP we find descriptions and allusions about the role and function of the sage in the process of penance from which it is clear that he is thought to be only an “advisor” and “physician” of the soul who helps the sinner find the proper atonement, and that is the main purpose of the confession.⁹⁷ Only God knows or rules about the appropriateness of the confession and atonement. We read in the “*Sefer Teshuvah*”⁹⁸, which all scholars agree is authored by Samuel Ḥasid, at the beginning of SHP:

⁹⁵ In HTR it is mentioned that this type of penance is not practiced in the time of R. Eleazar.

⁹⁶ In the Hebrew terminology of the *ḥaside Ashkenaz teshuvah* (in their terminology it means in most of the cases “penance”, rarely “repentance”) and *kapparah* (‘atonement’) are synonyms. Therefore, in this study the English terms “to do penance” and “to make atonement”, when they refer to the practice of *teshuvah* of the *ḥaside Ashkenaz*, are used interchangeably, and refer to penance.

⁹⁷ The metaphor of the “physician of the soul” in the literature of SHP, its abundant parallels in Christian penitential literature, the concept of the “contraries are cured by contraries” in the imposition of penances in Christian literature and its origins in Greek medicine will be discussed in the third part of the present study. For the use of this metaphor in Lurianic Kabbalah: Fine, *Physician of the Soul*.

⁹⁸ The first part of SHP (pars. 1–13, beginning with the subscription *Sod Yer’eh Elohim*) is called “*Sefer ha-Yira’ah*”, the second one “*Sefer ha-Teshuvah*” (pars. 14–26, beginning with the subscription *Sefer Ḥasidim b*), both authored by R. Samuel Ḥasid, according to most of the scholars. From par. 27 on, begin the paragraphs written by Judah Ḥasid (with the subscription “*Zeh Sefer Ḥasidim*”).

“Who is a wise adviser? He who can give advice without stumbling [of the penitent]. And if he [i. e. the penitent] stumbles, although he [the adviser] has given a good piece of advice, he is not a wise adviser because [he has caused] stumbling. So he must be careful not to cause sin and evil by his advice. Who is a good physician? He who is careful and causes no illness. And if he causes illness, although he heals, he is not a wise physician. So if someone [causes] no sin, then he is a wise [adviser].”⁹⁹

It is clear from this instruction of R. Samuel Ḥasid, that he was well aware of the dangers of this type of advising: the healing of a sin could cause another transgression. The process of hearing the confession and advising is described in SHP 43, which contains an instruction to the Sage, whose duty is to administer penance for the penitent sinner, after the prayer of the penitent¹⁰⁰:

“And at the beginning the teacher must ask him whether he regrets [the sin committed]. If he answers ‘yes’, then if he committed fornication with a woman, [the teacher] must say to him, ‘If you regret [your sin], you must distance yourself from that woman and shall not see her or speak to her for one year. If you do that and are assiduous in doing that, then I will give you penance so that you may achieve atonement for your sin because there is no atonement without punishment’ [...]”¹⁰¹

The idea that the sage, while giving advice, must have in mind that the roots of transgression are in evil thoughts can also be learned from the exemplum of SHP 52–53 which contains three stories told by three men in their confessions to a sage. Each of them has committed one of three sins – murder, fornication, and theft – mentally only.¹⁰² The sage sent them to the head of the academy to “pass judgment” on them. The exemplum ends with the words and the decision of the head of the academy: they must do penance because “we are commanded to eradicate evil”.¹⁰³

As mentioned, besides the penance performed within the frame of the Sage-confession, there is another type of private *teshuvah* in the teaching of *ḥaside Ashkenaz*, called “personalist atonement”.¹⁰⁴ The introductory paragraph to HTRB states:

⁹⁹ SHP 17.

¹⁰⁰ A text which is very close to the prayer written by Eleazar of Worms in HTR.

¹⁰¹ SHP 43.

¹⁰² They had the motivation for these transgressions, i. e., anger against an enemy, love towards a married woman, desire to steal the hidden treasure, and they sought the opportunity to transgress, but overcame their evil instinct and did not transgress. Their fathers had the same evil inclinations, as the sons. If this kind of fighting of the evil instinct would be performed within the frame of a *teshuvah* it would be *teshuvah ha-ba’ah*. The head of the academy disapproved their behavior and did not see in it a kind of merit, but, on the contrary, since evil thoughts are considered equal to the evil act, their behavior was sinful.

¹⁰³ See also Alexander, *The Pious Sinner*, 27, 30.

¹⁰⁴ A kind of core-idea of the “personalist” way of penance is contained already in the teaching of Judah Ḥasid: “The first *ḥasids* have written down their sins when they sinned, and they were always before them in order to regret, be contrite, repent and confess them forever. They wrote them in allusions, not explicitly, in order that others may not know them. [They wrote them down], in order to remember their sins, not to transgress again, to regret, be sorrow in their heart. But what is said (bBer 34b, bSota 7b) ‘he who says his sin explicitly, is an insolent one’, only he who tells to everybody his sins, but to tell to a sage all his sins in order to instruct him what to do and how to do penance, is allowed. And he must say what he has done “I did so and so” in order to

“There is a person, whose evil impulse drives him to sin, and after he has sinned, he is too ashamed to go to a sage to be instructed what penance to perform [...] Therefore, a person who wants to atone completely for the sin he committed should consult this tract and he will find penance [*teshuvah ve-kappara*] for his sin. He will be in no need to humiliate himself by turning to the sage for instructions what to do [in order to receive atonement].”¹⁰⁵

Both “innovations” in connection with the *teshuvah*-doctrine of *ḥaside Ashkenaz* (the private confession and the atonement by corporal affliction) had a central role in Christian doctrines of penance in the Middle Ages¹⁰⁶. Almost all scholars who have dealt with the penitential teachings of *ḥaside Ashkenaz* have discussed, to some extent, the question of possible influences. The main proponent of the thesis of Christian influence was Baer. Baer highlights the idea of “measure for measure” in the imposition of penance and in the doctrine of atonement of *ḥaside Ashkenaz*, and he argues that it originates in the Christian concept of “*composition*” which, in turn, is rooted in Germanic tribal law¹⁰⁷.

II.A.2. The Public Aspects of Penance in the Teaching of Ḥaside Ashkenaz

From the above mentioned description, it seems as if the *teshuvah* in the teaching of *ḥaside Ashkenaz* was a private or even secret process both in the form of the Sage-confession and the personalist atonement. This, however, applies only to the nature of the confession as described in the paragraphs quoted. The atonements were in fact a combination of private and public elements. Private elements of the penance were fasting, private flogging, prayer, confession, and sometimes paying fines, restitution, and charity within the frame of the penitential process. Payments, however, could also be performed publicly. Besides these private components, social punishments and public humiliations constituted an important part of the penance.

In the process of penance, shame was an important factor, and this fact was highlighted by additional humiliating acts which the penitent had to suffer. The murderer, for example, had to perform not only public flogging but also disgracing public penances during his 3 years of exile in the place he had been sent to, which were humiliating rather than

say him how to do penance [...]” The requirement to privately write down one’s sins is contained also in the *Commentary on Shi’ur Qomah*: “Each man knows what he did, and he has to write always what he has done”.

¹⁰⁵ Ms. Parma 2295 fol. 108a.

¹⁰⁶ See IIIA2 and IIIA3.

¹⁰⁷ Baer, “המגמה הדתית-החברתית”, p. 18. See III.A.1.

physically painful.¹⁰⁸ Moreover, the confession itself had in some instances a requirement of publicity:

“And this is for the penitent: if his sin is known to many people, he shall not be unwilling to do what is ordered by the religious law concerning fornicators, because of shame. For it is good to atone for his sin in this world. Because shame sheds the blood of man and removes sin. As the sages said¹⁰⁹ “The murderer must say, “I am a murderer”. And woe to the man who puts to shame his fellow.”¹¹⁰

However, in the case of fornication the following restriction is made (or allowed), apparently in the case when the sin of the fornicator is not known to many people:

“The fornicator shall not say in the place in which he is unknown “I am a fornicator”, but he shall say [instead] “I am a sinner””¹¹¹

There was a danger in publicizing one’s sin because of the fear of losing social status, and the author of SHP was well aware of this fact. Therefore public shame was used as part of penance for grave sins. Nevertheless, when others could be suspected instead of the true sinner, the confession was to be done publicly.¹¹²

II.A.3. The Penitentials of Ḥaside Ashkenaz in Context

According to Ivan Marcus, SHP contains a fragment from R. Judah Ḥasid’s sage-penitential, and in the first part of SHP there is also one from R. Samuel he-Ḥasid’s. In the penitentials transmitted in the name of R. Eleazar of Worms, Marcus identified five recensions, which are contained in about 65 manuscripts and early editions. He prepared the catalogue of these manuscripts and identified the true authorship in the case of the fifth recension.¹¹³ The first recension is that of the SR¹¹⁴ (HTR), the second one is a variation of HTR, with a better structured version, in about 30 manuscripts (HTRB)¹¹⁵; the third is the single text at the end of the Maharam Prague edition (1608) with the subtitle “*Darkhe Teshuvah*” (DT); the fourth is the composition with the inscription *Moreh Ḥaṭṭaim* or *Sefer ha-Kapparot* (MH-SK), and contains some paragraphs which allude to the *Hekhalot* literature;

¹⁰⁸ HTR 23.

¹⁰⁹ bMak. 12b.

¹¹⁰ SHP 39. It is part of his penitential process to confess publicly, because “the shame sheds the blood”. But for others, it is a transgression to shame him or mock at him. For the prohibition of mocking at penitents, see, for example, II.B.1 and II.C.11.

¹¹¹ SHP 40.

¹¹² Especially in cases of theft, cheating (SHP 74=89).

¹¹³ I. Marcus, “*Ḥaside Ashkenaz Private Penitentials*” Id., .”חִיבוּרֵי הַתְּשׁוּבָה שֶׁל חֲסִידֵי אֲשְׁכֵנָז”

¹¹⁴ Ed. Fano, 1505, HTR.

¹¹⁵ With an addition of a paragraph about the desecration of God’s Name, which is absent from HTR.

the fifth is the *'Iske teshuvah* (IT), in three manuscripts¹¹⁶, which is the longest version, with many additions to the text of HTR and at the head of the composition with the beginning of a fragment of a responsum of Juda Ḥasid about *teshuvah*.

In the following, I shall discuss two other penitentials, from manuscripts differing from the five recensions mentioned above, which were not discussed either by Marcus, or by Joseph Dan. Furthermore, I shall present liturgical texts attached to penitentials which demonstrate the existence of a liturgy of private penance. Finally, I shall analyze glosses to penitentials testifying about the actual practice of self-mortification at the place where the scribe lived. These examples of penitentials in manuscripts serve to describe the “Sitz im Leben” of the penitentials.

II.A.3.1. The *Responsum* of R. Judah Ḥasid (RJH) in Ms. Oxford Catalogue Neubuer 682

In 1996, Shlomo Spitzer published from Ms. Oxford 682¹¹⁷ fol. 369a–b a responsum of R. Judah Ḥasid, found at the end of *Kizzur Pisqe ha-Rosh*, in a different script than the *Kizzur*, in a script which differs from the script of the *Kizzur*, both from the 15th century¹¹⁸. The beginning of the *responsum* is identical with the beginning of IT, but Ms. Ox. 682 contains the more complete version of Judah Ḥasid’s responsum.¹¹⁹ The questions discussed and answered in the *responsum* recall the questions and problems discussed in SHP.¹²⁰ Some of them describe extreme situations or special conditions, and the answers to them are not conventional, either. Sometimes they are not in accordance with the “*din Torah*” but decide

¹¹⁶ One of which is a fragment.

¹¹⁷ Ms. Oxford, Catalogue Neubauer 682, Oxford, Bodleian Library Ms. Opp. 312 (Ox. Opp. 622, old no.)

¹¹⁸ In a smaller script. There are many additions in the manuscript, among others on fol. 370a: “It was copied from the manuscript of R. Judah he-Hasid”. See NLI electronic catalogue, entry Ms. Ox. 682, general notes in Hebrew, note no. 4.

¹¹⁹ Spitzer, “שאלות ותשובות” . See App. no. 6.

¹²⁰ The questions and answers are the following: (1) Can a sinner do penance more times? The answer is: it is allowed, only that the sinner must aggravate the penances. (2) Whether the transgressions can be rectified by doing a *mizvah*: the answer is negative. (3) Whether it is advisable to commit suicide because of the sins, the answer is: it is good. (4) Whether it is good to repent in the hour of death, the answer being positive. (5) Whether it is good to give charity for the dead to avoid the afflictions in the *Gehinnom*, and whether it is good to give charity in sickness to prevent afflictions. Both answers are affirmative. (6) Whether 100 transgressions can be redeemed by 100 *mizvot*, the answer is: yes, but only if you suffer pain or endanger your life by doing the *mizvah*, like for desecration of the Sabbath, if one extinguished the fire on the Sabbath to save 100 *maneh*, he must give this money to charity and suffer pain which is as heavy as the death penalty [*karet*, death of the *bet din* (stoning)]; if you killed someone, you must save a life; if you transgressed a vow, you must fast 45 times, at least, (on the day, until the stars can be seen). (7) Whether it is allowed to release a vow with another vow, e.g. to vow to drink wine, and to say, “I am a *nazir*”, the answer is: yes. (8) That it is forbidden to pay with stolen money. (9) That if Ruben is indebted to Simon a *mane* and Simon says, “I lend you the money, with the condition to give it back to me”, Simon cannot compel Ruben to give him back.

according to “*din Shamayim*”¹²¹. This is a characteristic of SHP as well.¹²² The measures¹²³ prescribed in the *responsum* are even more extreme. For example, suicide appears as a possible way of atonement. R. Juda Ḥasid maintains here, that it is good to commit suicide for sins, and he brings an example about an apostate who has drowned himself.¹²⁴ Most of the questions are connected to the principles and the measure of atonement. The main principles are that the atonement is to be imposed according to a subjective measure¹²⁵, and that only suffering atones. Merits do not neutralize transgressions, but if someone suffers pain or loss by doing a *mizvah*, he may attain atonement by this.

We do not know anything about the context of the *responsum*, so it is unclear whether the *responsum* is only a literary shaping of R. Judah Ḥasid’s thoughts connected with *teshuvah* or it is a real answer to a question sent to him.¹²⁶ I think that even if the literary form

¹²¹ The complicated question of the relation of *din Torah* – *din Shamayim* in the teaching of *ḥaside Ashkenaz* whether this “*din Shamayim*” in their teaching can be regarded as a kind of “natural law” and a challenge to the “positive law”. This would parallel the contemporary Christian discussion of the relation between natural and positive law (for example by Thomas Aquinas), regarding the epoch in a perspective. But Soloveitchik draws the attention to the fact that the “*din Shamayim*” of the *ḥaside Ashkenaz* is not to be regarded as the product of an antinomian attitude, but, on the contrary, it is to be regarded as the product of a stringent view. He identifies the “law of Heaven” in their teaching with the Talmudic concept of “*lifnim mi-shurat ha-din*” and with another concept invented by the *ḥaside Ashkenaz*: the highest purpose of the *hasidic* life is to search the “Will of the Creator”. The will of the Creator is a higher demand than the strict letter of the Law, both in stringency and in importance. The fulfillment of this higher requirement is attained, among other things, by the “subjective” definition of sin, as explained in the Introduction 3.2.

¹²² The contradiction between the traditional, midrashic explanation on judgment of sins and their atonement and the ideas of SHP on these issues is clear from the beginning of SHP, where earlier, classical commentaries on the basis of the Talmudic doctrine, are quoted side by side with the original explanation of SHP (both, that of Samuel and of Judah Hasid). (For the question of the contradiction between the midrashic approach and the approach of SHP, see Soloveitchik, “The Midrash, Sefer Ḥasidim”.) The classical explanations are in SHP 30–32 (pp. 28–32), which quote from the *Megillat setarim* of R. Nissim, and in SHP 33 (pp. 33–36) from R. Alfasi. These explanations use bRH 17a–b and bQid. 40a–b for developing the idea that in the World to Come and on *Rosh ha-Shanah* the transgressions and merits are weighed one against the other. The excess in merits or sins decides the fate of the person in the World to Come. On the contrary, SHP 15 (p. 18) uses the explanation from *Sifre Devarim*, parashat *Ve-zot ha-berakhah pisqa* 347 (“R. Hananiah b. Gamliel says: ‘merits never redeem sins and sins never redeem merits [...]’”) and in the next paragraph of SHP a parallel explanation to RJH is to be found in connection with this idea (p. 19): a *mizvah*, as such, does not neutralize a sin; but if someone who caused the death of somebody saves another life by endangering his own life, this kind of *mizvah* redeems sin. This is explained in SHP 43 (pp. 41–42) even more in contrast to the traditional midrashic explanation: “‘merits never redeem sins’, but the merits will be counted separately and the sins separately. (SHP 43) Therefore the penitent shall receive on himself a penance which is equal with the punishment of the Torah [for this sin], and pains [equal] to the pleasure [enjoyed] in the sin. And he shall not say, ‘Isn’t it that the Torah said (Ex. 21,24) <eye for eye this means monetary compensation> (BQ 83b–84a) [...]?’”. This is [said, i.e. BQ 83b–84a] because the Torah wants the remedy of the world. But according to the law of Heaven he did not fulfill his duty”.

¹²³ The “measure” of the atonement is the degree of heaviness of the penance – e.g. lighter, heavier sufferings, death.

¹²⁴ See discussion in II.C.1.

¹²⁵ For the same sin different persons must atone in different measures.

¹²⁶ Modern researchers of medieval halakhah face the same problem in connection with the ThD of R. I. Isserlein. The generally accepted view is that ThD contains many real *responsa* (some of them are to be found in PuK, too), which have been reworked, and in addition to fictive *responsa*. Maybe something similar is the case also with the RJH. For this assumption – namely, that part of the content of RJH is authentic, but the final form is a later literary reworking, and part of it is fictive – speaks the anonymity of the questioner and the fact that most

is a kind of “reworked form”, the questions are real ones and reflect the practice of private penance. For example, the first question reflects the viewpoint of a penitent backsliding sinner’s real situation, and not the viewpoint of the sage or rabbi, whose ideal is that the sinner never returns to his transgression after penance. The question whether the performance of *mizvot* can neutralize transgressions again reflects the everyday situation of the sinner, who wants to repair by merits the transgression committed. The charity giving for dead and the repentance in the hour of death are again common situations which reflect the problems of the penitent in their context.

II.A.3.2. Ms. Paris 1408, 137b–139a – the Rhymed Penitential¹²⁷

Beyond the uniqueness of its form among the penitentials, this penitential contains some sins and their atonements which are absent from other penitentials¹²⁸, and penances for sins are different from those ordered in HTR, MH, DT or IT.¹²⁹ The periods of exile for

of the problems were discussed in SHP, too. A similar problem of the authorship emerges also in connection with the testament of R. Juda Hasid (according to some scholars also with SHP). See Soloveitchik, “Three Themes”, p. 322 n. 28: “The actual authorship of R. Judah is not beyond question, but the testament is certainly a product of the movement”.

¹²⁷ Sirat, “Ms. Paris 1408”. Schwab, REJ 64 (1912). See App. no. 7. The manuscript is from the 14th century, Ashkenazic script, it contains works by R. Judah Hasid, R. Eleazar of Worms, Ra’avyah, Shimshon mi-Shanz, Abraham b. Ephraim, Maharam of Rothenburg, Mordehai b. Hillel, Hizqiyah b. Jacob mi-Magdeburg, Isaac Trobish, Samuel b. Isaac, Abraham Ibn Ezra, Abraham b. David of Posquiers.

¹²⁸ The penances listed and their respective atonements are: (1) Penance for looking at the women: the sinner must do *teshuvat ha-gader* and fast. (2) For having intercourse with a prostitute: 10 months fasting. (3) Having intercourse with a woman, being in her menstrual period, on Sunday, will be punished by the heaven by 10 years of leprosy on the son or the daughter; if it happens on Monday: 20 years leprosy on the son or daughter. (This is in fact not a penance but a punishment of the Heaven; maybe, the penance for this sin is included in the general heading of transgressions liable to *karet* in the next item). (4) Penance for transgression liable to *karet*: 270 days fasting; flogging 3 times each day, to give charity, prayer and confession all his days. (5) Murder: it is graver than the transgression of all the other commandments of the Torah: exile, flogging in each place of the exile (in the synagogue, publicly), fasting 365 days (= prohibition to eat meat and drink wine, except on the Sabbath and holidays), to give charity, to give charity for Torah study), Torah study and feeding the poor. (6) He who is suspected to transgress the *kashrut* laws or desecrates the holidays, and for not mentioning the transgression in the confession: 40 lashes, 40 days fasting, and learning the Torah. (7) For false testimony, lying and hypocrite behavior: 40 days fasting, 40 lashes, prayers, and studying the Torah. (8) Disgrace of the parents: he must do penance (without specifying the kind of the penance). (9) If someone was required to give charity, or claimed to have given, but did not: 40 days of fasting, daily confession, and giving the vowed money to charity (the voluntarily given charity was offered by a vow). (10) For drinking the wine of the Gentiles: 40 days fasting and secret flogging. (11) For eating pork: the punishment would be torture for 12 months in the *Gehinnom*; its penance is 40 days of fasting (= prohibition of wine, meat and rejoicing). (12) For transgressing a vow: praying for forgiveness. (13) For mocking the commandments or the words of the sages: 40 days fasting. (14) For worshiping other gods, for idolatry (= Christian practice): putting on black clothes, fasting for the rest of the life on Mondays and Thursdays, 1 year exile, flogging in each place of the exile (publicly, in the synagogue), 1920 fasts, that is: for each negative commandment transgressed: 40 fasts. That is to say, for the 48 commandments transgressed, but it is not specified which commandments were transgressed by an apostate, or on the basis of which source the author decides that 48 commandments were transgressed. The 40 days of fasting for one negative commandment transgressed is in accordance with the ruling of R. Juda Hasid.

¹²⁹ There are penances for looking at women and for having intercourse with prostitutes, which are basent from HTR, DT, MH and IT. Both themes are to be found in SHP. For looking at a woman as leading to transgression, see SHP 18, 43–49, 54, 59, 980; for prostitution, see SHP 63 and 58, 80. See also II.B2.1.5 and II.B2.1.6. There

murder and penance for apostasy are of one year, which is less than in the other recensions¹³⁰. This is a characteristic of the penances for these sins in the *responsa* of the 15th century¹³¹. Penance through Torah study is mentioned for most of the transgressions. Not only penances are mentioned but also punishments by the hand of Heaven, e. g. leprosy for the sinner or for his descendants¹³². The exact number of days of fasting for committing a sin liable to *karet* is 270, for apostasy 1920 days, corresponding to the 40 fast days of 48 commandments transgressed.

The subtitle of the penitential in the manuscript attributes the rhymed composition to R. Judah Ḥasid. We have no proof for the authorship of the actual form, because also the penitentials written by R. Eleazar are presented by him in the introductory paragraph as a tradition received orally from R. Judah Ḥasid, R. Samuel Ḥasid etc. – which is the chain of tradition listed in the introduction of most of the penitentials in manuscripts.¹³³ Therefore, it could be easily the case that the attribution of the manuscript to R. Judah regards only the content, and the form was a later reworking. We have, however, no proof that the poetic versification of R. Judah Ḥasid's penitential rulings is the not work of R. Judah Ḥasid but of a later author. It seems that the purpose of this version was to make the learning of the penances easier. It speaks also in favor of this view that the manuscript contains a rhymed “laws of ritual slaughter” (fol. 1a)¹³⁴.

II.A.3.3. Liturgy of Accepting Fasting for Private Penitent

There are manuscripts which contain instructions for receiving or vowing private fast together with one of the recensions of the penitentials. They contain also instructions for the liturgy of private penitence, and liturgical texts – prayers and confessions – different from those contained in HTR and MH. This indicates that the process of private penance had also a liturgical aspect, sometimes. Such is, for example, HTRB Ms. Vatican Rossiana Ebr. 356 (f2354), 74a–81b in which there is a liturgy for the private penitent. This Ashkenazic

are penances for transgressions related to charity, for different transgressions of dietary laws, which are also important themes in SHP.

¹³⁰ In HTR, MH, DT, IT this penance is of three years.

¹³¹ See II.B1, II.B17 and II.C7.

¹³² This punishment by the Heaven is here mentioned in connection with having intercourse with a *niddah*. It is a classical punishment by Heaven for slander in HTR 16 on the basis of Deut. 24,9 and Num. 12, 10–15 (the story of Miriam) and the *midrash* in *Sifra*. See II.B.6.2.

¹³³ See Marcus, *Piety and Society*, p. 122.

¹³⁴ Other rhymed *Hilkhot Sheḥita* compositions are to be found in Ms. Toledo 13, fols. 52b–53b (Italian, 13–14th centuries), by R. Mivḥar b. Yafet; AIU H 452 A fols. 37a–45b (Eastern, 15–16th c.).

manuscript is from the year 1412, and it is a collection of private prayers¹³⁵. After the abbreviated HTRB version there are texts of prayers and confessions for penitents.¹³⁶

II.A.3.4. Glosses in the Manuscripts of the Penitentials Containing Customs of Self-Mortification

There are some manuscripts in which we find glosses referring to customs of self-mortification and self-flagellation. Such is for example the gloss in MH Ms. Parma Biblioteca Palatina Cod. Parma 2410 fol. 15a¹³⁷, in the paragraph on *teshuvat ha-katuv*, concerning fornication with a married or engaged woman. It states that there are men in the forest among wild animals, flogging themselves and searching for danger, this being for them the atonement for their sins.¹³⁸

Regarding the penance of the apostate who converted deliberately to Christianity, we find a gloss in the same manuscript on fol. 15b, stating that the repentant apostate has to mortify himself with thorns and thistles of the wilderness.¹³⁹

If we had only the first gloss, we could think on members of any flagellant movement, either Jewish or Christian, a vague reference which was not a direct experience of the scribe. But if we connect the two glosses, a real experience of self-flagellants and practices of self-mortification by hermits for the sake of atonement in the surroundings of the glossator in the 15th century, or earlier in time is possible. The expressions for the penance of the penitent apostate in the second gloss have common features with the description of the first one and differ from the penances of the main recensions: “he shall torment his flesh with the thorns and briars of the wilderness, flog himself, confess, regret, cry [...] day and night”. This indicates, I think, that possibly the glossator had real experience of self-mortification practiced as atonement for grave sins in his surrounding, and was not only a literary tradition. However, without personal names, and without place names there is no proof for this assumption.

¹³⁵ There are 9 units in the manuscript: (1) private prayers before or after the regular prayers; (2) private prayers inserted among regular prayers; (3) private prayers and instructions for the penitent; (4) private prayers for the journey; (5) magic spells (*segullot ve-kame'ot*) for different purposes and situations; (6) private prayers for different occasions in the life of a man; (7) the order of pronunciation of *herem* and curse; (8) sections from *Hekhalot Rabbati* etc. See the electronic catalogue of the NLI. For the text see App. No. 2. A related Ms. of private prayers is the Italian Ms. Parma 1792 (de Rossi 671, f 1792), from the 15th century.

¹³⁶ See App. for the translation.

¹³⁷ Parma de Rossi 1048, Ashkenazi manuscript from the 15–16th centuries. See Beit-Arié–Richler, *Catalogue of Biblioteca Palatina Parma*; electronic catalogue of the NLI, entry Parma 2410/3; I. Marcus, “Haside Askenaz Private Penitentials”, p. 71. This part of the manuscript is dated to the 15–16th centuries, Ashkenazi script. For the additions see App. No. 3.

¹³⁸ Ms. Parma 2410 fol. 15a. See App. no.3 (n. 77) and App. II.A.3.4. for translation.

¹³⁹ Id. fol. 15b. See App., no. 3 (n. 80). And translation in App..

II.A.3.5. Geographical Distribution of the Manuscripts of the Penitentials

The manuscripts of the penitentials were written in the 13–15th centuries (except 8 manuscripts from the 16th century), and most of them are in Ashkenazi scripts. There are also 12 manuscripts in Italian, 3 in Sephardic, 3 in Byzantine, and 2 in Yemenite scripts. Although the script shows the provenance of the scribe, while the place in which the manuscript was copied as well as the place in which it was used may have been different, the statistic on the basis of the script and colophons together can give a general orientation. They were copied mostly by Ashkenazi and Italian copyists, in a lesser measure by Spanish and in the Byzantine scribes.¹⁴⁰ The geographic distribution of the provenance of the copyists of the extant manuscripts of the penitentials shows that they were copied first of all within the culture in which they originated. Further, their presence in Ashkenazi or Italian *maḥzors* show that they were probably used for private penitential practice in a – private or communal – liturgical setting by the members of Ashkenazi communities. Their presence on the margins of copies of important authoritative *halakhic* works of the Tosafists – like *Sefer Mizvot Qatan* – in manuscript codices, as well as their presence in non-Ashkenazi manuscripts confirms Ivan Marcus' thesis, that HTR and the other recensions were the form by which the penitentials of *ḥaside Ashkenaz* found their way into mainstream *halakhah*.

II.A.4. The Use of the Penitentials of Ḥaside Ashkenaz by Mystical-Ascetic Trends Influenced by Ḥaside Ashkenaz in the 13th Century

II.A.4.1. Commentary on *Shi'ur Qomah* of R. Moshe b. Eleazar

R. Moshe b. Eleazar was the great-grandson of R. Judah Ḥasid and son of R. Eleazar b. Moshe ha-Darshan¹⁴¹. He lived in the second half of the thirteenth century in Germany. R. Moshe wrote a commentary on *Shi'ur Qomah* – on this early, maybe late antique, short mystical treatise about the measurement of God, which was an object of controversy between the Karaites and Rabbanites, and object of criticism for Maimonides due to its anthropomorphic descriptions of God. In the early 13th century this book became again one of

¹⁴⁰ The geographical distribution of the provenance of the copyist of the penitentials on the basis of the script: HTR – 4 Ashkenazi; 2 Italian; 2 14th c.; 1 15th c.; 2 16th c.; 1 17th c.; 2 early print; HTRB – 15 Ashkenazi; 5 Italian; 2 Sephardic; 2 Byzantine; 2 Yemenite; 1 – 13th c.; 7 – 14th c.; 10 – 15th c.; 5 – 16th c.; 2 – 18th c.; 1 – 19th c.; 3 early print; MH – 7 Ashkenazi; 1 Sephardic; 5 It; 1 Byzantine; 4 14th c.; 5 15th c.; 5 16th c.; early 2 print; DT – 1 early print; IT – Ashkenazi 3; Italian 1; 13th c. 1; 14th c. 2; 15th c. 1.

¹⁴¹ R. Eleazar b. Moshe ha-Darshan, the great-grandson of R. Judah Ḥasid, wrote commentaries on the Torah.

the most-frequented sources of the mystics¹⁴², who reinterpreted the anthropomorphic expressions in a creative manner and found new meanings for these expressions. In combination with other classic mystic sources, e.g. the *Hekhalot Rabbati* and *Zutrati*, they used *Shi'ur Qomah* above all for a new interpretation of the figure of Metatron.

The *Commentary on Shi'ur Qomah* of R. Moshe is preserved in three manuscripts. The earliest among them is Ms. Vatican Angelica 46 (fols. 1a–18a), which also contains – a fragment? – from the *Sefer ha-Navon* of R. Nehemiah b. Shlomo ha-Navi (fols. 18a–23a).¹⁴³ R. Moshe's commentary is interesting because of the mystical conceptions and theology contained in it – among other things, the (re-)interpretation of the figure of Metatron, explicit polemical statements against the theological conceptions of Christianity, e.g. the Trinity, and against the “philosophers”, and further, ideas about the “unique Cherub”.

At the end of the commentary, I found a practical instruction of the author regarding how to use the book *Commentary of Shi'ur Qomah*.¹⁴⁴ The instructions are related to those of HT and HH of R. Eleazar of Worms.¹⁴⁵

The book is a mystic-esoteric work about the Divine Glory and the Divine Names, therefore it is only allowed to be studied in a state of physical and mental purity. The connection with the last moments of the Yom Kippur ritual already indicates that fasting and abstinence are meaningful in the preparation for the study of the book.¹⁴⁶

¹⁴² They are: (1) the renowned members of the *haside Ashkenaz* of the Kalonymos family branch, R. Samuel Ḥasid, R. Judah Ḥasid, R. Eleazar of Worms (See Altmann, “Eleazar of Worms” *Hokhmat ha-'Egoz*”; Dan תורת הסוד; Wolfson, “Metatron and Shi'ur Qomah”); (2) the members of the Unique Cherub circle [See Dan, *The Unique Cherub Circle* (1999)]. Rebiger, “The Angels”; D. Abrams, “The boundaries of Divine Ontology”); and (3) the author of a commentary on the seventy names of Metatron, the *Sefer ha-Navon*, named R. Nehemiah b. Shlomo ha-Navi, who is called also R. Trostlin. R. Moshe b. Eleazar was a disciple of R. Nehemiah. (See Idel about the “third” mystical branch, or more precisely other individual examples of esoteric authors and works, in “Some forlorn writings”; Id. י”ר נחונייה” Id., *Sonship*; three other studies were written by M. Idel on R. Nehuniah: on his commentary to the 42 Names of God, on a *piyyut* of Yom Kippur written by him, and on a commentary to a *piyyut*.; Verman, *The Books of Contemplation*).

¹⁴³ See electronic catalogue of the NLI, Manuscripts, entry “Roma, Biblioteca Angelica Or. 46”, f 11697.

¹⁴⁴ The *Commentary on Shi'ur Qomah* of R. Eleazar was quoted by Idel in relation to the polemical paragraph against Christian Trinity contained in it, and the Metatron son-ship symbolism. M. Idel did not mention the instruction at the end of the composition.

¹⁴⁵ See App. no. 8. See for translation App. II.A.4.1, beginning.

¹⁴⁶ This is one of the longest and most detailed descriptions of the doctrines and practices of *haside Ashkenaz*, known to me, concerning the ascetic preparation and initiation and way of life for a *hasid* mystic, besides R. Eleazar of Worms's *Hilkhot ḥasidut*. It is also a rare, or even unique source for the description of requirements of the *hasidic* way after the death of the two main leaders, in the 13th century. It can be interpreted both as an example for the “sectarian fellowship of Pietists” (I. Marcus, *Piety* p. 15), “a counter-elite” in the development of the “movement” and “mystical fellowship”, collegiate of initiates. Description about a preparation for mystical initiation is contained in the third book of Eleazar of Worms's five-part theological work, in the *Sefer ha-Shem*, which describes the preparation for the creation of Golem (see about this, for example, M. Idel: *Golem*, 57–80). In the literature of the Unique Cherub circle, there are allusions to the assumption that the members were “initiates” but the ritual itself is not described. Some manuscripts of the *Pesaq ha-Yirah ve-ha-Emunah*, e.g. Ms. ox. 2575/2, fol. 5b end with these words: “*Barayta of Yosef b. Uzziel* which was revealed from the mouth of Jeremiah the prophet. It is not to be revealed but to the modest ones. [From] my teacher R. Avigdor ha-Tzarfati

The first requirement is the atonement for the sins committed. In this and in the statement that one shall always write down his sins in order to do penance, we can recognize the thoughts of R. Judah Ḥasid as expressed in the *Sefer Ḥasidim*. Every fasting requires ritual immersion. The wearing of the sackcloth is the sign of penance and humiliation. This section contains an important piece of information about Judah Ḥasid's practice and the author's other grandfather, whose name was omitted. Seclusion, abstinence, and charity are also requirements of the *ḥasidim* described in the SHP. The next section contains the instruction concerning the ritual immersion for the days of preparation for the study of the book which contains the commentary on the description of the measurements of God and the Divine Name, in the first and last three days three times a day. The next section also contains a teaching of Judah Ḥasid, according to which the punishment for not keeping the ways of the *ḥasid* life, sometimes comes in the next generations, in the life of the descendants. At the same time it says that you must flog yourself in this preparation period – preparation for the study of the *Commentary on Shi'ur Qomah* – three times a day and confess when you receive flogging. In the following section the author highlights the secret character of the whole preparation for the study of the esoteric book *Commentary on Shi'ur Qomah*. The following section describes the friend who must be a *ḥasid* as well, the clothes for studying and the way of keeping the book in a chest. The next section describes the fellow student, and the trials the student must undergo: they must test each other in order to be pure for the sanctity of the content of the book they are to read.

II.A.4.2. *Seder Pe'ulat ha-Yetzirah*

In another anonymous magical composition from Ashkenaz (14th century) from the British Library Catalogue Margaliouth Ms. 752¹⁴⁷, *Seder Pe'ulat ha-Yetzirah*, which contains magic spells for healing and begins with the creation of a golem, I found an instruction on fol. 88b¹⁴⁸. The section contains the preparatory fasts¹⁴⁹, abstinence, afflictions for one who wants

za"l." The "modest ones" [*tzenu'im*] means "initiated ones" in this context. About another "ḥasidic branch", probably in Northern French: H. Soloveitchik, "Piety, Pietism" (at the end of the study).

¹⁴⁷ See about the manuscript Idel, "ר"ח נחנייה בן שלמה הנביא", id., *Ben: Sonship*, ch. 2, pp. 195ff.

¹⁴⁸ See App. no. 9 and translation in App. II.A.4.2 (beginning).

¹⁴⁹ Fasting as initiatory ritual for mystic and magic experience has roots in antiquity and earlier Middle Ages, and not only in Judaism. Fasting has also a ritual function in the liturgy. The fasting of 40 days as a preparation for revelation in the Jewish and Christian contexts has biblical roots. There are documents in support of longer fasting as preparation for initiation rituals before the *ḥaside Ashkenaz*. These are discussed in the scholarship, for example: in Schäfer–Shaked, *Magische Texte*, vol. 1, p. 69 (fol. 6b/6ff.) and p. 136 (fol. 1b/5); vol. 2, p. 127 (7b/11); *Sefer ha-Razim I* (ed. Rebiger–Schäfer) §§119 and 227; *Sefer ha-Razim II* (ed. Rebiger–Schäfer) §372. The ascetic preparation in the framework of incantation-texts in the Hekhalot literature was discussed by R. Lesses in the third ch. of her book *Ritual Practices*, 117–160. Further see Swartz, „Like the Ministering Angels ...”, id., *Scholastic Magic*, 158–162; I. Wandrey, *Das Buch des Gewandes*; J. Trachtenberg, *Jewish Magic*, 114,

to receive knowledge by magic from the “Angel of Knowledge”. This type of ritual is called “*petiḥat lev*” (‘opening of the heart’)¹⁵⁰ and had ancient roots. My contention is that the ascetic preparation for this ritual in this version was shaped by the penitential writings of *ḥaside Ashkenaz*.¹⁵¹ The combination of the forty days of fasting, each day until night and in addition three days of fasting continuously, day and night – a fast called “Esther’s fast” – is a typical fasting mentioned in SHP, IT and RJH, in the name of R. Judah Ḥasid. Originally it was prescribed for the penitent who fornicated with a Gentile woman or maidservant, and was later prescribed also as a penance for other transgressions, usually – but not always – connected with ritual impurity, like having sexual relation with a wife who is *niddah*. In this instance, after 40 days of fasting, a man must fast three more days and nights continuously, then go with a little child to ritual immersion. He must say the magic formula sitting immersed in the water up to his neck.

II.A.4.3. *Sefer Minhag Tov*

The treatise was composed close to the year 1273¹⁵². According to E. Kanarfogel¹⁵³, its author “may have studied with Northern France Tosafists. He did study with R. Moses b. Meir of Ferrara and perhaps settled in Bari or Taranto, although it is unclear, whether he was of Italian origin. [...] This work is full of ascetic practices in the spirit of *ḥaside Ashkenaz* and academy at Evreux.”¹⁵⁴ According to Weisz, the author collected for himself customs from different sources in order that he might behave himself accordingly. From the Italian words

243; R. Arbesmann, „Fasting”. The boy as medium for ritual of divination: J. Dan, „שרי כוס”, 34–43. Harari, „לעשות פתיחת לב”. Harari doubts that in Schäfer–Shaked, *Magische Texte* on the p. 136 (fol. 1b/5) the text is to be read for 42 fasts, instead he reads 2 days. Harari p. 343. I do not know, however, about the combination of the 40 days continuous fasting and an additional fasting for three days and nights continuously (“Esther’s fast”) from earlier sources, than *ḥaside Ashkenaz*. It is possible, even likely, that it was introduced by Samuel or Judah Ḥasid. It was applied in these 13th century “initiatory” rituals as an ascetic practice for both, penance and ascetic mystical-magical preparation.

¹⁵⁰ See especially Harari, לעשות פתיחת לב.

¹⁵¹ Ritual preparations for the creation of a *golem* and for the recitation of God’s Names (e. g. the wearing of white clothes, the use of virgin soil) in the writings of R. Eleazar of Worms and in the tradition of *ḥaside Ashkenaz* were to some extent discussed by Idel in *Golem*, ch. 5, pp. 57–80. Fasting and ascetic customs were not detailed in these sources.

¹⁵² Weisz, „ספר מנהג טוב”, edited on the basis of a Kaufmann Ms. A89. Here, 232, 237. The source for dating is in the par. 32 of the composition: “32. And it is a good custom to put on phylacteries in the intermediary holidays (*ḥulo shel mo’ed*). And thus I saw R. Moses and R. Meir z”l in the intermediary holidays of Pesach of the year “*lamed gimmel*” [in the year 33 according to the small Hebrew era, 1273 according to common era] when he was here with us that he put on and he said to me that the majority of the “Gaons of the World” [*ge’one ‘olam*, that is, the great rabbinic sages] put on [phylacteries]. And R. Yeshayah also [put on]. [...]”.

¹⁵³ See E. Kanarfogel, *Peering*, 45–46 n. 34.

¹⁵⁴ The editor, Weisz mentions in the introduction that only M. Güdemann used the manuscript before him. The manuscript codex is composed of parts originating from different times, part of it is parchment and part of it is paper. Fols. 1–12 make up the oldest part of the manuscript, written on parchment and containing the *Sefer Minhag Tov*.

and allusions of nos. 22 and 32 of *Sefer Minhag Tov*, the editor, Weisz, thinks that the author lived in one of the port cities on the seacoast, and collected the customs from the books of customs which came from Germany and France and from what he saw among his teachers after 1273¹⁵⁵. He quotes R. Judah Ḥasid. Worthy of mentioning are the ascetic practices of lengthy fasting, flogging, regulations regarding clothes (which torture the body, which are not colorful etc.), practices of going barefoot.¹⁵⁶ The humbleness as a central value and its expression in the wearing of gray clothes, is highlighted by the Italian word *umiliati*, meaning humble ones.¹⁵⁷ The introduction shows that the ascetic customs gathered in the composition are intended to serve as exercises to attain perfection and purity by ascending the spiritual “ladder” which leads the soul to the “holy spirit”, and by abnegation of the body.¹⁵⁸

The STR from Italia, (12th century or 13th century) also contains reference to an ascetic practice of the *ḥasidim* on Yom Kippur. We do not know whether they were identical with the *Ḥasidim* or *perushim* of the SMT.¹⁵⁹

In these three examples (CShQ, SPY, SMT) characteristic *ḥaside Ashkenaz* ascetic customs of fasting, self-flagellation, self-torture, self-abnegation are given as instructions for initiation rituals for esoteric practices which had ancient roots. These three types of rituals are: (1) CShQ = preparation for the “esoteric explanation of the *merkavah*”, (2) SPY = “*petiḥat lev*”, (3) SMT = “mystic ascent”. Their ancient and earlier medieval Jewish counterparts are to be found in the (1) literature of *merkavah* and *Hekhalot* traditions; (2) handbooks of preparations for magic incantations and for the use of magic spells also known from the Cairo Genizah and passages in the *Hekhalot* tradition, and (3) in the *Hekhalot* literature.

The ascetic preparatory exercises were, however, shaped by the penitential writings of *ḥaside Ashkenaz* in a decisive way. This is indicated by explicit reference to R. Judah Ḥasid’s ascetic practices or instructions in (1) and (3), and by the most characteristic fasting modes and periods of R. Judah Ḥasid in the (2) [the 40 days of fasting + the 3 days continuous fasting (= “Esther’s fast”)]. The 40 days of fasting was a common period for all kinds of penitents,

¹⁵⁵ No. 32 of the composition. The author mentions one of his own books entitled “*Shevuat ha-‘Eduṭ*” (no. 54).

¹⁵⁶ References to the ascetic practices in this composition are made in the dissertation, *passim*.

¹⁵⁷ Here could be an allusion to the Christian lay penitential order of the time in the region, the *humiliati*, or at least to the common central value of humbleness with this order. The *humiliati* were an Italian Christian religious penitential order formed probably in the 12th century. Their name is said to have arisen from their very simple clothes which were all of one color against the fashions of the day. They refrained from lies, oaths and law suits.

¹⁵⁸ See translation of the introduction in the App.. After the introduction follows the index of the chapters from 1 to 82; after this there are statements about God’s unity.

¹⁵⁹ *Sefer Tanya Rabbati*, 172 sec. 81. For translation, see App. II.A.4. See also Ra’avyah 2.185, 190 to this custom of the *perushim*, as well as *Sefer ha-Manhig* of R. Abraham b. Nathan ha-Yarchi (1155–1215), about *ḥaside Tzarfat* (1:363). Like Ravyah, he quotes a passage from the *Pirke de-Rabbi Eliezer* to support this custom. See Kanarfogel, *Peering*, 51. See in *Sefer ha-Manhig*, p. 607 about “*ḥaside Alemaniah*” as a reference to the *ḥaside Ashkenaz*.

the 3 days continuous fasting day and night was ruled as penance for the sexual intercourse with a Gentile woman or maidservant, the support being given from the Book of Esther (4,16), arguing, in a *midrashic* manner¹⁶⁰, that she fasted for her “sin”, because she delivered herself to a Gentile. She and the whole community fasted three days and nights before she entered the king’s chamber without being called.¹⁶¹

II.A.5. The Jurisdiction of Criminal Cases in the Jewish Communities of Germany after the Black Death and the Role of Penance in this System

In the life of Jewish communities of Germany after the Black Death the penance and especially its public form, played a special role. The ritualized public forms of penance, which will be described in the course of this study, served to solve social conflicts on all levels.¹⁶² Besides public rituals, the penitent had to perform private penances which were measured regularly by fasting days and periods. Penitentials of *ḥaside Ashkenaz* served as manuals for imposition of penances. The community – and many of its members – were involved in some way in the performance of most rituals related to penitence, therefore, the process of penance can be called a “social drama” in the terms of the anthropologist, Victor Turner’s definition.¹⁶³ The criminal or offender committed a transgression by which the “peace” of the society was disturbed and a “crisis” emerged. The community leaders, the court or rabbi imposed a penance which had public ritual aspects and in the course of which the penitent was humiliated. Moreover, he had to suffer other afflictions – physical, social, monetary – and in the end the social peace was re-established.¹⁶⁴

This type of penance functioned in the framework of the special system of the community organization and in the framework of its legal system in particular, in which the

¹⁶⁰ See bMeg. 15a: “Go, gather together al the Jews... which is not according to the custom. R. Abba said: It will not be [she said] according to the custom of every other day. Till now [I have associated with Ahasuerus] under compulsion, but now I will do so of my own will And if I perish, I perish. As I am lost to my father’s house so I shall be lost to thee’. The Epstein translation there mentions (n. 24): “[By submitting voluntarily to Ahasuerus she would be for ever forbidden to Mordeḥai who was her legitimate husband, according to the law which forbids a wife to her husband where she had relations of her own free will with another man]’. For the explanation that Esther was the legitimate wife of Mordeḥai, see ed. Epstein 78 n. 5. And see Megillah 13a.

¹⁶¹ In SHP, ST, RJH. See especially IIB2 and IIC4.

¹⁶² These cases will be analyzed in II.B.1–II.B.17.

¹⁶³ Turner’s theory of “social drama” for the rituals in Judaism was recently applied by M. Keil, “Gott, Gemeinde”. According to Turner’s theory, the “social drama” is a result of the conflict and crisis inherent in each society, which has four main phases: 1. breach (crisis emerges); 2. crisis (the crisis widens); 3. redressive action (public rituals which serve the purpose of reestablishing social peace); 4. reintegration (the change is legitimized).

¹⁶⁴ See the cases in II.B.1–II.B.17.

rabbi had a central role. He was the supreme authority overseeing the local legal system. In order to understand the role of the penance in this community, we had to outline the community organization and the legal system of the Jews in this period.

The existence of the European Jewish communities in Germany in the high and late Middle Ages was based on privileges accorded to them by the king or emperor – who called the Jews “*servi camerae*” (the servants of the royal treasury) and regarded them his property (the property of the king).¹⁶⁵ The Jewish community as a whole had the right of self-government, first of all to have a quasi-autonomous jurisdiction, the limits of which was negotiated from time to time by the representatives of the Jewish communities and the emperor, and for which they had to pay a certain tax, usually yearly, the sum of which was again negotiated, as a rule. Besides the regular taxes – which included the *judensteuer* or *concession* and the *golden penny* (*guldener opferpfennig*), a poll-tax – there were extraordinary taxes, imposed by rulers. On the other hand, the status of the Jewish communities depended also on their relationship to other authorities, besides the king – the nobility, citizenship and church –, and on the actual relationship between these authorities.¹⁶⁶

The community was lead generally by the *parnasim*, who formed the community council. Usually they collected the taxes. The tax collection was based on assessment made in

¹⁶⁵ About the importance and significance of the privileges of the Jews in Germany in the Middle Ages see Stobbe, *Die Juden in Deutschland*, 45f, who discusses the relationship between the king or emperor and landlords, town or city magistrates and bishoprics or archbishoprics. These authorities had the power to accord the Jews their privileges and the right for their protection (19ff). The four secular authorities – king, nobility, citizenry and church – allotted rights to the Jews according to their division of powers in the cities or towns where they dwelt. Stobbe discusses in detail five greater cities, Nürnberg, Regensburg, Augsburg, Köln and Mainz in this respect. The Jews, on the other hand, bought their rights to autonomy, to self-government and -legislation by the collective tax (and tolls) which they negotiated with the respective authorities, usually each year. Stobbe publishes the text of the main privileges at the end of his book. See also Barbeck, *Geschichte*, Aronius, *Regesten*; Toch, *Die Juden*.

¹⁶⁶ This is also the conclusion of Bell’s book, *Sacred Communities*, namely, that the status, leadership and relation to Gentile authorities (tax-paying) of the Jewish communities in Germany in the high and late Middle Ages was a result of a complex social development characterized by great differences between the rich and the poor, and struggles and unrest between social strata, characteristics shared with the Gentile society in which they lived, is. He argues, that the main reason for the special status of the Jews as tax payers was due to the fact that they were moneylenders by profession, a development which took place after the crusades. Until the 12th century, the European Jewry’s main profession was trading, a status which they lost after the Christians had begun taking over this field of business as a result of the Crusades and the expansion in the East. In the German towns and cities the guilds, which comprised the merchants and craftsmen, excluded all non-Christian members, and in this way the Jews were excluded from the trade of the Christian society. On the other hand, both the Christian and Jewish societies of the towns and cities were characterized by great social differences, which in the Jewish community lead to the situation that it was governed by a very small number of tax-payers. In 1396 in Augsburg for example, the percent of the taxpayers who owned at least 1000 fl was 2.7%, they controlled 48.9 % of the total disposable assets of the city. In 1492, 4.7 % controlled 80.9 %, and 22 people, that is 0.42 %, had control over 10000 fl and possessed over 30 % of the assets. On the other hand, the great differences between social classes within the Gentile society lead to the rebellions of the middle and lower classes and to the struggle for power between the old patricians and the new rich strata, beyond the existing struggles for authority and influence between king or emperor, nobility, citizenry and church, which caused uncertainty also for the status of the Jewish community. See also: Abrahams, *Jewish Life*, Berliner, *Aus dem Leben*; Parkes, *The Jews*.

two ways, either by individual declaration, which had to be confirmed by oath, or by the assessment of the collectors.

According to B. Rosensweig¹⁶⁷, the Jewish community was insistent that its members should litigate in Jewish courts and punished very severely those who summoned another Jew without his consent to a Gentile court, since it was well known that the Gentiles received bribes and distorted the law.¹⁶⁸ The Gentile authorities usually forbade the Jews to judge criminal cases¹⁶⁹, and theft and injury were regarded as grave criminal cases in the Gentile courts, theft being often punished by death. However, the Jews, despite this interdiction, judged criminal cases, not only theft, assault and battery, but also murder. The punishments of the Gentile authorities were more severe, containing mutilation, brand-marking, torture, imprisonment in severe conditions, and execution in a special manner for Jewish criminals.¹⁷⁰ The Jewish courts sometimes punished the offender severely, applying above all lashing in public, which took place as a rule in the synagogue, between the afternoon and the evening services. But they applied maiming very rarely¹⁷¹, and almost never death penalty, not even in the case of informers¹⁷². Fines were often imposed, also as commutations for lashes in case of rich offenders; removal of rights was also a punishment used by the Jewish courts. For law enforcement public denunciation and mostly the *herem* (greater excommunication) was used.¹⁷³

Despite the interdiction, the Jewish courts judged criminal cases, and this was one of their main concerns. Another one was the prevention of information and betrayal, and the regulation of tax assessments and negotiations.¹⁷⁴ Most of the enactments from the very beginning dealt with these two main fields of jurisdiction.

¹⁶⁷ Rosensweig, *Ashkenazic Jewry*, 81.

¹⁶⁸ About the prohibition of litigating in Gentile courts, enactment attributed to R. Gershom, and decreed on the synod of Troyes by R. Tam and his fellows, see the basic works of Assaf, קהילות אשכנז; Frank, בתי הדין, Zeitlin, "The Opposition". The prohibition of litigation in Gentile court has Talmudic precedents (bGit. 88b).

¹⁶⁹ Rosensweig, *Ashkenazic Jewry*, 83: "Cases which involved the area of criminal law, such as thefts and physical assaults, belonged officially to the civil authorities. Most privileges explicitly removed them from the competence of the Jewish courts".

¹⁷⁰ Called "Jewish execution", for example hanging in an inverse position, by the legs up-side-down; hanging between dogs etc. See Kisch, *The "Jewish execution"*.

¹⁷¹ Two cases are discussed in II.C.2.

¹⁷² This was not the case in Spain, where there were some cases in which informers were executed. There are a few exceptions in Germany, see II.B.16 and II.C.1.

¹⁷³ See Zimmer, *Harmony and Discord*; Rosensweig, *Ashkenazic Jewry*.

¹⁷⁴ These two concerns are well reflected in the collection of decisions NMM (in Weil, pp. 167–178). *Nimmuqe R. Menaḥem of Merseburg* contains *pesaqim* and extracts from *responsa* of his predecessors (Maharam, R. Ḥayim Paltiel, R. Ḥayim OZ, and many anonymous and lost *responsa* besides his own decisions). The extracts and decisions are all quoted or written without mentioning the names of the authors and with the anonymous names of the litigants (called always Ruben, Simon, Levi, Lea, Rachel etc.). Despite anonymity and the shortened way of quoting, the entire composition has a very neat structure, and the topics are reduced to a very few issues, from which the type and function of the work is clear. The subjects of NMM are as follows: 1. taxes

There were several kinds of courts. Lay courts – mainly in smaller localities, but also in greater towns and cities, like Regensburg, Worms, Frankfurt, and Ulm – were formed of the *parnasim* of the community, and they were recognized, for example in the privilege issued by Sigismund in 1421. They were disfavored by great scholars like R. J. Weil who warned R. Shapiro not to sit together with a lay court, because they were inclined to decide in contradiction with the views of the scholars, reflecting the standpoints of the business men and not of the men of the *halakhah*. There were also processing courts whose only task was to gather evidence and hearing of testimonies but not to render decisions. Their records were sent to a great rabbi who rendered a decision. The courts which rendered decisions were either courts of arbitration or permanent courts. The institution of courts of arbitration existed only in the German lands, and was not in use in Spain¹⁷⁵. In monetary-conflicts the two litigants chose each one a judge who decided on the case. If the case could not be resolved with two judges, they chose a third one, and if the three could not render a decision, either, another judge was named by the community council instead of the one chosen by the two judges, or the rabbi of the community was appointed as third judge. In the 15th century permanent courts did not exist in each community. However, the great cities, Nürnberg, Regensburg, Frankfurt, Prague, Neustadt, and Ulm had their own courts. In some cases the defendant was not willing to litigate in a certain court, like in the case of one of R. J. Weil's *responsa*, R. Jekuthiel of Breslau was not willing to go or even send his lawyer¹⁷⁶ to Breslau because the elders of the city were his enemies. According to Talmudic law, the defendant had the right to refuse to litigate in the court of the plaintiff, and to ask to be summoned instead in the “outstanding court” or a neutral court. But the plaintiff also had the right, in certain circumstances, to litigate in a court other than the defendant's home court. There were no courts of appeal, but the decisions of a court could be transferred to the outstanding authority of the time, who was the most prominent scholar¹⁷⁷. At the same time, these scholars had the power to judge in

– 49 paragraphs; 2. assault and battery – 9 paragraphs; 3. informing – 19 paragraphs; 4. curse, slander, and battery resulting in murder – 27 paragraphs. The two main categories are decisions regarding the community before the Gentiles (1. and 3.) and decisions of corporal or honor injury (2. and 4.). See also Agus: *Rabbi Meir*; Id.: *The Heroic Age*.

¹⁷⁵ Although in bSanhedrin it is the basic form for every court judging in monetary matters. See Zimmer, *Harmony and Discord*, chapter 5.

¹⁷⁶ The litigation with the aid of a lawyer or attorney began in the 15th century (see below). Formally this was firstly applied in cases when one of the litigants (regularly the plaintiff) dwelt far away from the place of the court of his opponent (as a rule the defendant), and could not appear in person, then he wrote an authorization and sent his proxy instead.

¹⁷⁷ The rabbis who have collections of written *responsa* – R. Mollin, R. Weil, R. Isserlein, R. Bruna, R. M. Minz, R. Colon, R. J. Mitz – were beyond any doubt considered as such authorities for appeal. But besides them, the renowned and respectful rabbis could serve as such appeal if justice was at stake. Sometimes the opinion of more rabbis was asked, especially in cases which stirred up scandal.

cases in which other scholars of lesser importance did not have the courage to assume the risk, because one of the litigants was an influential or rich man. Such was the case of Abraham Ezra, who had to repay the redemption of his wife and his grand-daughter to David Zehner, and R Shalom of Halle, being afraid of Abraham Ezra, refused to judge on the case. However, R. J. Weil had such a prestige that he had no fear to rebuke and threaten the rich man, his own relative, with excommunication in case of disobedience.

When one of the litigants was dissatisfied with the decision of the court, he had the right to suspend the daily prayer – a procedure called “*iqquv tefillah*” – until he compelled his litigant to appear in court. Another device was the “*iqqul*”, the retaining of the property or pledge of the litigant until he appeared in the court or obeyed the decision (although in some of the early enactments such a procedure was forbidden, it was applied in Germany in the late Middle Ages). Sometimes the rabbi sent his decision to other rabbis for notification, and sometimes he sought their opinion before making a decision. The use of lawyers as attorneys began in the 15th century when their work was rewarded by monetary payment.

In the legal system of the medieval Ashkenazi Jewish communities the courts, and especially the outstanding rabbis, played a central role. There was a need for a strong legal system, because the existence of the Jewish community depended on obedience to the law and loyalty to the community. It may well be that disobedience and betrayal to the Gentile authorities were the main reasons for the decline of the strong Jewish self-government at the end of the Middle Ages.¹⁷⁸

In this legal system the *teshuvah* played a special role in particular cases, e.g. in cases in which the legal system had no other solutions, as I will argue in the course of this study.¹⁷⁹ The role of the rabbi and of the courts in the process of penance had a decisive role, as I shall try to demonstrate it in the chapter about the institutions of the *teshuvah*.¹⁸⁰

¹⁷⁸ This is also E. Zimmer’s conclusion in his book *Harmony and Discord: the decline of the Jewish self-government in the course of the 15th century* was mainly due to the discord between the governing authorities of the Jewish communities and their membership (for example, through the denunciation and betrayal of the Jewish communities by their leaders) and the discord among the members of the leadership. This led to the dismantlement of internal integrity of the Jewish communities.

¹⁷⁹ See e.g. II.B.1.4.

¹⁸⁰ See II.D.2.

II.A.6. The Use of the Penitentials of Ḥaside Ashkenaz by the Rabbis in Criminal Jurisdiction and in Imposition of Penance after the Black Death in Germany

The rabbis in the 13–14th centuries used the penitentials of *ḥaside Ashkenaz* not (or: not only) for ascetic or mystic purposes¹⁸¹, but first of all in order to impose punishments and penances upon criminals or offenders who injured the norms of the community. According to Elbaum, penance was imposed in the three centuries following *ḥaside Ashkenaz* (until the end of the Middle Ages) on the basis of the penitentials of HA. This remained the custom even in the 16th century, despite Sephardic influences on the *halakhah*.¹⁸²

Even before the rabbis in the 14–15th centuries, R. Meir of Rothenburg quoted the Roqeah concerning an informer who caused the death of a fellow Jew¹⁸³; and there are *responsa* in manuscript Parma 86 from which it is clear that the decision of the rabbis (R. Hayim Or Zarua's, and R. Shabbatai b. Samuel's) was influenced by the penitential of the Roqeah.¹⁸⁴ In the 14–15th centuries the penitentials of R. Judah Ḥasid and R. Eleazar of Worms were in the hands of the rabbis R. J. Mollin, R. J. Weil, R. I. Bruna, R. Moses Minz, and R. I. Isserlein, and they were quoted in the penitential schedules imposed by them.

II.B. Transgressions

Categories of Sin

In Part II.B, the 17 categories of sins are discussed on the basis of a quantitative classification rather than a qualitative systematization. This is due to the fact that in the penitentials sins are also listed in this way (without classification). The separate discussion of the cases, and their respective penances by showing the systems of laws, punishments, penances behind each case corresponds to the method of analysis which is applied in this study. It is more appropriate than an artificial systematization of transgressions, which is not inherent in the penitentials.

The only differentiation in the penitentials is that grave (cardinal) sins are at the head of the list (more or less, not without exceptions). Fornication and adultery are generally first,

¹⁸¹ However, ascetic teachings and mystic doctrines had also influence on the rabbis in the 13–15th centuries, at least on some of them, e. g. on R. I. Isserlein, whose mystic and ascetic inclinations and customs under the influence of the writings of the *ḥaside Ashkenaz* are known to us from the book of his disciple, the *Leqet Yosher* of R. Joseph b. Moses.

¹⁸² Elbaum, *תשובת הלב*, 19ff.; Dan, *”יהודה החסיד*, chapters 10–13.

¹⁸³ Agus: *Rabbi Meir*; Id.: *The Heroic Age*, Elbaum Id., 19.

¹⁸⁴ See II.B.3.1.4., II.B.16, II.C.6.

because the four ways of penance (*teshuvah ha-ba'ah*, *teshuvat ha-gader*, *teshuvat ha-katuv*, *teshuvat ha-mishqal* etc.) are exemplified by penances for fornication and adultery.

If we look for a system of categories of sins (on the basis of the modes of atonement or teachings about atonement), we must realize that there is not one such system behind the penitential writings and compositions concerning *teshuvah* and behind the theories and doctrines of *teshuvah* in SHP and HT, but there are more systems¹⁸⁵.

First, there are the traditional systems. Most prominent of them are the categories of sins according to their punishments (sin and guilt offerings, flogging, extirpation, capital punishment). Another traditional system is the four categories of sins on the basis of the modes of atonement in the name of R. Ishmael (Yoma 86a). A third Talmudic system is the categories of cardinal sins, for which one must let himself be killed rather than transgress (A. Z. 18a, Sanh. 74b)¹⁸⁶.

A further traditional system is the Ten commandments (for example, concerning penance for perjury, in HTR allusion is made to the gravity of mentioning God's Name in vain from the Ten commandments).

Beyond these traditional systems, there are the special categories of atonement of *haside Ashkenaz*: namely, the four ways of *teshuvah*¹⁸⁷. From the four ways, the first two can only be applied alternatively (*teshuvat ha-gader* and *teshuvah ha-ba'ah*) and the second two alternatively or complementarily, but they are atonements and modes of penances theoretically appropriate for each type of transgression, regardless whether grave or light, against God or the fellow man etc.

There is a tight connection between penance and punishment in *teshuvat ha-katuv* which prescribes penances "equal" to the severity of punishments prescribed by the Torah. The term "equality" is a more or less subjective category in this context, but it maintains the connection with the punishment imposed by the Law, in opposition to *teshuvat ha-mishqal*,

¹⁸⁵ At the end of *Piety and Society* in App. I., I. Marcus outlines the "complementary structures of piety, sin and atonement", regarding the "correct will", the "demonstration of correct will" and "criteria of reward and punishment". This is a good and right system, appropriate to the description of the ideals of piety, the notion of sin and atonement among *haside Ashkenaz*, as a whole, but for the individual sins and atonements, no universal systematization works so perfectly. On the other hand, in the whole ideology of *haside Ashkenaz*, in SHP, and especially in the teaching about atonement (and sin) the doctrine of suffering played a much greater role than it has been suggested so far (as I shall try to demonstrate it at the beginning of part C).

¹⁸⁶ In the bYoma 86a, in R. Ishmael's teaching, sins are classified according to the way in which they can be atoned for. Behind this classification there is a categorization on the basis of the punishments of the crimes or transgressions committed, with the corresponding listings of sins of the *Mishna* which are liable to sin-, guilt sacrifice, flogging, exile, *karet*, and *mitat bet din*. About the idea of repentance in ancient Judaism: Bell, R. H.: "*Teshubah*"; Montefiore, "Rabbinic"; Arnold, "Repentance"; Pfann, "The Essene" Schatz, "Freedom";

¹⁸⁷ See above.

where this connection is not maintained, but the criterion for the imposition of penance is the “pain equal to the pleasure contained in the sin committed”.¹⁸⁸

II.B.1. Murder

In his study entitled “Homicide in the *responsa* literature”,¹⁸⁹ J. Bazak states that concerning the legal procedure in case of murder, one encounters at least four questions in the *responsa* literature.¹⁹⁰ If we want to include the main topic of the present chapter in his classification, we can connect it to the question of punishment and atonement for murder in the Middle Ages (Bazak’s 4.1 question). However, our approach is different.

What is important in Bazak’s approach to the question of homicide in the *responsa* is that the Jewish courts assumed the right to judge cases of murder and punish murderers despite the fact that according to Talmudic law, after the destruction of the Temple there were

¹⁸⁸ More about the principles of atonement in the teaching of *haside Ashkenaz* and in the imposition of *teshuvah* in medieval Jewish communities see the introduction to II.C. The categories of sins listed in HTR, MH and ST, with their respective atonement show a parallel for Christian penitential lists in many respects. The typical lists contain in both traditions murder, fornication and adultery, idolatry/apostasy/heresy/blasphemy as grave (mortal) sins, treason/information; plunder/arson; sins committed against the fellow man (injuries) – corporal (assault and battery) monetary (theft, robbery) and honor (cursing, slander) –; perjury, transgression of a vow; irreligious behavior, transgressions in eating and drinking etc. This in itself is not a proof of influence, because sins emerging in medieval society were similar in the communities of both religions to some extent, and the similar developments could be independent of each other. We must highlight that there is a relation between the categories of sins in HTR, MH, IT and those of three other rabbinic sources. First, the teaching about the four kinds of sins in the name of R. Ishmael in the bYoma 86a contains the idea of the differentiation between sins on the basis of the gravity of their punishments (from the death penalty, through *karet*, to flogging), and their atonement: cardinal (mortal sins, those punished by extirpation or capital punishment, which are to be atoned for through additional sufferings or mortifications) and grave but not mortal sins (the transgression of a negative commandment, those atoned for by the Day of Atonement). This idea is also contained in the categorization of sins of the penitentials, the atonement system of which requires bodily tortures for mortal sins, long, more year-periods of penance; sins, like theft or cursing the fellow Jew, are to be atoned for through lighter fasts, with shorter, one-year or forty day-periods of penance. Second, the teaching concerning mortal sins in the bTalmud, in the case of which one has to die and is not allowed to transgress, connected to the doctrine of Qiddush ha-Shem – idolatry, fornication and murder – in Sanhedrin 74a–b, differentiates also between these two main categories. Third, related to particular sins listed in HTR, MH and ST, there are clear parallels between the penitentials and the enactments of the communities: for example, the prohibition of speaking in the synagogue during prayer is contained both in the enactments (TRG, TRT, *TSh*) and in a separate paragraph in the penitentials. Some paragraphs (perjury, theft, informing in the Gentile court, illegal acts by contempt of court, disobedience, illegal action in the legal process), are construed in the penitentials in a way which shows clear textual influence in the sources by the similarity in wording. (See: Marcus *Piety*, 128; he thinks that in the case of laws regarding denunciation, the enactments were influenced by the penitential of Eleazar). The connection between the enactments and the *sifre* or *hibbure teshuvah* will be highlighted in the analysis. For the relation of the notion of sin in the teaching of *haside Ashkenaz* to that of the traditional hierarchy of sanctions and traditional classification of *mizvot*, see Soloveitchik, “Three Themes”, p. 323. He maintains that “Pietists insisted that the official penalties were a necessary convention only and threw no light on the intrinsic worth of any deed”.

¹⁸⁹ Bazak, הריגת נפשות .

¹⁹⁰ See Bazak’s arguments in App.B.1 (See on judging criminal cases after the destruction of the Temple: Aptowitz: “Observations”).

no courts that could judge murder. Moreover, courts fought criminality severely, and even made exceptions from Talmudic law, judging stringently; for example, insufficient testimony was accepted. The courts exercised this right above all on the basis of the principle of “making a fence”. Making reference to this principle, enactments were issued regarding criminality and enforced by ban and other punishments. What is not quite acceptable for our discussion in his view is the place of religious values in the punishment. According to Bazak’s view (4.1), the problem of making atonement for murder does not belong to the legal field but to the religious one. As we will try to demonstrate in the course of this dissertation, the separation of religious and legal fields in medieval Jewish communities is not quite adequate. Religious rituals and processes of penance played important role in making peace between members and community; *teshuvah* concerned not only the feelings of the offender, but had consequences on his and the community’s life.

II.B.1.1. *Sefer Ḥasidim Parma* (SHP)

II.B.1.1.1. The Changed Meaning of “Exile” for Murder in SHP

The punishment prescribed for inadvertent homicide (in what follows manslaughter) in the Talmudic tractate *Makkot*, chapter two (*’Elu hen ha-golin*) is exile into one of the cities of refuge.¹⁹¹ During the period of the Middle Ages discussed here, exile was understood as banishment from the place where the offender lived to another place, or more often from one place to another, changing the place continuously, or pilgrimage to *Erez Israel*. The main purpose was not to find refuge from the blood redeemer, but to make atonement. On the other hand, it seems that the sharp distinction of the Bible, the Mishna and the Talmud between murder, which was punished by death in the *Bet Din* of twenty three judges, and manslaughter, for which exile was prescribed, was blurred concerning punishment in the Middle Ages. Exile – in this new form – was the penance for those who committed manslaughter or murder and wanted to atone for their sins.

¹⁹¹ Of the six cities of refuge where the murderer who sinned involuntarily could flee and stay until the death of the high priest: Num. 35, 11–32, Deut. 19,1 ff., Deut. 4, 41–43, Josh. 20. Homicide (*shefikhut damim*) is the gravest sin in the Torah (Gen. 4,7; Ex. 20,13); but only murder (= voluntary homicide) is punished with death (Ex. 21,12, 14; Lev. 24,17, 21; Num. 35,16–21; Deut. 19,11); as opposed to manslaughter (= involuntary homicide, Ex. 21,13; Num. 35,22,23; Deut. 19,4–6). After the returning from the Babylonian exile, the number of the cities of refuge was probably extended to the other Levitical cities (with these 6 altogether 48). The biblical regulations concerning the cities of refuge were extended in the tannaitic period. These were theoretical regulations or descriptions about the functioning of the cities of refuge between 100 BCE and 30 CE from R. Eliezer b. Jacob (Tosef. Mak. 3,[2]5, bMak. 10a) and from the school of R. Akivah (mMak. 2,5). See Jewish Encyclopedia „Cities of Refuge”.

We can not know precisely when and how exile changed its meaning.¹⁹² In our sources, however, we can find interesting interpretations of contradictions between the original meaning of exile (biblical, Mishnaic) and the contemporary practice of exile. Scriptural verses are explained and applied to exile for murder in SH's times, which are not connected to the cities of refuge at all, but to the banishment of Cain and Abshalom. Thus we find it in a *derashah* of SH, which attempts to give reasons for the duration of exile – 5 years – practiced in the time of the author, on the basis of explanations from the numerical value of scriptural verses.¹⁹³

The verses are quoted to support the contemporary practice, which only is mentioned in the last words, “as in these days”. They have nothing to do with the cities of refuge and are not quoted to give reasons for guarding the murderer but in order that the cursed one might be banished from his original place. The idea of guarding the murderer is mentioned indirectly, through the example of Cain. Whether this meaning, “being cursed”, is also meant for “these days”, is not detailed.

The meaning of banishment as atonement for the sin of murder is clearer when banishment takes the form of pilgrimage. One example is to be found in SHP about a murderer who went to pilgrimage to the Mount of Olives in Jerusalem and there, during the circling procession on *Sukkoth*, *Hoshanah Rabbah*, was tortured severely for the sake of atonement¹⁹⁴. The notion of atonement connected to exile is intensified by two parameters related to banishment: the very long journey to the *Erez Israel* and the tortures received there. Although the historical authenticity of the story is doubtful, the fact that in the second part of the story the figure of the penitent murderer is connected to a ritual at the holy place during *Sukkoth* and to the person of Rav Hai, is significant, because both the ritual of the circling on *Sukkoth* on the Mount of Olives before 1070 and the person of Rav Hai Gaon are attested in reliable historical sources. Further, we have a historically authentic testimony about a penitent who went to pilgrimage to the Mount of Olives during *Sukkoth* for the sake of atonement¹⁹⁵.

Another paragraph in SH sheds light on the real circumstances in which exile for murder was performed in European Jewish communities.¹⁹⁶ From some sources it seems that

¹⁹² About exile see also II.C.7.

¹⁹³ SHP 175. See App.

¹⁹⁴ SHP 630, second part. See detailed analysis of the paragraph in II.C.8.

¹⁹⁵ See II.C.8 in detail. See E. Reiner עלייה Because the invasion of the Turks, the *yeshivah* of Jerusalem was exiled after 1070, and the rituals ceased. The case was also discussed by Dan: *”יהודה החסידי תורת התשובה”*.

¹⁹⁶ SHP 1209, for example, tells a story which is not connected to murder, but to the way of life of Jewish beggars in the European Middle Ages: it is about two partners who because of poverty went from community to community.

the exiled person went from one Jewish community to another, entered synagogues etc.¹⁹⁷ In one of the sources, the murderer apparently was afraid to go among the Gentiles. One way or the other, in these times in the European lands a Jew could not avoid staying in a place where only Gentiles lived, if he decided – or was – to leave his community. One of the cases relates to a murderer who did not want to mingle with the Gentiles, and therefore preferred to take upon himself additional pains and afflictions rather than go into exile.¹⁹⁸

There is an interesting explanation that connects the idea of guarding the murderer to the original meaning of exile found in the Bible. But the original meaning of protection as referring to the murderer himself is interpreted for the children of the murderer.¹⁹⁹

That the prevailing interpretation of exile has nothing to do with the original idea of exile is also clear from a ruling which forbids anyone to give refuge to the murderer, whether Jew or Gentile. The prohibition is supported by the Talmudic example of R. Tarfon in the Niddah.²⁰⁰ In a SHP paragraph, there is also a reinterpretation and generalization of the “murderer” for “bad ones, guilty ones”:

“[...] do not receive the murderer if he flees to you, whether Jew or Gentile [...]”²⁰¹

II.B.1.1.2. *Lifnim mi-Shurat ha-Din* in the Principle of Atonement for Murder in SHP

The second theme related to murder in SH is a specific interpretation of the sin of murder sin typical of the conception of SH. The murderer is guilty not only for taking human life but also for the pain caused to the relatives and those whom the murdered person loved, so he must atone for that, too. It is clear that this conception is not to be found in the strict sense of the law and the earthly punishment, but it is a subjective dimension of the interpretation of sin.²⁰²

II.B.1.1.3. Evil Inclination for Killing, Avoiding Murder in SHP

The subjective dimension of sin and penance typical of the conception of SH is also to be found in a third theme, in the intention to kill/evil inclination for murder which in this view is judged as gravely as the act committed. Again, this is only to be thought within the frame of

¹⁹⁷ Ms. BL 477, see further.

¹⁹⁸ SHP 176. See App. for translation.

¹⁹⁹ SHP 177. See App. for translation.

²⁰⁰ Nid. 61a about the Galileans who sought refuge at R. Tarfon and he refused to give it to them. Further, on the exile as mode of penance see II.C.7. See about SHP 181 as an interpretation for the “bad ones” Soloveitchik, “Three Themes”, p. 338 and n. 90 there.

²⁰¹ SHP 181.

²⁰² SHP 131. See App. for translation.

haside Ashkenaz'-conception of sin and atonement, and not in a legal framework of punishments. In case of murder and injury it is the inclination what counts in SHP. SHP 1673 instructs, in two parts, on the principle that the intention itself is more condemnable than the actual act, both in the case of merits and transgressions. The first part tells a story about a man who has wanted to redeem captives with much money, but when he has arrived at the appointed place, it has turned out that someone else has already redeemed them without any effort or money. The conclusion is that the merit of the one who has intended to redeem the captives with much effort is greater. Similarly, the second part teaches this principle concerning transgressions.²⁰³

This view is also clear from the notion of evil inclination for murder in the exemplum of the three men who have had evil inclinations for stealing, murder, and fornication, but have withheld themselves in order to get reward in the world to come. They have gone to a sage and confessed that they have put themselves to the trial willingly. He has sent them to the head of the academy who has found them guilty, (his verdict being: "almost willingly"), and has prescribed them penances equal to the days they have sinned²⁰⁴. We can interpret this subjective conception of sin and atonement, and the teaching about evil inclination as "*lifnim mi-shurat ha-din*". This principle – known from the rabbinical literature – is also to be found in other rulings connected to murder or requirements which are not strictly prescribed by the law. The *ger* must make atonement if he commits murder.²⁰⁵ In another exemplum a physician is ordered to heal his enemies, as an extension of the commandment "Do not kill!".²⁰⁶ The physician must heal the daughter of his enemy without requiring the money his enemy owes him. And in order not to be suspected of murder if she dies, the physician tells a sage [his friend] about the cure and asks him to tell the father about it. In this way, if the girl gets well, the sage will say to the father that the physician deserves their gratitude.

II.B.1.1.4. Penance for Infanticide, Murderous Women in SHP

The fourth question is a specific SH theme: women suspected of murdering their children. Superstitious beliefs are in the background of stories about women who have killed

²⁰³ SHP 1673. See App. for translation.

²⁰⁴ SHP 52–53. See the analysis of the story in Alexander, *The Pious Sinner*, 27, 30, "The Tale of the Three Confessors".

²⁰⁵ SHP 215.

²⁰⁶ SHP 178.

their children by magic, namely, some women possessed magic powers by which they could cause disaster²⁰⁷.

II.B.1.2. *Hilkhot Teshuvah* and Related Schedules of Penance for Murder

II.B.1.2.1. *Hilkhot Teshuva*

In the Middle Ages, the authoritative *halakhic* work was HT of R. Eleazar of Worms, in which the following penance is prescribed for murder.²⁰⁸

The four components of penance, which also point to the possible sources, are the following:

(1) three years exile (possible source: mMak. 2,1–8, with the changed meaning of exile, as explained above); in addition: public flogging (source: mMak. ch. 1) and confession in each town (mMak 2,8);

(2) The signs for the status of the penitent in these three years of exile are similar to those of the mourner and *menuddeh*: prohibition of shaving, washing; going barefoot²⁰⁹ (possible source: bMQ 15a–b); in addition he shall fast and confess every day (source: private fast in Ned. and Yoma 86a for confession).

(3) In the fourth year, he shall fast on each MT (like community and individual fasts for other purposes)²¹⁰.

(4) Public humiliation: he shall endure mockery and not answer; he shall lie down at the threshold of the synagogue when the people are coming out; he shall tie his hands with a chain around his neck. (medieval developments)²¹¹.

In HTRB Ms. Jer. 621 fol. 22a, there is a gloss at this place (*):

“But if he has killed²¹², he must – according to R. Tam’s decision – receive flogging each morning and each evening until Yom Kippur, for twelve months after the death of the killed person²¹³, until the light²¹⁴ of the dead one is forgotten in the heart. [...]”

²⁰⁷ A related superstitious view is the *qatlanit* – the woman whose two husbands have died has been forbidden to marry a third time. See: Grossman, *Pious and rebellious*, 276; he quotes the Talmudic discussion about the prohibition against marrying a *qatlanit* (bYev. 64b); he states that the phenomenon of the *qatlanit* was more widespread in the Middle Ages, than in modern times, and influenced the image of women. During the 14th century the violence in Ashkenaz and the plague were a stimulus for ignoring the prohibition in order to ease the remarrying of the *qatlanit*. Also: Baumgarten, *Mothers and Children*. SHP 172, 173, 1287. For translation, see App. II.B.1. A related story is about a woman who has caused a baby to cry by performing magic, but she has not killed him, in SHP 174. For translation, see App. II.B.1.

²⁰⁸ HTR 23.

²⁰⁹ For the signs of the penitent murderer, see in the C10 more in detail.

²¹⁰ Like the community (Taanit 18a–19a) and individual fasts (Ned. 1. chapter; *Siddur Rashi* No. 541; Kol Bo No. 61 etc.).

²¹¹ Probably Christian influence, because according to the Christian penitentials, the exiled murderer with his hands tied around the neck was a typical requirement in German lands (see part III.B1)

²¹² Maybe the correct version would be: “If he has killed unintentionally”.

It appears that this is a later addition, but we do not know from which time. Probably the glossator distinguished between intentional and unintentional murder, and if so – namely that in the beginning he meant to add a ruling about unintentional murder, and in the course of the addition, he gave also rulings concerning intentional murder – the following details were added: (1) for one year (or in the first year until YK) he must receive flogging twice a day. In the original version of HT there are three years in which he must receive flogging in the synagogue and fast each day, but it is not stated that he must receive flogging twice a day. It seems that in this version of the addition flogging means private/secret flogging, to which in the later developments always private confession is added. The original version is public flogging in the synagogue. (2) We encounter here the ruling which we read in SHP 176, viz. that the murderer must support the little children of the killed person. (3) If he has committed the murder willingly, the punishment is ten times severer. (4) The punishment for those who mock the penitent is excommunication.²¹⁵

A further addition is in DT to the place marked (**gloss):

“and he must tie iron rings around his waist”

This ruling is also to be found in SHP 176 quoted above, and maybe both glosses have been added on the basis of SHP. It can also be conceived the reverse order, but it is not probable – namely that SHP 176 is a later addition on the basis of two versions of HT, Ms. Jer. 621 and DT.

II.B.1.2.2. Ms. London British Library Add. 27128 (= Cat. Margoliouth 477)

In the manuscript Ms. London British Library Add. 27128 (= Cat. Margoliouth No. 477 fols.164a–165a²¹⁶, there are 7 paragraphs which contain *responsa* and enactments of the Geonim, and Taqqanot of “*rishonim*” in connection with punishments meted out by the *bet din* after the sealing of the Talmud: punishments and schedules of penance for the murderer,

²¹³ There is apparently an error in the manuscript; we do not know which the correct version is: whether he shall receive flogging twice a day, only until Yom Kippur that year in which he has killed, or a whole year – the year of the mourning of children. There are reasons for both versions; in the first version, after Yom Kippur the sins will be pardoned to all the community, and to him as well. For the decision quoted in the name of R. Tam we have no other sources, and it is probable that either it is an error in the transmission or a false attribution by someone to R. Tam.

²¹⁴ The remembrance.

²¹⁵ As we find it in the enactments (TRT, TSh) decreed under threat of *herem*: it is prohibited to shame the penitent, and so is it in NMM.

²¹⁶ The manuscript is written in an Ashkenazi script, from the 14th century. It has been published by Hershler, “תשובות גאונים וקדמונים בדיני נפשות בזמן הזה”

the laws of flogging and excommunication. Nos. 1, 6 and 7 are “*sidre teshuvah*” for murder, which resemble HT.

The beginning of paragraph No. 1 is identical with a Geonic responsum quoted in OZ I. No. 112 in the name R. Sherira Gaon²¹⁷: the murderer can not be punished by the *bet din* in the time of the Geonim, but he can be excommunicated, which means that he loses all his rights as a member of the Jewish community, and even after his death he will remain excommunicated. The second part of paragraph No. 1 is probably a later addition, and it does not belong to the original Geonic resp.²¹⁸

The addition, viz. the “*sefer teshuvah*” rules, that if he repents, the murderer must undergo a process of penance that lasts 3 months and 5 years altogether. This schedule of penance is, according to this source, “an enactment of the ancestors and a tradition of the Geonim”. The penance of the murderer is exile. First, he must go to the grave of the killed person barefoot, and ask for forgiveness, then shave off his beard and hair.²¹⁹ Both in the first 3 months and in the following 5 years, he must receive public flogging in the synagogue on each Monday and Thursday. In the first 3 months, he must fast daily, and afterwards, in the following 5 years of his exile, only on Monday and Thursday. If he does not repent, he shall not be buried in a Jewish cemetery, and his coffin must be stoned. If he dies during the time of the penance, he must be buried in a Jewish cemetery.

²¹⁷ Assaf (דענישך) doubts that this is a *responsum* of R. Sherira's and thinks that it is the *responsum* of R. Natronai, the same as in Tur HM 425, *Sha'are Zedek* 4.7.39.

²¹⁸ This is also Prof. Robert Brody's opinion, whom I have asked about the problem. He maintains that the schedule of penance in the first paragraph of this manuscript is a later addition. This view differs from M. Hershler's, the editor of the manuscript. I have accepted the view of Prof. Brody, since no other Geonic sources mention the term “*sefer teshuvah*”, and it is not probable that this single medieval manuscript has preserved a Geonic source. It is more likely that the additions were made during the development of the rules of penance for murder, in medieval times, by compilation of different sources. However, we have no decisive proof for dating the “*sefer teshuvah*” in No. 1 or 6.

²¹⁹ We can learn about a precedent from the Bible 2Sam. 10,4. In the *responsa* of the Geonim, shaving one's hair is an addition to flogging; first we find it in the name of R. Yehudai Gaon (8th c., OZ III B.K. 329, 347): “He who injures his fellow, can not be exempted completely, but he must be flogged and shaved, and he must fast for a month, in order not to be a hired transgressor. [...]”. In the *responsa* of Rav Natronai Gaon (9th c.) we find flogging, *niddui* and shaving the hair of a Jew who has been caught fornicating with his maidservant. (*Sha'are Zedek*, III,6,13; Assaf p. 46). At the same time we find a similar decision in South Italy (*Toratan shel Rishonim*, I.29; II.18; *Halakhot Kezuvot*, 123): “If a man and a woman confess that they have fornicated with each other, and one witness testifies the same thing, then the woman must be divorced from her husband by *get* and they both must receive *makkat mardut*, and their hair must be shaved for the sake of humiliation. In the same source, we find (*Toratan shel Rishonim*, I.32; II.20; *Halakhot Kezuvot*, 137): “If a man has voluntarily desecrated the Sabbath, he must be flogged and shaved.” Kirschenbaum (ענישי גרף) remarks that Saul Lieberman has found, in a late *midrash*, a precedent for shaving the hair of a woman to put her to shame. The source is in the early text versions of the *Pirke de-Rabbi Eliezer*. (S. Lieberman, *Texts and Studies*, 53). Kirschenbaum also remarks that there is a scholarly opinion asserting that the shaving of the beard is an Arabic influence, but he does not accept this view, because in the 9th century in Italy and in the eastern part of the Byzantine Empire, Caesar Theofolis punished both light and grave transgressions with shaving the beard.

The 6th paragraph is a *pesaq* of the rabbis of Rome for murder. One who can not fulfill what is written in the enactment of the Geonim²²⁰ must be banished from place to place for two years; he must not stay in the same community more than eight days, unless he is compelled to do so; he must not receive from any community more than he needs; for two years he must fast every day; on each Monday and Thursday he must be publicly flogged in the synagogue; he must not eat meat except on the Sabbath and on holidays; he must not drink wine and beer, or any intoxicating drinks, except during *Qiddush* and *Havdalah*. In the first week, when he arrives home, he must go to the grave of the murdered person with two or three men, must lie down on the grave, confess his sin and ask for forgiveness from the dead person. He must do so during the week twice a day. Then he must marry his fiancé, after which he cannot be put to shame. In the following 8 years, he must fast on every Monday and Thursday; in the evenings he must receive flogging; he must give the poor money, as much as he can afford. Every year he must go 8 times into exile for 30 days, and during that time he must not stay in one community more than 3 days. When he leaves and returns, he must prostrate himself before the grave of the murdered person, and do as written above. In exile, he must not eat meat and drink wine; if he dies in exile, he must be buried in a Jewish grave. After 8 years, he must be *kasher* to all things, like other Jews.

The 7th paragraph is a *pesaq* of R. Ephraim of Regensburg²²¹ regarding the murderer, which prescribes exile for three years and prohibition to eat meat and drink wine, except on the Sabbath and on holidays; also public flogging in the synagogue during the morning and evening prayer; lying on the ground for the sake of self-mortification; if he is on the way, he may fast only on Mondays and Thursdays; he must not take part in rejoicings; he may wash himself only twice a year; he may wash his clothes only on Pesach and Yom Kippur; he must not shave off his hair; if he goes to a place where he can take off his shackles on the Sabbath eve and put them on again the night following the Sabbath, it is acceptable, if he can not, he may stay with them on.

II.B.1.3. Responsa

In the *responsa* literature of medieval Ashkenaz there are many cases of voluntary murder, some of which are connected to the penance prescribed for the offender.²²² In some of

²²⁰ Reference to No. in the same manuscript, according to M. Hershler, the editor of the manuscript.

²²¹ The disciple of R. Tam. The *teshuvah* is similar to that of R. Eleazar of Worms.

²²² Other cases of murder – most of them in connection with testimony, among them some related to the case of ‘*aguna*, viz. permitting the wife to marry –: R. I. Bruna Nos 53, 54, 55, 57, 58, 60, 116, 118, 119; R. I. Isserlein, PuK Nos. 161, etc.

them penance is just mentioned, in others it is described with some details, and in one of them a whole schedule of penance is given.²²³

II.B.1.3.1. Penance for Infanticide

In the Or Zarua I.112, R. Isaac b. Moses is asked about a case of a *mohel* who has circumcised a child. The child has died, and the question asked by R. Jacob bar Isaac is whether this man, who has unintentionally killed a soul, can be a prayer leader. The answer is a detailed and clear analysis of sin and atonement for murder, highlighting important principles.²²⁴ The respondent discusses the following questions:

(1) Whether the father of the child can forbid the community to pray with the circumciser. The answer is negative.²²⁵

(2) What will the offender's status be if he repents? Answer: Immediately after confessing his sin, he is considered a perfectly righteous man.²²⁶

(3) Whether he must ritually immerse. Answer: All penitents must ritually immerse²²⁷, but omitting ritual immersion can not make repentance invalid.

(4) Whether the offender must do penance. Answer: He must do penance through bodily torture²²⁸.

(5) Whether his²²⁹ exile can be considered a proper exile, since he has stayed in one place and has worked there.²³⁰ Yes, it can; firstly, because exile is to be understood as banishment from home, and not necessarily going from one place to another; secondly, because according to the Bible, working for one's sustenance is allowed.²³¹ The main idea

²²³ Bruna 266.

²²⁴ See about the *responsum* also: Marcus, *Piety* 126–7.

²²⁵ To support his own view, the author quotes R. Sherirah Gaon's *responsum*: according to this, "in these days" the community does not have the power to do anything to the murderer – to kill him, or flog and exile him – only to prevent the members from praying and mingling with him; and he is legally disqualified to take an oath and testify. The author adds to these words of the Gaon that it does not make any difference whether he has killed voluntarily or inadvertently, this is the law, if he does not repent.

²²⁶ Proofs are brought from the Talmud for the immediate readmission; especially in the case of Matatiah (the circumciser), who once was exiled for his sin and did penance: he must be readmitted.

²²⁷ This decision is in the name of his teacher, R. Simḥa of Speyer from his lost halakhic work, *Seder Olam*.

²²⁸ Which could be fasting and flogging.

²²⁹ The man who has circumcised the child and the child died is called Matatiah.

²³⁰ From the answer of R. Isaac b. Moses we can understand that he has fulfilled the penance of exile, and he has been banished to another place and has worked there. The question of the rabbi who has asked R. Isaac b. Moses is in connection with the exile – as we can understand from the answer – whether this can be considered a proper exile (i. e. whether this kind of exile atones).

²³¹ The word "living" in Deut. 4,42 is interpreted that he may earn his livelihood by working.

of exile is that the banished person lets the people know that he is a murderer, and because of that he must leave his home.²³²

(6) Whether the offender can be a prayer leader. As soon as he is considered a perfectly righteous man, he can be.²³³

NMM decides on a similar case: a *kohen* has circumcised a child and the child has died. The question is whether he is allowed to raise his hands and say the priestly blessing. The answer is affirmative, because his intention has been to perform a *mizvah*. Since the circumcision has not simply been an involuntary act, but also a duty, it seems that he has been exempted from performing any penance.

In the case of a mother who has found her baby dead in the bed, R. Hayyim Paltiel arrives at the conclusion that the woman's conduct should be regarded as an unintentional murder close to intentional.²³⁴ The *responsum* which quotes the case, namely R. Mollin's to R. Samuel, contains also an addition of R. Samuel's disciple claiming that R. Samuel has learned from R. Judah Kaz that such cases should be treated stringently. The question is why have the rabbis been strict with the mothers? Have the mothers killed their children intentionally for some reasons, or it is more likely that this was some kind of defense against the careless and inadvertent treatment of children in the Middle Ages? As we have seen it in SHP, women were suspected of performing magic and killing children. Was that true? It is possible that since this attitude of the mothers to their little children was rather difficult to control from the outside – either it was a case of inadvertent treatment or carelessness –, it was reasonable for the rabbis to be stern in their decisions in order to “make a fence”. The penance for these mothers was one year of fasting on Mondays and Thursdays, or an equal number of fasts for a longer period of time.

NMM contains a lenient decision in a case of deliberate infanticide by a mother. The reason for leniency was that the father of the child was a Gentile, and in the decision her act was explained by the decisor as a kind of “fighting idolatry”. However, since in the case of the woman there was no coercion either into fornication or killing, it was not to be considered as *Qiddush ha-Shem*.

²³² Deut. 19,4. As shown above, in medieval times, exile for murder was wandering from place to place, living mostly on charity; and R. Isaac b. Moses defends the classical explanation of exile against its medieval form. See: Bruna 265–6, NMM.

²³³ Other explanations and supports for his opinion are brought from the Talmud – if the *kohen*, in a similar case, is accepted to present the sacrifice, the prayer leader may also be allowed to pray for the community etc. The position of the prayer leader was a prominent status at that time, and it could be lost easily; for example, in consequence of a false accusation of fornication. See II.B.6.

²³⁴ Ms. Ox. 784, fols. 27b–28a, incomplete form in R. Mollin 45. For this type of case, see also: Urbach, ״על גרימת מוות בשגגה״; Baumgarten: *Mothers*.

II.B.1.3.2. Penance for *Qiddush ha-Shem* of Family Members

There is a case of *Qiddush ha-Shem* in an answer of Maharam of Rothenburg to a man who has slaughtered his wife and children in a time of persecution. As S. Goldin explains it²³⁵, the motivation for killing the children in a time of persecution is to be explained by the fear that the children may be converted and brought up as Christians. Consequently, the killing of the family members falls into the same category as suicide in times of persecution.

In this context we must explain the *responsum* of Maharam of Rothenburg to the man from Koblenz. In the year 1265, during persecution, the man slaughtered his wife and four children, while he himself escaped death. The question was whether he had to atone for his deed?²³⁶. The answer was that he did not have to make atonement, because his act fell into the category of *Qiddush ha-Shem*.

There is an example to the contrary in a gloss in *Orhot Hayyim*.²³⁷ *Semaq* of Zürich I.²³⁸ quotes an argument attributed to Ra'aviah.

In the case of a man who has sacrificed his family members in a time of persecution, and then has received the punishment of blinding himself, NMM arrives at the decision that the penance imposed has been an adequate one, and that the mockers must be excommunicated.

Qiddush ha-Shem, however, can never be classified either into the category of involuntary sins or into the category of regular voluntary sins. In medieval Ashkenaz, the penance for *Qiddush ha-Shem* was performed without any coercion of earthly courts, rabbis, and authorities.

II.B.1.3.3. Penance for Manslaughter (Involuntary Homicide) and for Indirect Involvement in Murder (Voluntary Homicide)

Clear involuntary and indirect involvement in the death of a messenger are judged by R. Weil in an answer to his friend, R. Yequiel. The messenger of R. Yequiel, R. Ezra has been murdered, and for the indirect involvement of R. Yequiel in the death of his messenger,

²³⁵ Goldin. "פן יבואו הערלים."

²³⁶ Ed. Berlin 1891, 346–347. Ms. ox. 678 fol. 249b on the margins. I. Habermann: *גזירות*, 179–80. Salfeld: *Martyrologum*, 15. ("On Nissan 15, 1265... ", in Koblenz). S. Goldin: "פן יבואו הערלים". S. Goldin also mentions that in the *Memorbuch* of the community of Koblenz we can read about three families, two men and a woman (*Hasida*) that they sacrificed themselves. One of the families was "R. Abraham bar Moses's wife and children who had been slaughtered".

²³⁷ Berlin 1902, II. 26–27, quoted in H. Soloveitchik, "Halakhah", 102, 104. See App. II.B.1. for quotation.

²³⁸ Jerusalem 1973, no. 6 pp. 57–58, by Moses of Zürich. See App. II.B.1.

R. Weil has recommended him self-mortification, 40 days of fasting, and also to support the little children of the murdered person.²³⁹

II.B.1.3.4. Penance for Voluntary, Planned Murder

In Ms. Parma 86 there are two cases of deliberate murder, judged by two contemporary rabbis: R. Ḥayyim b. Isaac Or Zarua and R. Shabbatai b. Samuel²⁴⁰. In both cases, despite lack of evidence, the suspects have been condemned. The court of justice that has turned to the two rabbis has been empowered by two respondents to excommunicate or disqualify the murderers, to punish them with flogging and detainment – in the latter *responsum* with the restriction: “until they mend their ways”. In the second case there has been evidence for threatening the victim before the act. The murder has been committed in a field where nobody has been present except the victim, the suspect and the Gentile slave of the suspect. Therefore, no matter whether the suspect himself has committed the crime, or he has just ordered his servant to commit it, he has been found guilty. The *Roqeah* is quoted regarding the law of the murder, and at the end of the *responsum*, excommunication and other punishments are to be imposed on the offender.²⁴¹

It seems from these two *responsa* that in case of deliberate murder the court has been empowered not only to excommunicate but also to punish with full force, even if there has been insufficient evidence. On the other hand, severe punishments have served to “subdue” the heart of the criminal, in the hope that he will “return quietly”. This means that even if the very process of condemnation, excommunication, and punishment can not be called “penance”, the ultimate aim of all the chastisements has been to attain contrition and repentance.

II.B.1.3.5. Penance for Assault and Battery Resulting in Murder

In the next four examples murder has originated in assault and battery. The decisions of the rabbis concerning murderers are: (1) penance; (2) excommunication; (3) penance which is, in fact, a kind of punishment; or (4) punishment which in its content or originally is penance.

²³⁹ Weil 125.

²⁴⁰ Ms. Parma 86 Nos. 189 and 190.

²⁴¹ For the adaptation of penance to murder by the *Roqeah* for the informer who has caused death by his denunciation as described in the *responsa* of R. Meir of Rothenburg, see Maharam Prague 485 and TshM Neziqim 14, see II.B.16.

In the first example, according to a decision of NMM, a man has beaten his pregnant wife due to which she has died on that very day. The judgment has been that the man has to be flogged “without mercy’, shaved and exiled.

The second example²⁴² is a case of assault and battery between two groups resulting in the murder of a member of the party which has started the fight. The attacked party has resorted to the aid of the Gentiles, and the actual murderer has been an apostate Jew. Hayyim b. Isaac Or Zarua writes his *responsum* to the relatives of the victim, called R. Shalom, and their opposites, R. Moses and his relatives, to the place in which R. Hayyim’s teacher, R. Shabbatai b. Samuel, has been the rabbi, and has had a *bet din*. Penance does not play an explicit role here, but it is very important for understanding the process of penance in case of murder, in three points (these are the parts of the decision relevant to our discussion):

(1) The decision about complaining to the Gentiles during an assault and battery is exemption for the man or party who has been in danger of death. The exemption is decided on the basis of the special situation, which is called the “hour of wrath” (“*sha’at ha-za’am*”).²⁴³

(2) The condemnation of the murderer as evil-doer, and the proclamation of this fact in all the communities in the region.

(3) The party who has made the complaint to the Gentiles – R. Moses and his relatives – is not guilty for the reasons named in point (1). But the community or court can not proclaim that those who mock R. Moses and his relatives and slander them are to be excommunicated, because that might become a stumbling block. They or the harmed party might turn to the Gentiles, and in this way the community would be exposed to danger.

In a *responsum* of R. Weil’s²⁴⁴ another kind of difficulty appears in the delimitation between penance and punishment for murder: somebody has hit a man who has died after four weeks; but before he has died, the man has stood up and walked on his own feet. A rabbi exempted the offender. However, the case has been sent to R. Weil who has judged him stringently, claiming that nobody can tell whether the man has died from this wound or because of something else. He has condemned the offender on the basis of his offence of beating, and has decided that he has to be legally disqualified from taking an oath.²⁴⁵ The

²⁴² *Responsum* of Hayyim b. Isaac OZ No. 25.

²⁴³ The pretext for the exemption of the informer who informs during an assault and battery is the verse in Deut. 19,16 – “lest the avenger of blood in hot anger pursue the manslayer and overtake him, because the way is long, and strike him fatally, though the man did not deserve to die, since he had not hated his neighbor in the past” –. In the Bible, this (i.e. “in hot anger”) is an expression for the blood avenger who would not be condemned for killing the manslayer before he reaches the city of refuge.

²⁴⁴ Weil 87.

²⁴⁵ The *Mordehai Ha-hovel* is quoted.

judgment, however, has been formulated in a manner which has been a schedule of penance rather than a decree of punishment:

“And if he hearkens to my words, he will receive penance through fasts and floggings, and if he is rich, he will give money and his sin will be atoned for.”

At the end of the *responsum*, we find a hint at the reason of this formulation:

“And in this case, because the beaten one has died, the offender shall ask for forgiveness at his grave; and because this is a doubtful murder case, it must be judged stringently. Maybe there is hope for the man.”

It means that the liability of the offender for murder is doubtful. Therefore, on the one hand, the schedule of penance is worded as an advice, and not as a decision; on the other hand, the offence is considered beating, and not as murder originated in assault and battery.²⁴⁶

According to a *responsum* of R. Bruna's²⁴⁷, two men have brutally killed a third one during a fight in a guesthouse. One of them has been drunken (maybe all three have been), and the two men have killed the one who has started the quarrel (called Nissan). The community prefects of Lemberg, who have sent the question to R. Bruna, have called one of the offenders a “murderer” (instead of calling him by his name, Simḥa) and the other one by his name (Naḥman). R. Bruna has arrived at the decision that both of them have been guilty, and both of them have been responsible to pay for the damage caused, according to the law for injury. But both of them are exempt from murder according to the “law of men” and the Talmud, because neither of them has performed an act which might have caused the death of the victim. Still, according to the “law of Heaven”, they can not be discharged. Consequently, they have been expected to undergo the process of penance. But while one of the offenders, Simḥa has been ready to do penance, the other one, Naḥman has not regretted his sin, and has refused to do penance.

The distinction between the “law of Heaven” and the “law of the men” as the very basis for a court's verdict – in this case: atonement through penance as well as excommunication –, seems to be paradoxical: how can a capital case be decided on the basis of the “law of Heaven” if according to the Talmud, the offenders are exempted as murderers?

²⁴⁶ The difference between this case and a clear murder or assault case is also evident, because reference is made to another decision concerning assault – contained in the Weil 28 and discussed in II.B.3 below. In that case the regular public penance with public flogging, confession, begging pardon in the synagogue and charity giving has been prescribed, beyond private fasts. In this case penance has only been advised. The begging pardon has had to be done in the cemetery.

²⁴⁷ Bruna 265–6.

The distinction between the “law of men” and the “law of Heaven” was common in the *responsa* of the decisors of the time.²⁴⁸ This strange – and at the same time common – logic also works in the direction of enabling decisions to be made by the aid of penance, when there is no legal way to deal with the case, considering that the two offenders were exempted according to the Talmudic law, though it was clear that they were guilty. As we have seen it above, penance could be, in a paradoxical manner, “decreed” by the prefects of the community, and part of the penalty was more like punishment, in its traditional meaning, and part of it more like penance.

In this case, one of the two men liable for murder, according to the “law of the Heaven”, must be excommunicated until he is ready to receive penance, the other one is to undergo the penance ordered by the rabbi, which is a shortened exile with all its other penances as ordered by the *Roqeah*. And before fulfilling his penance, he is received into the community. (This means that he is not excommunicated, not disqualified like Nahman, only that there are signs of being a penitent: he must bear the shame and do all the acts of private and public penances prescribed by the *Roqeah*.)

II.B.1.3.6. The Commutation (or Composition) of Penance for the Murderer is Prohibited

In a *pesaq* of R Weil’s²⁴⁹ a very important principle is stated on the basis of the decision Rambam: commutation is forbidden in the case of murder. Even more important is the addition of R. Weil, it is impermissible to commute the *teshuvah* by fine even if the

²⁴⁸ We also encounter it at least twice in the *responsa* of R. Moses Minz. According to the *responsum* 101, a litigation on monetary matters was annulled by a happenchance which occurred in the course of preparations on the part of the plaintiff. The defendant regarded it as sufficient reason for the annulment of the suit. R. Minz decided that according to Talmudic law he could do that (see II.B.8.3.2), but according to the “law of the Heaven” he is bound to do penance and pay for the losses (for which he had been sued by the plaintiff) by returning the costs of the lawsuit (his debts to the claimant) and asking for forgiveness from the plaintiff. According to Minz 93, the plaintiff, for beating, swearing falsely and desecrating the Sabbath, wanted to disqualify the defendant from taking an oath, but she could not do that, because there was not enough evidence, although it was evident that he had committed those transgressions. R. Minz’s decision was, that he was exempted according to the “law of men”, but liable according to the “law of Heaven”. Consequently, he was required to do penance for his sins on the basis of the schedule of *teshuvah* of *haside Ashkenaz*, through public flogging, fasting, *viddui* etc. After completing his penance, he would be qualified to take a rabbinic oath concerning the pledge which has been the object of litigation between him and the plaintiff. (See II.B.3 and II.B.8). The distinction between the “law of Heaven” and the “law of men”, and between the “court of Heaven” and the “court of men” is from the Talmud for the differentiation of transgressions between “man and man” and “man and God”; further, for the differentiation between punishments of earthly courts and of the Heavenly court; the expression “Heavenly law” was also used for the decision of God in connection with Qiddush ha-Shem etc. In SH, the distinction “*din Shamayim*” – “*din Torah*” is placed in the wider context of the differentiation between subjective and objective notions of sin and atonement, as well as pleasure and pain, reward and punishment. Thus, in SH the “law of Heaven” is mostly a synonym for *lifnim mi-shurat ha-din*. In the *responsa* of the 15th century, on the contrary, this distinction plays an important role in deciding the case in a legal, judicial manner. See also Soloveitchik, *Three Themes*, p. 320, n. 26, pp. 354–355.

²⁴⁹ Weil DVH 61.

murderer repents and does penance. It means that the rule was also extended to the time when penance worked in the manner we find it in the decision of R. Weil and his contemporaries: penance is elaborated and deduced from the laws of punishment of the Bible, through the Talmud and the *halakhah* afterwards. But commutation is not allowed, a prohibition based on the biblical principle formulated in Num., 35,31, and on the explanation of Rambam, namely that the soul of the murderer is not the property of the blood redeemer, but the property of God.

II.B.1.4. Conclusions

Four categories of penance are to be found in the *responsa* in case of murder:

(1) In case of murder, when he/she does not want to repent and the court does not have the right to punish him/her, the murderer is excommunicated and disqualified legally. This is proclaimed in every community of the region.

(2) In case of premeditated murder, the court sometimes had the right to chastise and punish, not only to excommunicate. The aim of these chastisements was to bring about repentance and penance.

(3) In case the murderer repents and asks for penance, the order of the *Roqeah* was administered, with some alterations. But sometimes penance – the basis of which is exile for a period of 1–3 years or more – is decreed by the prefects of the city or court and imposed in a manner characteristic to the punishment e. g. instead of “public flogging” in the synagogue with the purpose of humiliation, the “flogging without mercy” is ordered, which seems to be a punishment executed in the court.

(4) In cases of manslaughter, the penance is mostly 40 days of fasting continuously, or one year of fasting on Mondays and Thursdays, as in case of other sins which are lighter than murder.

II.B.2. Fornication and Adultery

SHP and HT are written for men and prescribe penances for men. In the teaching of *ḥaside Ashkenaz* there is no instruction as to what a woman shall do if she transgresses. The status of an adulteress is only relevant for the penance of the lover: if the woman, with whom the man has fornicated, becomes prohibited to her husband, the penance of the man is even more severe.

In the *responsa*, on the contrary, there are penances for adulteresses, built from the components of the penance of *ḥaside Ashkenaz* prescribed for men, which are both private and public. Men must atone for transgressing the laws of ritual purity through self-mortification, e.g. for fornicating with an unmarried girl who is a doubtful *niddah*. For fornication with a married woman, if there are witnesses, the man receives flogging according to the law, together with the woman. For seducing a young girl or an unmarried woman, the man has to pay the fine for seduction. At least, begging the pardon of the woman publicly is required. If the adultery or fornication is committed with the consent of the woman, no fine and no begging pardon are required.

The main difference is in the legal status of the adulterer and the adulteress.²⁵⁰ The adulteress becomes prohibited to her husband, and she is divorced if there are enough testimonies. Nothing changes in the status of the adulterer.

We encounter no public shame or difficult tortures as penances for men in the *responsa*, like for women.

II.B.2.1. SHP

II.B.2.1.1. ST (= SHP 18–19) of R. Samuel Ḥasid

In SHP 18 the main principles of penance for fornication are explained, reflecting the idea, that the root of the sin of fornication and adultery is the evil inclination in man, which must be fought. If he cannot overcome it and transgresses, he must atone for it by torture proportional to the pleasure enjoyed in the sin, respectively in equal measure, the Torah prescribes as punishment for this sin. By this the principles of the *teshuvat ha-mishqal* and *teshuvat ha-katuv* are presented. The ways of penance are both to search situations for sinning, in order to fight the evil inclination, and to avoid the same situations for sinning – by these principles of the *teshuvah ha-ba'ah* and *teshuvat ha-mishqal* are presented. A principle of *lifnim mi-shurat ha-din* is that the sinner is also due to atone for the consequences of fornication. SHP 19 details the penances for fornication by cases: (1) If one has sexual intercourse with a married woman, for which he is liable to *karet*, it can be atoned by flogging, according to Talmudic law²⁵¹, he must receive tortures as painful as flogging (according to the *teshuvat ha-katuv* of *ḥaside Ashkenaz*): he must sit in icy water during winter, among ants or bees in summer, and in the meantime he shall fast. (2) If he begets a bastard child, he shall receive additional penance; if he sinned many times, he shall do

²⁵⁰ See on this problem also Fram, “Two Cases of Adultery”.

²⁵¹ mMak. 2,1.

penance many times; (3) If he fornicates with a Christian woman or a maidservant, or takes a woman from an “improper family”²⁵², must fast three days and nights continuously (“Esther’s fast”²⁵³); if he begot children from her, he must receive additional penances; (4) Fornication with the ‘*arayot* (prohibited relations) and *shikhvat zera*’ are to be atoned by sitting in icy water; (5) If he sins secretly, he shall not publicize the penance; but if publicly, he shall publicize it. (6) If he sins with a *shifhah kena’anit*²⁵⁴, he is not liable to flogging; but she is.

II.B.2.1.2. Penance for Fornication and Adultery in SHP 38 of R. Judah Ḥasid

In SHP 38 the instructions of Juda Ḥasid are to be found about penance for fornication, which are also the principles of the *teshuvat ha-gader*, *teshuvat ha-mishqal* and the sage-confession. We can state that while the central theme of the ST was physical torture for the sin of fornication, the main concern of this paragraph is the subjective dimension of penance, which has as its background the idea that sin lies primordially in thoughts and not in deeds. The following points of the paragraph are to be highlighted: (1) the penitent must avoid seeing the image of the woman, that being the main source of sin, which is primordially rooted in evil thoughts and not in deeds; (2) the penitent must remember his sin forever through confession and crying and avoid enjoyment; exile, humiliation in appearance and habit of the penitent have the power to atone; (3) the pain in the penance must be proportional to the evil inclination in the sin; (4) there is no contradiction between the shame and the secret confession to a sage, especially as repentance is only possible through true regret.

II.B.2.1.3. Confession for Fornication in SHP

So far we have seen two principles concerning confession of fornication: (1) if a man fornicates secretly, he shall not publicize the penance; if his fornication is known to many

²⁵² This means in the terminology of SHP that the girl was not from among the *ḥasids*. See Marcus, *Piety*, p. 91ff., Soloveitchik, “Three Themes”, p. 336.

²⁵³ bMeg. 15a. In the Book of Esther 4,16 Esther asks Mordehai to gather all the Jews and to fast three days and nights continuously, and she does in this way as well, before she enters the king’s hall without being called. The explanation of SHP 19 (= SHB 167) and RJH has as the source the bMeg.15a, and argues that the atonement by fasting for fornicating with a Gentile woman or maidservant is a parallel to Esther’s fasting for her “sin” that she delivered herself to a Gentile. In the RJH version which is to be found at the beginning of (all three manuscripts of) the IT, there is a reference to the *midrash Shoher Tov* (to the Book of Psalms, to Psalm no. 22) in which the impossibility of the three days of continuous fasting is explained, that they interrupt it before the night falls and the next day begins. See SHB par. 167, p. 173 n. 12 (*Meqor Ḥesed*), SHP par. 19, p. 24, ns. 9 and 10; Spitzer. *ק"שאלות ותשובות* 200, ns. 4, 5, and 6. The text of the *Shoher Tov*, *mizmor* 22: “Is it possible that they fasted 3 days and 3 nights and did not die?...”. And the Ran to the Rif at the end of the first chapter to the *Rosh ha-Shanah* and Shut Ribash no. 415 quote the *Shoher Tov*. See *Shoher Tov* ed. Buber, 31a (30a–34a).

²⁵⁴ A non-Jewish maidservant who had to undergo a kind of *giyyur* in order to be fit for serving her Jewish master. In many respects her status differed from that of Jewish maidservants.

people, he shall publicize it²⁵⁵; (2) there is no shame in confessing the sin to a sage; moreover, this is the way of true repentance²⁵⁶. There is a contradiction between the Biblical sentence that he who hides his sin will not succeed²⁵⁷ and the Talmudic sentence that a man who publicizes his sin is insolent²⁵⁸. A compromise between the two principles – confession and shame – is the solution for the fornicator to say: “I am a sinner”.²⁵⁹

II.B.2.1.4. Fighting the Evil Inclination for Fornication

According to the doctrine of *ḥaside Ashkenaz*, the root of the sin of fornication is the evil inclination in man. In HTRB Ms. Jer. 621 fol. 22a, there is a gloss from the Talmud²⁶⁰ regarding passion, in the paragraph about confession, before the examples of fornication and the four ways of penance are discussed:

“Said Elijah to Rav Judah the brother of R. Sala the Pious: Fall not into a passion and thou wilt not sin [...]”

However, according to SHP, the instinct for fornication can not be solved by eradicating the passion or desire itself, because not only adultery will be prevented by that, but also the husband’s duty towards his wife.²⁶¹ There are two ways of fighting evil inclination related to women, which are also two of the four ways of *teshuvah*: *teshuvat ha-gader* and *teshuvah ha-ba’ah*. The first, the way of avoiding, is explained on the basis of R. Ilai the Elder in MK 17a and the commentary in the name of R. Hananel to it.²⁶²

This would be *teshuvat ha-gader* in the terminology of *ḥaside Ashkenaz*. The dangers of fighting deliberately the evil inclination for fornication the other way, that of *teshuvah ha-ba’ah*, are explained in the confession of one of the three men who came before the sage²⁶³. The confessant was in love with a married woman and fought his evil inclination, putting himself to the trial by being near her and touching her, and withholding himself from committing fornication. Were this for the purpose of *teshuvah*, it would be called *teshuvah ha-ba’ah*, in the terminology of *ḥaside Ashkenaz*. According to the decision of the head of the

²⁵⁵ SHP 19.

²⁵⁶ SHP 38.

²⁵⁷ Prov. 28,13 and Ps. 32,1.

²⁵⁸ Ber. 34b, SHP 38.

²⁵⁹ See IIA2. SHP 40.

²⁶⁰ Ber. 29b.

²⁶¹ SHP 71, by a “medicine” against desire.

²⁶² SHP 62. See translation in App..

²⁶³ SHP 53. See: Alexander, *סיפורת והגות בספר חסידים*; Id., *The Pious Sinner*; Kramer: *God and Man in the SH*. See Soloveitchik, “Three Themes”, p. 328, n. 51, where he quotes to exemplify the idea that *ḥaside Ashkenaz* were “immune” to ataraxy, and sought not to “deaden” the “drives” or “impulses” but to “restrain and channel” them.

academy, he had to atone for it. The reason is not only that it is a “dangerous” way of fighting, but also that the evil thoughts are in themselves considered sins. Therefore, in the first paragraph of HTR it is stated, , that *teshuvah ha-ba’ah* is not practiced. *Teshuvat ha-gader* is the widespread way of avoiding transgression in the future, like in another paragraph, in which it is stated, that the man is prohibited to bring a woman into his house, in order to make fence for transgression.²⁶⁴

II..B.2.1.5. The Image of the Woman as the Main Source of Transgression

In the first sentence of SHP 18 the principles of the way of life of the penitent are considered in case of fornication: the bearing of public shame and the avoiding to look at women, since the image of the woman is the main source of the sin of fornication (= *teshuvat ha-gader*)²⁶⁵.

“He who does penance must be careful not to look at women, and if his deeds are known to the people, and if he is disgraced, he has to remain silent. [...]”²⁶⁶

The overcoming of the evil inclination to look at women is praised as the virtue which has the merit of being nearer to God than the ministering angels.²⁶⁷ It is even a transgression to see and hear women, or look at their clothes; he who withholds himself from the image of the woman shall see the Divine Glory.²⁶⁸ The enjoyment or happiness of seeing the woman is also considered a sin.²⁶⁹ The three images which are prohibited to be seen are the idol, the evil-doer and the woman.²⁷⁰ Pars. 43–45 enumerate the different kinds of desires for women, introducing the two explanations about the three different types of desire for women with the statement that in the world to come the evil inclination will only be considered. Thus the subjectivity of sin gains here an extremist interpretation. The three kinds are the desire to see

²⁶⁴ SHP 57.

²⁶⁵ See also A. Grossman, *Pious and Rebellious* passim. The Talmudic source for the idea that the evil inclination has “effect” through the eyes that can see [the woman], is bSota 8a, and its parallel in Sanh. 45a (in the name of Rabbah): “Raba declared: We have learnt a tradition that the evil impulse only bears sway over what a person’s eyes see.” The discussion here is about the stoning of the man without his clothes and the stoning of the woman with her clothes. Further the bHag. 11b (about the prohibition of expounding the forbidden relations in three – master and two pupils): “The subject of the forbidden relations is different, for the master said (bMak 23b): Robbery and forbidden relations, a man’s soul covets and lusts for them. If so, [the rule should apply] to robbery also! [In the case of] the forbidden relations, whether [the opportunity] be before him or not before him, a man’s inclination is strong; [in the case of] robbery, if [the opportunity] is before him, his inclination is strong, but if it is not before him, his inclination is not strong.”

²⁶⁶ SHP 18.

²⁶⁷ SHP 980.

²⁶⁸ SHP 59.

²⁶⁹ SHP 54.

²⁷⁰ SHP 59.

the woman, to think about the woman, and the desire of the burning heart²⁷¹. The remedy for the third kind of evil inclination is according to the next paragraph: going out of the country and praying.²⁷² Three kinds of desiring the woman without seeing her are identified in the next paragraph, on the basis of three verses from Hosea 7, which are different in some respects from the above mentioned paragraphs.²⁷³ In the next paragraph, it is stated that he who does not beautify himself will not have the evil inclination.²⁷⁴ In the par. 47 the meaning of the prohibition of the Decalogue to covet the neighbor's wife is extended to other "fences" around this prohibition, by reading the verb "*ḥamad*" in other stems; hence it is prohibited to beautify the face, or praise a woman to a friend. In this paragraph, also the conception is developed that the source of the evil inclination for fornication is the image of the woman. The highest expression of the variation/gradation of the meaning of the sin of looking at the image of the woman is that he who withholds himself from seeing the radiance of a beautiful woman, will enjoy the radiance of the Divine Glory. A story is told about a *ḥasid* who did not lie in the bed but on the floor at the time when his wife was a *niddah*, in order to mortify himself.²⁷⁵ In par. 49 there are some practical advices for those who can not banish from their thoughts the meditation on the woman during prayer time or Torah study.²⁷⁶ In par. 51 it is explained that the thinking about the woman, even if he does not transgress, is still the domination of the evil inclination over the man, which must be fought.²⁷⁷

In CShQ avoiding to look at women is part of the preparatory penance, the way by which one purifies himself, following ritual immersion and accompanying fasts:

“[...] This is the rule: one must always do complete penance, and must purify himself first, and when he thinks that he is clean, he shall fast as I wrote above, and he shall not look at women, only at his wife, [...]”

II.B.2.1.6. Fornication, Prostitution²⁷⁸ in SHP

²⁷¹ In the second variation the bodily desire, SHP 43.

²⁷² SHP 44.

²⁷³ SHP 45. The three desires are the desire to see her (identical with the first one in par. 43), the burning heart, this is when he desires her in mind (these are nos. 2 and 3 in par. 43) and the bodily desire which is to be found only in young men.

²⁷⁴ SHP 46.

²⁷⁵ SHP 48.

²⁷⁶ SHP 49.

²⁷⁷ SHP 51.

²⁷⁸ Grossman in his book *Pious and Rebellious* (133–147) discusses the problem of prostitution and concubinage in the medieval Jewish society, in Christian Europe (Franco-German Jewry, Italy, Provence, France) and Muslim countries. He states: “The role of the woman in the family and Jewish society was greatly influenced by the

The punishment for men who fornicate with young women and virgins is exemplified in SHP 63 by a story about the fate of these sinners in the world to come. Once a man was riding alone in the wilderness at night while the moon was shining, and he saw a huge carriage on which men were sitting and which was drawn by men. He wondered what they were doing. As he got near them, he recognized some of those who were already dead. They told him that this was happening because of their sins, for while they had been alive, they had been playing with women and virgins, and now they had to draw the carriage until they became so exhausted that they could draw it no more. Then those, who were on the carriage would come down and those who were drawing would climb up and flog the men who were to draw the carriage.

In SHP 80 a story is told about a young man who used to gather prostitutes in his house and then free them, in order to save them from other, unlawful men.²⁷⁹ This young man deserved, according to the revelatory dream of a *ḥasid*, a very high place in the *Gan Eden*. A similar story is told in SHP 58 about a Christian bishop, who commanded his servant to gather the prostitutes coming to the market on market-day, and take care of them for the time of the market, in order to save them from the evil.

II.B.2.1.7. RJH on Backsliding in Fornication

In RJH one of the questions posed to R. Juda Ḥasid is whether a man who reverts to his sin can do penance a second time. The answer is that he can do penance even ten times, but he must multiply the penances for the second/third time. The answer is exemplified by the case of the transgression with a Christian woman (fasting 40 days and 3 days and nights consecutively). This kind of transgression serves also in CShQ for the explanation of the word “atonement” (*kapparah*) for grave sins, by fasting 40 days and 3 days consecutively. The examples are: fornication with a Gentile woman, with a married woman or with a menstruating woman.

II.B.2.2. *Hilkhot Teshuvah*

What SHP 18,19,38, 40 presented in a less ordered form, HTR 2–17 presents in a systematic manner. The variations to the five recensions are given. It is worthy to mention that

institution of concubinage, which was particularly widespread among the Jewish communities in Spain. Sexual relations outside marriage and other deviations from religious and social norms were common in the Middle Ages, both in Christian Europe and in Muslim countries. The gap between ethical and religious ideals and reality was significant. (146–7, note 50).

²⁷⁹ Tamar, *The Pious Sinner*, this is one of the most important *exempla* of her analysis, 30ff.

the glosses in Parma 2410, Hamb 80, DT etc. are almost all connected to the physical torture or mortification of the flesh.²⁸⁰ In DT there is no distinction among the four ways of penance in the part concerning adultery and fornication.

The period of penance for fornication with a married woman, the punishment of which would be death by the *bet din*, is according to HTR, HTRB, MH, IT one year of fasting and self-flagellation each day with additional corporal self-tortures in summer and winter. For fornication with an unmarried woman or girl, a transgression liable to *karet*, the period of penance is only 40 days, with fasting, flogging, confession each day.²⁸¹ This is also the period for fornication with a Christian woman, Gentile maidservant (the days of fasting being restricted in this latter case to Mondays and Thursdays). The periods of DT for fornication with a Christian woman are longer, and the penances are more severe than in other recensions: one year of fasting every day if she does not bear a bastard child; if she bears a bastard child, two years of fasting, flogging, and confession every day. For enticing an unmarried girl, one year of fasting every day; for having intercourse with a *niddah* widow, one year on Mondays and Thursdays, and if she has ritually immersed, 40 days of fasting. For fornication with a married woman the tortures are to be performed twice a day.

II.B.2.3. *Responsa*

II.B.2.3.1. Penance for an Adulteress (Through Confession)

R. Bruna notifies in one of his *responsa* that he heard a clear testimony about a married woman who committed several times adultery, and went to Maharzak in Twerk, and confessed in order to receive penance. That rabbi commanded her to uncover her head confess, and bear the humiliation of his wife, to mortify herself in cold water²⁸²:

A similar case is discussed in the *responsum* of R. Weil 12. R. Weil answers to R. Seligman's question concerning a young married woman who has fornicated²⁸³. The woman had committed adultery in three communities for a year and a half. The penance ordered by R. Weil is a kind of adaptation of the penances prescribed by *haside Ashkenaz* for fornication for

²⁸⁰ In II.C.2–3 these modes of tortures are discussed in detail. See translation of HT, DT in App..

²⁸¹ There is a *midrashic* explanation for fornication with an unmarried woman, namely in bSot. 2a (and Sanh. 22a) it is stated: "Rav. Judah says in Rav's name: Forty days before the embryo is formed, a heavenly voice goes forth and says: The daughter of so and so for so and so." The meaning of the midrash is that couples are predestined. The forty days of fasting (and self-flagellation) could be a "measure for measure" penance for fornication with an unmarried girl, and also for the similar transgressions (*goyah, shifhah shikhvat zera'*)

²⁸² Bruna 226. For translation, see App..

²⁸³ R. Seligman was a rabbi in Ulm, with whom R. Weil had correspondence and good relations. See, for example, Weil's *responsum* in the case of the ritual slaughterer. This ritual slaughterer himself was the son of R. Jacob Mollin, in Ulm. See below in II.B.11.

a penitent adulterer in SHP and in HTR for the case of an adulteress, with the characteristic penances of sitting in cold water or among bees, and fasting for a year, with the appropriate leniency for a young woman regarding physical tortures. Beyond this kind of adaptation of penances prescribed by *ḥaside Ashkenaz* for men for the case of a woman, there is also innovation in the order of penance imposed by R. Weil which is missing from the penances in SHP and HTR. While in SHP and HTR no detailed public penance was prescribed for fornication and adultery, R. Weil imposes public shaming and humiliating rituals for the adulteress, based on symbolic acts known from the case of *soṭa*.²⁸⁴ It is noteworthy that in other *responsa* of R. Weil, the decisions and the orders of penance are very severe, and that is also the case here: he decides that the woman must do penance all her life. The respondent highlights that according to the law her penance would be even more severe, but she could not bear it, since she is very young. All the leniencies are very well based and argued.²⁸⁵

Another question remains unanswered: what is the status of this penitent woman? Is she allowed or prohibited to her husband? As we know, the law concerning an adulteress is that if she is suspected of fornication and there are enough witnesses to the fornication, she is divorced immediately; if there are not enough witnesses, she is brought before the Supreme Court in the Temple, and if she admits her sin, she must be divorced instantly; if she does not admit her sin, she must undergo the trial of the bitter water. In the case mentioned above, since she confessed her fornication, she must be divorced.

But the definition of penance itself would contradict this, because SHP and HTR suggests that after penance, at least for a man, the status of the penitent is the same as it was before the transgression. Thus the meaning of penance would also be for women to remain with their husbands and not to be divorced. But *ḥaside Ashkenaz* does not discuss penance for women, only for men. If he does penance after committing adultery, a man is not divorced from his wife, but this would also be the case if he did not do penance. If she does not do penance, a woman is divorced, but if she does penance, the question remains: must she divorce her husband, or is the penance also sufficient to allow her to remain with her husband? In the two *responsa*, Bruna 226 and Weil12, the authors only deal with the status of the woman as penitent within the community, and thus we know that she must sit separated from the women in the synagogue, humiliate herself, and avoid speaking with men all her life etc. After a year there is a change in her status as penitent, the main part of the penance is

²⁸⁴ See II.C.11 in more detail.

²⁸⁵ For translation, see App..

done, a further year will be a period of lighter penances, and all her life she must do something for the sake of atonement.

In the case of the responsum of R. Jacob Mollin²⁸⁶ a woman confesses in writing to R. Nathan of Eger that she, though having been married for ten years, committed adultery with two men in the first two years of her marriage, while her husband was far away from home. She is with her husband now, they have four children, and she does not want the thing to become known, mostly because of the children. She does not want to reveal her identity, either. She asks R. Nathan of Eger for penance. The rabbi thinks that her confession is sincere, because she has hidden the truth from her husband, and turns to R. Mollin for advice regarding the status of the woman: can she stay with her husband or must she be divorced. R. Nathan does not doubt the sincerity of her repentance, but he has doubts concerning the question whether this penance is also sufficient to allow her to remain with her husband. What is more, there are differences of opinion among the decisors concerning the status of the woman who says “I am defiled to you”. R. Mollin’s interpretation of the woman’s letter totally differs from R. Nathan’s. R. Mollin thinks that the woman’s confession is not sincere, she wants to deceive the rabbi in order to divorce her husband, “which is a widespread device of women in these days’, according to his words. He, however, disapproves only the sincerity of the intention of her repentance, and not the content of her confession. Consequently, he concludes that the woman says the truth, she has indeed committed adultery. Still, the asking for penance and the fact that she has hidden the truth from her husband is nothing but deceit, she does not sincerely repent, all she wants is to be divorced in order to be free to go to her lover. As a matter of fact, R. Mollin answers the question what the status of this woman is, and he decides, on the basis of the *halakhah*, that she must be divorced. There is a contradiction in R. Mollin’s decision, if he is well aware that she confesses in order to be divorced, why does he order her to divorce? She might be prohibited to her lover as well. But R. Mollin apparently thinks that the content of the confession is true, only the intention is false. Her confession is legally accepted by R. Mollin as proof for adultery, but it is not accepted as proof for sincere repentance. So she remains in her sinful condition, probably until she returns sincerely. The question whether by sincere repentance and true penance she is allowed to remain with her husband or not, is not answered. We can not find out what the consequences of not being accepted as penitent are, either. Is she separated from the community until she returns sincerely, like many other offenders?

²⁸⁶ Ms. London 27111 No. 181. The same, in incomplete form, is contained in Mollin TH 181. It is a correspondence between R. Mollin and R. Nathan of Eger.

In conclusion, in the three cases discussed above in which women ask for penance from rabbis for adultery, we have no answer to the question what effects penance had on their marital status and their status in the community. In the first two cases, their confession was accepted as grounds for true repentance, and they received an order of penance, their status being that of a penitent in the community, but the *responsum* contains nothing about the impact of the penance on their marital status. In the third case, R. Mollin's decision was that she must be divorced from her husband, but her confession was not accepted as true repentance and as a basis for receiving penance, therefore we do not know, what would be her status in the community after confession and divorce.

II.B.2.3.2. Jealousy Accusation against the Wife (*Sota*)

In four *responsa* women are charged with adultery and fornication (by their husbands, and in one case by the householder and others), and in all four cases there are not enough witnesses, consequently the suspicions are not proved.²⁸⁷ In all four cases the rabbis decide that the woman can not be declared “defiled” and divorced.²⁸⁸ In the first *responsum*.²⁸⁹ the woman is warned by her husband not to hide with a Gentile, but women witnesses see her hiding with this Gentile. Since there are not enough witnesses²⁹⁰, she can not be prohibited to her husband, and even if there were one male witness, she could only be prohibited by jealousy accusation (*qinnui*)²⁹¹.

²⁸⁷ Fram (“Two Cases of Adultery“) discusses two decisions of R. Joel Sirkes: one case happened in the year 1619, shortly after Sirkes had arrived in Cracow as a young jurist, and another one several years later, when he was already a mature and well-known jurist with experience in the city and in the country. In these *responsa*, unusual and illogical decisions are made: in the first – in which the local rabbi asks Sirkes whether she is legally prohibited to her husband, and whether Sirkes recommends her an appropriate penance to perform, and in which the latter question is not answered by Sirkes or it is answered but it is not included in the *responsum* – he prohibits the woman to her husband; although there are precedents for cases like this, he decides to the contrary. In the second one he allows the woman to her husband and declares her innocent, although the case is rather “ugly” and there are many suspicions.

²⁸⁸ In his article on the teaching of Menachem ha-Meiri about women, Grossman discusses the subject of the *Sota* in ha-Meiri's teaching. (האישה במשנתו של ר' מנחם המאירי). He claims, that while in the case of the different opinions of R. Akiva and R. Ishmael in *Sota* 3a about whether jealousy accusation and warning are a duty (*mizvah*) or not, Rambam and others (on the basis of his decision) decide as R. Akivah, but Meiri decides as R. Ishmael, maintaining that they are not a duty. A. Grossman sees the reason of this in the fact that the Meiri cares for the honor of the woman who after the jealousy accusation or warning could be easily exposed to the danger of not being able to continue her marriage. It seems that the intention of the respondents in the four *responsa* is the same, in their own actual cases.

²⁸⁹ Weil 8.

²⁹⁰ In this case women are not allowed to testify.

²⁹¹ The man accuses his wife of fornication. A court is convened to investigate the case: if she is found guilty, he can divorce her without paying the *ketubbah*, and if she bears a child, it be declared illegitimate. If she is found not guilty, she will remain with her husband.

The second *responsum*²⁹² is also a case of suspicion of adultery of woman without enough witnesses. The question regards liability to flogging because she is hiding with a man (*yihud*), and the answer is, that flogging can only be executed on the basis of two male witnesses. In the third²⁹³ the accusation is brought against a Jewish maidservant, the wife of a *kohen*: one night she fornicated with a Jewish servant in the house of their householder witnessed by a little servant girl. Again, because there are not enough witnesses, she can not be charged with adultery and divorced, and he can not be flogged. A *responsum* of Maharam's is quoted²⁹⁴ in which he decides in the same way, namely that without two proper witnesses she can not be divorced.

In the fourth²⁹⁵, a minor girl is charged with fornication by her husband and her father-in-law. The claim that she has admitted the fact of having fornicated. If their statement is true, the husband can divorce her without paying her the *ketubbah*. The girl, however, denies the fact of having fornicated and denies by taking an oath of having admitted the charge of her husband and her father-in-law. The decision of R. Colon is that since there are not enough witnesses that she admitted the charge, she can not lose the *ketubbah*.

II.B.2.3.3. Suspected Women, Permitted or Prohibited (Women among Christians, by Their own Will or Captured)

In two *responsa* of the ThD, the status of the Jewish woman is discussed, who spends more time among the Gentiles. In the first one, the question is whether a woman is prohibited to her husband or not if she stays among the Gentiles for business purposes for a longer period

²⁹² Bruna 8.

²⁹³ Isserlein PuK 222.

²⁹⁴ The *responsum* of Maharam (Maharam Lvov 310), which is quoted also by R. Colon in 81–82 as precedent (see below), is not discussed here in detail, but the case is understandable from the quotations. In the *responsum* of Maharam the husband in fact “delays the prayer” (*'iqquv tefillah*, this was a device and right of the individual in the Ashkenazi Jewish communities, decreed in enactments, during the whole Middle Ages, if he felt that injustice occurred with him, he could hinder the prayer leader in the synagogue during the service, and the community remained in the synagogue until his case was resolved or, at least, until a proposal for the remedy of the injustice was made), claiming that his wife was “pregnant through adultery”; by this he wants to force the community to convene a court which would enable him to divorce his wife without paying the fee in the *ketubbah* and declare the child illegitimate. The court then would begin to investigate the case. See also Goldin, “The Synagogue”, p. 25 and there n. 58. It seems that this was a procedure applied in cases when there were not enough witnesses, a procedure mentioned also at the end of the *responsum* Weil 8: that the woman could not be divorced except by examination. If the husband suspected his wife of having committed adultery, the procedure followed what had been established in the *Sota*, only that she was not tried if she denied, but a court examined the case.

²⁹⁵ Colon 81–82.

of time²⁹⁶. The answer is that she is allowed, because in this case she can not be suspected of being violated.

In the second *responsum* women were captured by Christians in order to be converted.²⁹⁷ Some of them are converted without their husbands and run away as soon as they can; some of them are converted with their husbands and run away with their husbands; and some are converted and remain among the Gentiles for a long time, even if they get the possibility to leave. They apparently stay among the Gentiles for their own monetary gain. The answer is that in the first two cases they are allowed to their husbands, in the third case they are not. The basis of his decision is that although they were captured for conversion – that is, “for their lives”, and not for extortion of money from the community –, they are supposed to be untouched because they were there with their husbands and fled away as soon as it was possible, even if they were converted. In the third case they are not trustworthy, because they remained there even after they could run flee.

Both Grossman²⁹⁸ and Blidstein²⁹⁹ discuss the problem which the Ashkenazi sages faced in trying to determine the status of the captured women. Grossman concludes, that the basis for the decision of the Ashkenazi sages of the 12–13th centuries was similar to that of Rashi’s explanation on bKet. 29b, namely, their problem was to define the purpose of the capture of the women, and they solved the problem by differentiating between two purposes of captivity by Christians: if the women were captured in order to extort from the Jewish

²⁹⁶ Isserlein ThD 242. Keil in her article on Jewish business women in Late Medieval Austria (“Business Success”) discusses this *responsum* of Isserlein and she states that Ashkenazi women usually had no problem leaving their houses unaccompanied by their husbands or male relatives. On the contrary, the family was proud of the successes of the businesswomen and trusted their steadfastness in their morals and beliefs. Some rabbis found it dubious when married women granted loans to peasants in the countryside or acted as mediators, and for that reason they had to stay overnight at non-Jewish places, but business considerations proved to be stronger than custom. The problem was that according to Jewish law (the *halakhah*), a woman who was raped had to be divorced from her husband; but since she as a moneylender stayed with non-Jewish people voluntarily, and there was no danger of rape, she was allowed to remain with her husband.

²⁹⁷ ThD 241.

²⁹⁸ Grossman (“האישה במשנתו של ר' שמחה”), discusses the opinion of R. Simḥa of Speyer related to the captured women: “[...] Nobles, feudal princes, men who borrowed on interest from Jewish women and others took them and closed them in their homes for a certain time, either for monetary reasons (to blackmail their husbands for money) or for religious ones (to influence them to convert to Christianity). In the Mishnah it is stated: ‘The woman who is captured by the Gentiles for monetary matters – she is allowed to her husband. For her life – she is prohibited to her husband. Rashi explains there that if the woman is captured by the Gentiles in order to extort money from her or from her husband, she is allowed to her husband. But if she is captured and condemned to death or she is in danger of death, she is prohibited to him. [...] The fear is that every woman in such situation will try to save her life by all means.’” The sources quoted: mKet 2,9; bKet 26b; Rashi to the place s. v. “*Asurot*.”

²⁹⁹ Blidstein, (מעמדן האישי): “In fact, R. Simḥa of Speyer maintained, that our women saw in their captivity a temporal evil only, and they were trustworthy, that is, they will behaved themselves well. While in the Talmud the sages see the psychological state of the woman as a compelling power until she is ready to give in, here [R. Simḥa and the Ashkenazi sages] see the psychological state of the woman as a strengthening power which enables her to resist all kinds of seductions. It is clear that – of course, if we believe the things as truth and not just a juridical trick –, Ashkenazi sages esteemed women highly.”

community money, they were allowed to their husbands after they were redeemed from captivity, because they were supposed to be untouched by the Gentiles who feared that by violating them they would lose the money of redemption; if they were captured for their “lives”, that is, in order either to convert them to Christianity, or for violating them, the women were not allowed to their Jewish husbands, after they escaped captivity, because the Gentiles were not interested to care for their integrity.

Blidstein in his article on the status of the captured women emphasizes that R. Simḥa of Speyer maintained that the captured women had to be regarded as trustworthy – if they said that they had not committed fornication in captivity, therefore they could not be divorced from their husbands after having been redeemed –, they had to be believed because of the moral strength shown in captivity. According to Blidstein, this view highlights the fact that R. Simḥa had a high opinion of the chastity of the women of his time.

II.B.2.3.4. Adulterer and Adulteress Prohibited after Being Widowed

In a case which is asked from R. I. Isserlein, the man has fornicated with the married sister of his wife. The question is whether after the death of the sister’s husband and the man’s wife, they are allowed to marry each other. The answer is, that they are not allowed.³⁰⁰ The punishment or penance for the adulterer and adulteress is not discussed.

II.B.2.3.5. Intercourse with an Unmarried Woman – *Niddah*

In a question asked from R. M. Minz by another rabbi, a man has fornicated with an unmarried girl and comes to ask penance.³⁰¹ The case is judged by R. Minz who decides that he must do penance for fornication with a *niddah*.³⁰²

II.B.2.3.6. Fine for Seducing a Young Girl, Violating a Woman

According to the explanation of the Ket. 38a by R. J. Colon, seducing a minor is punishable by a fine, while seducing a barren woman is not.³⁰³ In another case, the inquirer asks R. J. Colon about the fine for seducing of an adult girl; Colon’s answer is, that since she is a grown-up, no fine is to be imposed on the seducer.³⁰⁴ The second answer of the same *responsum* deals with the case of an adulteress, the question being whether she is permitted or

³⁰⁰ Isserlein PuK 29.

³⁰¹ Minz 98a.

³⁰² See for translation App..

³⁰³ Colon 138. The seducer must pay a fine for seducing a girl if she is a minor, but if she is a barren woman, he does not have to.

³⁰⁴ Colon 167.

prohibited to her husband. The answer is that if she has been violated, she is not prohibited, but if she has fornicated, she must be divorced. In the first case the man must also proclaim publicly his sin, and must beg the woman's pardon publicly, because this is a case of transgression against the fellow-man.³⁰⁵ In the other *responsum* of R. Colon³⁰⁶ the question is about a woman who claims, that she was violated when she once fainted and was lying unconscious. The answer is that if there were no witnesses, the man can not be fined for violation.

II.B.2.4. Conclusions

A woman's confession of adultery is not accepted as basis for true repentance and for receiving penance, being suspected that her intention is to divorce her husband and marry the other mané but the content of her confession is accepted as true and as a basis for divorcing her from her husband.³⁰⁷ If her confession is accepted as basis for doing penance, because there was enough evidence beyond her own confession, the penance prescribed for her has been severe and lengthy, often lasting to the end of her life. Fasting, physical torture, public shaming and confession are prescribed. Her penances are based on the schedules of penance prescribed by *ḥaside Ashkenaz* for an adulterer or fornicator, but with the modifications and additions for women, e. g. the outer signs of humiliation are prescribed on the basis of the description of *Soṭa* for an adulteress. If she does not confess and is accused of adultery, which she does not admit, and there is not enough evidence, she can not be divorced from her husband, and can not be flogged. Captured women who are taken in order to be converted are not divorced unless they remain in captivity of their own free will.

For men, for fornication with an unmarried girl, and in case he confesses and is willing to do penance, he is ordered to perform penance as for fornication with a *niddah*. For violating a woman, he must publicly beg the woman's pardon, this transgression being a sin between man and his fellow man. For seducing a minor girl, the fine is decided. If the intercourse happens with the consent of the woman, it is not considered violation and the woman is divorced from her husband.

³⁰⁵ Woolf, "The Authority of Custom"; Id., "Between Diffidence and Initiative".

³⁰⁶ Colon 129.

³⁰⁷ Mollin TH 181.

II.B.3. Injury, Wound, Beating, Corporal Damage

II.B.3.1. *Taqqanot Rabbenu Tam*

The enactments on battery of R. Tam and his colleagues (150 rabbis) issued in the synod of rabbis of France in Troyes in 1160, among other important *taqqanot* regarding community government, litigation etc. are quoted on the basis of the version of the enactments found in Maharam Prag no. 1022³⁰⁸. These enactments concerning assault and battery reinforce Talmudic laws regarding fines for injuries, and add others to them.³⁰⁹ They are important, because in the 15th century they were still in force. In NMM (14th century, Sachsen) many of them are listed again among the *pesaqs* of Menachem of Merseburg, others are repeated in a somewhat changed form. (1) The first enactment contains some important decisions of R. Tam and his court³¹⁰ on the fines for beating: a. there is a difference between beating in the synagogue and beating outside the synagogue, for the first one the fine being twice as much³¹¹; b. two beatings are fined twice; c. if both hit each other, no fine shall be imposed³¹²; d. the courts are empowered to consider the persons, the case, the circumstances, and to decrease or increase the fines³¹³; e. the fine is not given to the poor but to the offended one. (2) The second enactment confirms the validity of the Talmudic law of fines for injuries: if two or more persons hit one another, they shall pay the difference; (3) For curses the punishment is not beating³¹⁴, and he who hits his fellow man, because this one curses his father, shall not be exempted, but must pay the fine to the offended one.³¹⁵ (4) The fourth enactment is also very important and in widespread use³¹⁶ it states that even without proper testimony and with deficient testimony (one woman, one relative etc. as below), the injurer can be fined. (5) The fifth enactment regards law concerning the offender: excommunication can be lifted before the wrong-doer receives and performs what the court has decided, and he

³⁰⁸ Fols. 158a–160a. The same is contained in Minz no. 102.

³⁰⁹ According to Talmudic law, he who injures his fellow-man is liable on five grounds: 1. damage; 2. pain; 3. stoppage of work; 4. costs of cure; 5. shame. (BQ 83b ff.)

³¹⁰ The enactment in the printed version ends with the words: “According to the manuscript of Ri H. of Troyes”.

³¹¹ It is stated that R. Joseph Qarah had seen it so before R. Yehiel of Paris did – this must be a misunderstanding: either one or both of the persons are not known sages.

³¹² If the beatings are of equal strength, they cause equal damage, wound or injury.

³¹³ In France the difference between the beating in and outside the synagogue is made on the basis of this enactment.

³¹⁴ But it seems that he is fined or exempted.

³¹⁵ This differs from the *Mordehai* and NMM (see below) where the curses are also fined, and according to NMM the offender receives flogging instead of fines. On the basis of this enactment it seems that there was a time or there were places, in which the curses were not fined or punished in Ashkenaz, or not taken so seriously. This appears to be the situation also on the basis of the responsum of R. Avigdor b. Menachem in the Maharam Lvov 491 (at least for some places). However, there (*Tsh. Maharam Lvov* 491) the decision of Ra’avan contradicts this. See II.B.5.

³¹⁶ For example NMM repeats it, as we shall see.

can be counted to the prayer. The reason is that in this way he might be more willing to accept the decision of the court. This can be done at the request of the offended one, and if this does not happen, the community must ask the lifting of the excommunication for him.³¹⁷ (6) The sixth enactment is also a very important one from the point of view of the development of the law for injuries and crimes in medieval Jewish *halakhah*”: it states that if the offended person charges the offender in the Jewish court, and this does not want not to be judged there, the offended one has the right to go to the Gentile court (because they can compel the offender to appear before the Jewish court and obey their decision of the Jewish court, to pay). A later development of the law is that in the “hour of wrath” (*sha’at ha-za’am*), one is allowed to complain to the Gentile authorities without the permission of the Jewish court.³¹⁸

II.B.3.2. *Haside Ashkenaz*

II.B.3.2.1. Anger as the Root of the Evil Inclination for Beating in SHP;

One of the most distinguishing characteristics of a person, according to SHP is that he can overcome his anger, anger being the reason of many transgressions. The following aphorism highlights this idea, in the spirit of *haside Ashkenaz* and according to the rule of their stringent and subjective explanation of the rabbinic principle of *lifnim mi-shurat hadin*:

“There are three men who are recognizable only in three [particular] situations: the humble in the hour of anger, the hero in the hour of war, and the friend in the hour of need.”³¹⁹

One must ask permission from a good-tempered person to get angry.³²⁰ The anger of a good man against transgressors must also be tempered with patience and wisdom, but if the aim is the sanctification of God’s Name by his deed, he can even throw away the Torah scroll, as in the following advice:

“When the man gets angry because of the transgressors, he must consider [= weigh] his anger [...] And he who has by him a Torah scroll and sees that the people go to convert, it is better to throw away the Torah scroll and prevent them from transgressing [...]”³²¹

An *exemplum* is told about a son who receives from his father as his last will the warning that he shall overcome his anger. He, by hearkening to the advice of his father,

³¹⁷ This is also repeated in the decisions of NMM.

³¹⁸ In the 13th century. Because in the “hour of anger” there is always danger. See above II.B.1.4 and below II.B.3.4.

³¹⁹ SHP 121.

³²⁰ SHP 122.

³²¹ SHP 125.

saves his wife and son from his own anger, when returning home after a long journey, in the first moment thinks that his wife has gotten a boy from somebody else. As soon as he calms down, his wife tells him that the boy is his own son, born after his departure.³²²

II.B.3.2.2. Prohibition from Torturing Animals and Slaves in SHP – *Lifnim mi-Shurat ha-Din*

Another aspect of the *lifnim mi-shurat ha-din* principle in the interpretation of *haside Ashkenaz* connected to prohibition from beating and fighting against anger is the care for the “weaker and defenseless” in their society: they are insistent that it shall be prohibited to torture animals and slaves, and one must always care for their lives and well being.³²³ The animals and maidservants are to be treated with care; during their pregnancy it is not allowed to make them suffer or exhaust them.³²⁴ One must be careful with the health of animals, and shall not torture them.³²⁵ One shall not sell his servants to a cruel man.³²⁶ An *exemplum* is told about a man who is not willing to sell his horse to a cruel man even for a higher price.³²⁷ It is prohibited to chase a wandering dog away from house.³²⁸ In the world to come, the punishment for one who tortures animals is that he shall be subdued as an animal.³²⁹

There is an *exemplum* about the punishment of a Jew who tortures his animal. The punishment is carried out by the hand of a Gentile guardian, in a market in Muslim lands, by taking the coals off the back of the animal and putting on the shoulders of the Jew.³³⁰

II.B.3.2.3. Breaking or Cutting the Hand or Arm as Penance for Beating

The *talio* punishment for injury, which was already interpreted in the Talmud as paying a sum of money instead the “measure for measure punishment”,³³¹ returns in the examples of *haside Ashkenaz* as a penance. This can be explained with the underlying principles of both, the *teshuvat ha-katuv* and *teshuvat ha-mishqal*: a pain equal with the (*talio*-) punishment of the Torah and equal with the pain, injury, wound caused is a self-torment

³²² SHP 126.

³²³ SHP 138.

³²⁴ SHP 139.

³²⁵ SHP 140.

³²⁶ SHP 141.

³²⁷ SHP 142.

³²⁸ SHP 143.

³²⁹ SHP 144.

³³⁰ SHP 145.

³³¹ BQ 81a, 83a–84b: “eye for eye, means paying a certain amount of money”; Mekhilta par. *Mishpatim*.

proportional to the offence committed. There is a story in SHP, also quoted in the ST, that tells about a man, namely R. Mordehai, who breaks his own hand as *teshuvat ha-mishqal* for beating:

“And there is a story about R. Mordehai who hits a Jew with his fist and then he says ‘The arm which hit a Jew shall be broken’³³², and puts his hand in a hole in which there is a latch and breaks it, because it is said (Job 31,21) ‘If I raise my hand against an orphan’³³³ and (Job 31,22) ‘Then let my shoulder fall from the socket.’³³⁴”

In some manuscripts of MH there is an addition to the paragraph about beating in the name of R. Tam, who orders that the hand of the offender shall be cut off:

“He who hits his friend shall beg him pardon, receive flogging and shall not do it again. R. Tam orders that his hand shall be cut off.”³³⁵

On the other hand, a *lifnim mi-shurat ha-din* instruction is that the injured one must ask for mercy on the behalf of the injurer, even if the injurer himself does not ask for it.³³⁶

II.B.3.3. HTR

According to HTR6, for hurting by hit or words, the penitent must ask for forgiveness from the offended person. For beating, as punishment, he must pay the fine, beg pardon, receive flogging for transgressing a negative commandment; as penance he must confess and fast.³³⁷

II.B.3.4. *Responsa*

II.B.3.4.1. Beating the Wife and Children

In *Or Zarua Pisqe BQ* No. 161 we find a responsum in the name of R. Simḥa of Speyer, connected to the punishment for beating the wife.³³⁸

Grossman in his article on the opinion of R. Simḥa of Speyer about the situation, status, value of women³³⁹ maintains that R. Simḥa’s view reflects an extremist attitude in favor of women, compared to the opinions of other Tosafists. It is true, admits Grossman, that

³³² Allusion to the verse in Job 38,15: “The wicked are denied their light, and their upraised arm is broken”.

³³³ The second part of the verse: “knowing that I have influence in the court”.

³³⁴ Second part: “and my arm be broken off at the elbow”. SHP 631.

³³⁵ Ms. Mil. X111; Ms. Vat. 247, Mos. 103 fol. 127a.

³³⁶ SHP 1024. See also the enactment which declares that his sentence of excommunication must be released on the request of the offended one or the community in TRT (above II.B3.1) and NMM.

³³⁷ Punishments for injury are mixed here with penances. Here is the gloss in the name of R. Tam in some MH Mss.

³³⁸ OZ PBQ 161. For translation, see App..

³³⁹ Grossman, האישה במשנתו של ר' שמחה משפירא, רא.

at the end of the 13th century, R. Perez b. Eliyyahu mentioned a ban in an enactment which has been proposed by him in order to guard women against the violence of their husbands, stating that the wife had the right to ask the court to decree ban against her husband from the beginning if he threatened her. However, this is an exception, and the general view of the Tosafists did not care so much about guarding women against violence in the family. The teaching and decision of R. Simḥa is influenced by *ḥaside Ashkenaz*, firstly, because they were also concerned about the honor of the wife and prohibited the husband from hitting her³⁴⁰, secondly, because of the atonement through self-mortification characteristic to *ḥaside Ashkenaz* imposed on the husband.³⁴¹

In one of Maharam's *responsa*³⁴² a man beats his wife. Maharam judges the case with rigor, and arrives at the decision that the man must be excommunicated, flogged, chastised, and if he keeps beating her, his hand must be cut off.

In NMM there are two cases of violence against minors, which, however, are not grave, therefore the no strict punishment or penance similar to the examples mentioned above are ordained, only fines are imposed. In one *pesaq* of NMM, an adult pushes a seven year old minor, and admits it, so according to the decision he does not have to be punished. In another *pesaq* of NMM a minor complains that a man has hit him; if he admits it, the man shall give money, so that they can buy from a prayer book for the boy or something of the kind.

II.B.3.4.2. Assault and Battery between Men

If there is an enactment of the *bet din* or the community saying that the offender must be fined, then the court can fine him, as in the *responsum* of R. Ḥayyim bar Yehiel Hafez Zahav, and also disqualify him from testimony and oath until he does penance recognizable to the rabbis.³⁴³

³⁴⁰ SHP 1086: “[...] and as one do not throw his daughter before the lions, so no one is allowed to hit his wife [...]”.

³⁴¹ He also discusses the extreme approach of R. Simḥa of Speyer among the other approaches of the decisors of his time and after him, arguing that R. Simḥa allows the Jews to use the power of the Gentiles to compel the husband to give a divorce bill, an opinion harshly opposed by R. David ibn Zimra in the sixteenth century. In another article, Grossman discusses the opinion of R. M. Meiri on the same issue, (האישה במשנתו של ר' מנחם המאירי) He says that the Meiri also cared for the honor of the woman, especially in this case, and that the Rambam (Rambam *Mishneh Torah Hil. Ishut* 25,10. Meiri *Beit ha-Bḥirah Ket.* Pp. 249–250; 259–260) allowed the husband to beat his wife in some cases or to ask the court to beat her, namely when the woman accepted to be provided for by husband but refused to do the housework according to the Ket. 5,5 she was due to perform.

³⁴² Maharam Prague 81.

³⁴³ Maharam Prague 383. In NMM and Tsh. R. J. Jacob Weil No. 8 the *responsum* of R. Ḥayyim is quoted. See App. for translation.

R. I. Isserlein responds in a case when somebody cut off the hand of a man who had hit him with the blade of a knife.³⁴⁴ He decides that the offender must be judged severely, because he must have known that the other one who hit him first, did not mean to harm or kill him, therefore he should not have injured him that badly. Consequently, he must be punished by floggings, chastisements, fines for healing and cessation [from work]³⁴⁵, but the other three fines, damage, pain and shame, it is not good to collect from him. This decision is according to the decision of R. Tam.

In one of NMM's decisions, a person was found not guilty if taking out his knife, the other one seizes it, and is wounded. In another *pesaq* of NMM it is decided that if one denies the beating, or even if he claims that the other one has started it, he must be exempted. In another decision, a woman or a relative alone can testify in case of beating, as in the enactments of R. Tam³⁴⁶, and the community can expel the offender from the synagogue, flog and punish him. The other enactment of R. Tam's and his fellows is repeated in another decision of NMM, about the suspension of excommunication before the end of penance in case of beating.³⁴⁷ In NMM another example, which recalls the enactments of R. Tam³⁴⁸, is a case of charging the other with pushing in the synagogue. The respondent answers that if there is a testimony to the contrary, he is exempted.

R. I. Isserlein decides about a man who hit his fellow in the synagogue of Gratz on *Hoshanah Rabbah* circling, when the Torah scroll was on the *bimah*.³⁴⁹ His penance is to that he must ask publicly forgiveness from God and his fellow-man before the *bimah* and the Torah scroll, and pay two gold coins, the fee due to the physician, as charity for the synagogue. It is worthy to mention that in the previous *responsum* of R. Isserlein, PuK 208 discussed above, also the fine for cessation [from work] is also to be collected, in accordance with R. Tam's decision, mentioned there. Here the "*shevet*" (fine for cessation from work) is not a requirement, because it can not be assessed as precisely as the fee for the physician. This fine must go to charity for a *mizvah*, while in the previous case it belongs to the injured person. Here the offender is not flogged or chastised, and there is a requirement of public ritual begging for pardon. The difference between the two decisions of R. Isserlein (PuK 208 and PuK 210) is that the first resembles rather a punishment, the second a public penance. The

³⁴⁴ Isserlein PuK 208.

³⁴⁵ These are two of the five fines for injury, according to mBQ 8,1 and bBQ 83b et seq.

³⁴⁶ See above II.B.3.1.

³⁴⁷ See TRT above.

³⁴⁸ In connection with the beating in the synagogue which is fined twice as severely as the beating outside the synagogue.

³⁴⁹ Isserlein PuK 210.

reason of this difference is the gravity of the injury in the first case, and the fact that in the second one there happened also desecration of the synagogue. Therefore a public ritual of penance is more likely to restore social peace, as the order of public begging pardon shows it.³⁵⁰

Beating in the synagogue is dealt with in one of R. J. Colon's *responsa*. The incident happens in consequence of a quarrel between a young man and his father about a house in Verona.³⁵¹ The son is beaten in the synagogue by the associates of the father. The case of beating as such is not judged and discussed by the respondent, but left to the last judgment ("day of judgment"). In the course of time the father summoned the son to the court of the Gentiles, and this is answered in detail by the respondent. R. Colon considers denunciation a more dangerous harm against the son, than beating, the latter being less damaging.

In a *responsum* of R. J. Weil's, he answers to two judges, R. Mordehai and R. Isaac of beating. The assailant hit an old man. The offender was sentenced to be flogged publicly in the synagogue, to ask for forgiveness from the old man before the Torah scroll, and give him a silver coin. The offended person is liable for nothing, neither for the beating the wife of the offender, nor for complaining to the Gentiles, nor for cursing. This *responsum* (no. 28) is quoted by the respondent in his *responsum* no. 87, as a ground for decision in a case when the injured person dies after a time, and R. Weil decides to impose public flogging and begging pardon on the offender.³⁵²

In a *responsum* of R. M. Minz's one hits his brother-in-law, and there are not enough witnesses, R. Minz comes to the conclusion that the offender must do penance along with the punishments for the other two transgressions committed (false oath and desecration of the Sabbath), and flogging and confession must be taken together. He must be flogged in the synagogue in the afternoon, between the *Minḥa* and *Ma'ariv* prayers, and confess his sins publicly. He must also fast, because of the beating for a week.³⁵³

II.B.3.5. Conclusions

Although the Talmud interprets the "eye for eye" law of the Torah as monetary compensation for all kinds of injuries, many decisors in the Middle Ages make allusions to precedents in the Talmud, alleging that beating can be punished very severely, e.g. by cutting off the hand or breaking the arm of the offender. As penance, we find the "*talio*-punishment"

³⁵⁰ See App. for translation.

³⁵¹ Colon 154. The son was not ready to leave the house. See II.B.16 the case discussed in detail as information to Gentiles. For translation, see App..

³⁵² Weil 28. For translation, see App..

³⁵³ Minz 93. For translation, see App.. See on this *responsum* II.B.9, II.B.15, II.C.4, II.C.9, II.D.1.

in an example of SHP. According to the enactments, deficient testimony is accepted for beating, and usually the offender is considered an evil-doer, disqualified from testimony or even excommunicated until he performs the penance, however excommunication can be suspended earlier. It seems that it depends on the place and the court which kind of punishment is applied. In some cases the injurer is punished by flogging; the fines are also in use, but not all the five types listed in the Talmud for injury^é it seems that the doctor and the cessation from work are to be paid by the offender, on the basis of R. Tam's decision, but the shame, damage and pain are not. If the beating implies the desecration of the Name, or it is very grave, then begging pardon, confession, and sometimes public flogging are performed in the synagogue, within the frame of a public ritual, in the 15th century. The function of this is to restore communal peace, reconcile the parties, and also to obtain forgiveness from God. R. Weil, R. Isserlein, and R. Moses Minz imposed such rituals of public penance for beating.

II.B.4. Theft, Usury and Dishonesty

Throughout the following chapter, transgressions called theft, usury, cheating indicate a wider scale of offences than ordinarily. Especially in this period, and especially in the Jewish communities, economic life becomes rather complicated, and therefore transgressions connected to money, penances imposed, as well as ways of restitution, become matters which require some elucidation. We begin therefore with a brief survey of the major relevant *taqqanot* of the Tosafist period regulating taxpaying, and lending on interest. Like concerning injuries, these *taqqanot* had major impact on legal practices of the given period, and in fact were in use in many communities still in the 15th century.

II.B.4.1. *Taqqanot Rabbenu Tam* (= TRT, 1160) and *Taqqanot Shum* (= TSh, 1196, 1220)

Four enactments (*taqqanot*) are attributed to R. Tam, and they are as follows: (TRT) (1) Concerning the rules of charity- and tax-paying, if the majority of a Jewish community in a given town – which is not only a numerical majority, but denotes the majority of the good or prominent persons of the town [*tove ha-ir*] – agree about the sum to be paid by each member of the community individually, then the individual can not exempt himself from the enactment, or require the court to litigate on the sum separately. (2) During the collection of taxes the individual is not allowed to disobey the tax collector – either Gentile or Jew – but shall pay the tax first and then summon the community and litigate about the sum. He can even “cry” before, which means, that the tax-payer is entitled (on the basis of another

enactment), to protest and to “delay prayer” before paying the required tax, until the sum is clarified.³⁵⁴ This enactment is related to problems dealt with in the first one. (3) The individual who has lost a thing is entitled to “delay prayer” and the community leaders are due to proclaim a ban. This means that everybody who knows about the lost thing must inform about it, under threat of excommunication. Nobody from the community has the right to exempt himself from the ban by any pretext. (4) Nobody is allowed to withhold books which are pledged for a longer period of time, and which are not redeemed, except the teachers of children.

Fou enactments (*taqqanot*) were issued at the synod of the Rhinish communities (*Taqqanot Shum*), and they are as follows (1) One of them concerns the way in which taxes are assessed: the individual declares his property under oath and pays on the basis of the property. If he swears falsely, and it becomes known, he is disqualified from taking an oath. (2) Another enactment is a variation of TRT no. 2, and declares that the individual must give the money or thing demanded by the community, and then if he disagrees about the sum, he should litigate with the community.³⁵⁵ (3) Another one regulates lending, specifying that too much interest shall not be taken “[...] one shall not lend his fellow man money or property, only to a half profit and half loss (that is, semi loan and semi trust)³⁵⁶ [...]” (4) The fourth enactment prohibits also taking excessive interest and cheating in the deals “[...] And one shall not deal falsely [*shaqranut*], and shall not make coin-clipping [*giluah ma‘ot*]”.³⁵⁷

II.B.4.2. SHP

Main themes of SHP concerning theft are connected with the theoretical and moral explanations, like evil inclination for theft (e.g. avarice) and the principle of *lifnim mi-shurat ha-din*. Beyond these, the principles of confession in public, principles of restitution, principles connected to tax-paying are discussed with theft.

³⁵⁴ The enactment on “delaying the prayer” made it possible for a Jew, who had an argument with another community member or with the community, and was unsatisfied with the decision, to suspend the prayer in the synagogue, and the prayer leader as well as the whole community remained in the synagogue until a solution was proposed. At the beginning, the prayer could not be delayed on the Sabbath, but later it became a common practice to delay the prayer even on the Sabbath. The person concerned could in this way require the community to litigate with him, but even in this case he first had to pay the tax assessed, and then litigate again, and if his requirement was justified, the community paid him back the required sum.

³⁵⁵ *Responsa* of R. Meir b. Baruch Prague fol. 158b.

³⁵⁶ See bBM 104b: Half the capital value of the stock is a pure loan for which the trader bears full responsibility, the other half is a bailment, so that the investor bears all risks of depreciation.

³⁵⁷ See: Baron, *The Jewish Factor*.

II.B.4.2.1. Evil Inclination for Stealing and Its Fighting

According to SHP, evil inclination is the root of robbery and stealing, as it is exemplified by the story of the “three confessors”. According to the confession of the first confessant, his father was a poor man, so during the nights he would go to a place where he knew that some money was hidden, and when he saw the money, he took it out and then placed it back. He kept fighting his evil inclination in this way. Later the son did the same. The son asks the sage, whether he and his father committed a sin by this. The sage sends the son to the head of the academy. The head of the academy decides that the offender must do penance.³⁵⁸ Consequently, not the act itself is considered a transgression, but the evil thought, and first of all the act of tempting oneself, which bears the risk to transgress in fact.

II.B.4.2.2. Confession, Publicizing of the Robbery, *Taqqanat ha-Shavim*

Besides the way and laws of restitution, a main theme of SHP is the confession in case of stealing and robbery. It is a duty of the robber to confess his sins so that others shall not be suspected, as exemplified in a story about a student who steals wine from the householder of the house where Talmud-students are lodged.³⁵⁹ The story illustrates that theft is not allowed to be hidden by the thief if others are suspected. In another paragraph it is explained that atonement can only be achieved through true repentance performed of one’s own free will. If one makes restitution because he is forced, or if the robbed person recovers his property in some other way, e.g. owing to a happenchance or a legal verdict, in the eyes of God the sin is not atoned for.³⁶⁰ If one steals and repents truly, and wants to make amends for it, it is not allowed to publicize his sin so that the penitents shall return. This is called *taqqanat ha-shavim* in SHP³⁶¹. If the innocent people are suspected, it is the duty of the robber to confess publicly.³⁶² As in case of every penitent, the community is forbidden to shame and disgrace a repentant thief. In the ST, it is also stated that if theft occurred, but no ban was still pronounced – that is, for everybody who knows about the stolen thing, it is proclaimed under threat of excommunication to inform about it publicly –, but there are witnesses, and the thief returns the stolen thing(s), it is forbidden to publicize the robbery (for *taqqanat ha-shavim*).³⁶³

³⁵⁸ SHP 52–53. See: See Alexander, *The Pious Sinner*; Kramer: *God and Man*.

³⁵⁹ SHP 1416.

³⁶⁰ SHP 1238.

³⁶¹ *Taqqanat ha-shavim* in its Talmudic menaing means a specific law. According to the Torah (Lev. 5,20–25), the robber must return the thing itself. Because in some cases this causes great loss for the robber, the sages ruled that the robber is allowed to return the value of the robbed thing and not the thing itself. This was enacted for the sake that penitents should return.

³⁶² SHP 89.

³⁶³ SHP 20.

II.B.4.2.3. *Lifnim mi-Shurat ha-Din*

A stringent law, or decision according to the law of Heaven, is that one who steals in the childhood and recalls it later, must pay, though according to the law of men he is not liable.³⁶⁴ Another example for stringency is the order which prohibits to steal even from a *goy*, so that the Name shall not be desecrated.³⁶⁵ Although this is a Talmudic law, in SHP it receives central importance. It contains not only desecration of God's Name, but also constitutes danger for the whole Jewish community by bringing about accusation against it, if one of the members is proved by the Gentiles to be dishonest. In another paragraph it is stated that this is even a greater sin than stealing from the Jews, because it leads to the desecration of God's Name. The Gentiles should not say about Jews that they are dishonest.³⁶⁶

A graver offence than robbery is when one goes to eat at the house of a poor man. This can also not be put right because the poor man is ashamed of receiving gifts.³⁶⁷

There is a story about a man who loses money by gambling and steals the dice from the one who wins. When he wins back his money, he asks whether he has committed sin. He is told that this is stealing, and the one whom the dice has been stolen from can take legal action against him. Probably the dice are false, that is what has given cause for cheating and stealing.³⁶⁸

II.B.4.2.4. Cheating and Generosity in Tax-Paying

The touch-stone of righteousness and honesty in the Jewish communities according to SHP, is rectitude and even generosity in tax-paying. Not only stealing and robbery are considered transgressions, but also cheating in charity or tax-paying, or transgressing in other ways the enactments concerning the rules which the material aspects of inner community life depend on.

There are examples for both honesty and dishonesty in SHP concerning these matters. A case is told about a person who always pays his taxes and gives to charity what he is required by the community tax collectors, on the basis of property assessment, and never examines how much others give, because it would cause him pain if he could not reduce the sum.³⁶⁹ Another man is required by the community members to give a certain amount of money to tax and charity. He asks them what they would do if they knew that he has twice as

³⁶⁴ SHP 216.

³⁶⁵ SHP 133.

³⁶⁶ SHP 632.

³⁶⁷ SHP 848–9.

³⁶⁸ SHP 1236.

³⁶⁹ SHP 122.

much? They tell him that they would collect twice as much from him. So he gives twice as much³⁷⁰. There is a story which exemplifies the reward in the world to come for one who gives more to charity and tax.³⁷¹

There are devices for cheating in tax-paying, as in a case when the community decrees to collect taxes, and a Jew goes to a Gentile, his *ma'arufyah* – a Gentile businessman with whom a Jew has an agreement, and other Jews can not deal with him, or their rights are limited in this – and sells him his property for a small amount of money in order to minimize taxation. And he loses his property in this way, because after that he dies and his property remains in the possession of the Gentile³⁷².

In the rhymed penitential of Ms. Paris 1408, the failure to give charity when all the community is due to pay falls into the category of sins for which penance is ordered: the penance is to confess and to give the vowed money to charity.

In the RJH, the questions connected to money lending and stealing are explained typically by the distinction between the “law of men” and the “law of Heaven”. It is asked whether a man who owes money to another one, and is exempted by the lender from paying, is also exempted according to the law. The answer is that according to the laws of men he is, but according to the law of Heaven he is not. Another question asks whether one is allowed to steal if someone does not return the money borrowed from him? The answer is that he is not allowed to transgress a negative commandment in this way. If a person owes one pound to somebody else and says that he is willing to lend him money in exchange for that pound, which the other accepts, he can not be compelled to give back the pound until the other one pays his debt to him.

II.B.4.2.5. Restitution, Paying, and Atoning for the Consequences and the Pain

In SHP we encounter again the dimension of subjectivity in the law of restitution. The notion of the “law of the Heaven” is also applied here to support this subjectivity. If somebody robs one out of several people, and he does not know which one he has robbed, he must pay or return the stolen thing to all of them. Further, if someone steals from another one and delays the restitution, he must pay also for the delay because the robbed person could use

³⁷⁰ SHP 123.

³⁷¹ SHP 124.

³⁷² SHP 1797.

the stolen money in the meantime; further, he must pay for the pain caused to the robbed person, if he brings about a big loss even by a small sum.³⁷³

Basically, this is not only a typically “*hasidic*” explanation that considers the loss of the robbed person in a subjective way, but it can also be interpreted as a typically rationalistic explanation of the law of restitution, which fits well into the “complex” economic life of the time, which considers the relation of “capital” and “profit”, loss and gain as functions of the time passed.

The subjective explanation of the law of restoration is more typical of *haside Ashkenaz* when proportional physical mortification is required of the robber. In the following example the last idea of the previous paragraph is developed on the basis of the conception of physical pain, which, in case of fornication, is the main concern of the ST concerning penances. The given section deals with physical torture which the robber must receive in order to atone for the pain caused to the robbed person. If one steals, must not only pay in accordance with the loss and pain caused, but he must also mortify himself. In SHP 632 (= pars. 22–23, ST), it is also explained that if he receives the tortures and pain by himself, this is atonement for his sins.³⁷⁴

Both the “rationalistic” and the typical “*haside Ashkenaz*” interpretations of the laws of restitution mentioned above have in their center the robbed person’s interest. Other paragraphs focus on the person of the robber, and they differ from each other as to whether they see a proper “penance” (or the robber fulfills his duty) in giving the restitution money to charity. Furthermore, in paragraph No. 632 there is an example about a man who takes interest and repents by giving the gain to the poor. In SHP 21, on the contrary, the ruling is that by giving charity, even a bigger sum, and not returning the stolen sum or thing is not allowed, and it can not be considered as atonement. It is stated in this paragraph that the heirs must return the stolen thing, or money, or field robbed, otherwise they and their descendants will be considered robbers for not making amends.

Two stories are told in SHP 632 about the duty of restoration. The first one is about a man who lies concerning charity and tax-paying, and becomes poor. Before his death, when he goes to confess, the sage gives him the advice to give his house to the community so that they shall distribute it among the poor and the heirs. The next story is about a man who cheats another one who has left for a faraway country with his sons; and after a while the man confesses to the sage; the sage tells him to make inquiries, maybe the robbed person has a son

³⁷³ SHP 22=632. For translation, see App..

³⁷⁴ SHP 632. For translation, see App..

nearby, and if he does not, the sage gives him the advice to give the stolen money to the community for charity.

Another paragraph explains why the robber must repay only the value of the stolen thing and not the additional fifth part. The reason is again the “*taqqanat ha-shavim*”, as in the case of confession – that is, if others are not suspected of theft, the name of the thief should not be publicized in order not to hamper the return of the repentants.³⁷⁵

A further explanation for the requirement of restitution is that the soul will have no rest even after death if one does not fulfill this law. In SHP 35 there are two stories told about the unrest of the soul of the robber in the world to come; and the same idea as mentioned above in SHP 21 is explained: returning the stolen thing after the death of the robber, by either the heirs or others, is useful; moreover, this gives him rest after death. The second of the two stories is about a rich Gentile whose soul meets his servant and orders him to return the thing stolen by the Gentile in his life which he had not returned. After the second story it is explained that whether the stories are true or not, the law for the Jews is so that after the death of the robber others must return the stolen thing instead of him in order to save the robber’s soul from the *Gehinnom*.

II.B.4.3. The Penance for Stealing in HTR

According to HTR the penance for one who steals, robs or takes much for interest, is that he must repay or return the things stolen, he must fast, be flogged, confess, and practice charity.³⁷⁶ If someone committed treachery by coin-clipping, he must repair his deeds, and if he does not want, he shall be excommunicated until he is willing to do what is required of him.³⁷⁷

II.B.4.4. *Responsa*

The touch-stone of honesty and loyalty to community interests after SHP is still righteousness in tax-paying, as reflected in the *responsa* discussed below. Martha Keil, in her study on taxes and tax system to which Jews were subjected in the fifteenth century³⁷⁸ states, that the most controversial element was the donation of tax exemptions to certain Jewish men and women. According to Jewish law, these were valid only if the sum to be paid by the community had been lowered by the share of the exempted persons. Meanwhile, the privileges

³⁷⁵ SHP 1418. See App. for translation.

³⁷⁶ HTR 15–16.

³⁷⁷ HTR 28.

³⁷⁸ Keil: “Business Success and Tax Debts”, p. 6.

for individuals offered protection from the rabbinical court as well, which meant a gross violation of the autonomy of Jewish jurisdiction. In another article³⁷⁹, she discusses the privileges of individuals received from the Gentile rulers, basically for women, in tax-paying, and states that the wealthiest people, who got individual privileges, served as some kind of “buffer” between the community and Christian authorities, and could act as mediators in case of threat and prevent calamities through bribes. Regarding the oath on the declaration of property for taxes, Martha Keil writes³⁸⁰ that the property declaration had to be confirmed by an oath. The oath as an act of public performance, took place in the public religious space of the synagogue, by reciting the solemn formula in Hebrew and touching a sacred object, usually a Torah scroll.

II.B.4.4.1. Tax-Paying and Declaration of Property

The problems of justice and equity related to tax-paying emerge at the very beginning of the establishment of the rules themselves in particular cases. Inequity and dishonesty can occur simply by inadequate, improper, false rules. Most of the *responsa* of the 15th century deal with these rules.

In Mollin 62 the rules regarding taxes and other community payments are explained in a case where a man comes into the community after they have agreed with the bishop to pay a certain amount to him, in order to neutralize a false accusation by the Gentiles. The man claims that he is not liable to pay, and the community claims the contrary. R. Mollin explains that he is not liable, because³⁸¹ if someone comes to the city after they have agreed, he is not liable. The man also says to the citizens that he did even not have the intention to come to the city when they made the agreement, consequently he is exempted. The respondent explains also the rule that within the community half of individual taxes is determined on the basis of property, while the other half is per capita, if Jewish lives as well as property are in danger, according to the decision of Maharam. If only lives are endangered, then taxes are set only per capita, and if only properties are in danger, then taxes are assessed only on the basis of property (in proportion to the property).

³⁷⁹ Keil: „Maistrin (Mastress) and Business“; the responsa cited there are ThD 241, Maharam 341. The source from the archive cited there is: Haus-, Hof- und Staatsarchiv Vienna, Handschrift “Weiß” 594, fol. 62v–63r; p. 5.

³⁸⁰ “Business Success”, p. 6.

³⁸¹ In *resp.* Weil 133 the respondent quotes NMM that there are three times for tax-paying: if one goes out from the city before the agreement about an unusual payment with the bishop or ruler or the Gentile citizens, he is not liable to pay; if he remained there all the time, he is liable, if he came after the agreement, he is not liable. See further.

In Mollin 89, R. Jacob Mollin answers the question whether one can compel another one to pay tax as much as he does. This can not be done, because taxes are paid on the basis of property, if there is no danger of death, according to the Mordehai.

In Weil 133, the answer is given to a question connected with the declaration of property three rich men from a community want to be exempted from certain matters regarding their duty to pay taxes. R. Weil quotes the book of NMM, and explains who the author was: the dwelling place of R. Menachem Merseburg was in the country of Saxonia, he used to collect the customs of the country; the rules of tax-paying are still according to R. Menachem Merseburg's book in the days of the respondent). One question is whether one must pay tax for a property which is not in his hands. If he renounces the debt which another one owes him, and he has not more profit from it than one pound, then he does not have to pay a tax for it. When he no longer wants to get his property back, he must inform the community, and give them a quarter of it. Another question is, what is to be done if one wants the community to estimate after which debts one is due to pay taxes and after which he is not due to pay: this can not be carried out, because only the creditor himself can know who from his debtors is supposed to pay the debt and who is not supposed to pay it back. Further, there is a request is not to pay tax on the property which is outside the city or country; this is not possible, one must also pay for the property outside the country or city. Another request is to estimate the interest which has already been taken, not to count it to the property, and not to pay after it; such a custom does not exist. To the question whether somebody who paid the tax [required] and then had to give the king a large amount of money (because of a false accusation) can get back his money which he paid to tax; the answer is that the tax paid can not be returned to him.

In Bruna179 the following question is discussed: if someone is exempted by the ruler from declaration of property, is his wife also exempted? According to Bruna's opinion she is not exempted.

In Isserlein PuK 36, the oath on declaration of property in tax-paying is explained: one must take the Torah scroll in his hands when swearing.

In ThD 341 the rules of the tax-paying are asked about: four rich men move from one city to another under the same ruler, and pay the tax at the new place; the ruler expects them to pay where they have come from, but they do not want; the ruler does not accept this, and forces the men of the old place to collect the taxes from them. After that they can litigate about it if they want. The answer of R. Isserlein is that, the ruler has the right to claim the tax he wants, and if he wants to collect it at the old place, and not at the new, they must obey to

his will, and then they can litigate about it, but they must know that the interest of the community comes before private interest.

In another case the rich and the poor are due to swear an oath in the community on their properties, the rich are not willing to swear but would rather want the community caretakers to estimate their properties, or if they must swear, they do not want to detail their properties, but to swear on the whole. The respondent answers that the first request is not justified, while the second is, because only in Geonic times it was enacted to swear on the property in detail. If taxes are collected for the fortification of the city, the Jews are also due to pay; here the problem is³⁸², that the poor want the tax to be paid according to the property, the rich want it to be paid per capita, and some want it to be paid according to the households. R. Isserlein's answer is that they shall arrive at a compromise.³⁸³ This is also the rule in a case when the ruler comes to the city, and the Jews must contribute together with the Gentiles to the expenses.

II.B.4.4.2. Transgressing the Community Ban and Robbery

Another group of *responsa* of the 15th century deals with the question what the repair would be if dishonesty occurred during communal tax- and charity-paying.

The local or general community enactments regarding tax-paying are declared under threat of ban, and if one transgresses them, he/she is excommunicated, banned, or at least warned by either words or lesser excommunication for thirty days. In the next two examples we are going to examine the procedure for those who transgresses a community enactment regarding charity and tax-paying. In the first example there is an enactment declaring that if someone transgresses a certain ban, either a man or a woman, he/she shall be fined by giving a certain sum to charity.³⁸⁴ A woman transgresses the ban, and the question is whether her husband must pay the fine for his wife. The answer is that he has to. In the second example a ban is issued with the knowledge of all the community in Ancona, regarding tax- or charity-paying, and some transgress the ban, and after a time the matter is known to the rest of the community, but they are no longer able to pay the loss.³⁸⁵ The answer of the respondent is, that they shall do penance in this way: first they shall ask publicly for forgiveness from those whom they have robbed. And it is advisable that ten community members, or at least three,

³⁸² ThD 345.

³⁸³ As we can see in the answer of R. Mollin above who quotes Maharam, in a case when there is both danger of death and danger of property the taxes are collected half on the basis of souls and half on the basis of property. See also: Agus: *Rabbi Meir of Rothenburg*.

³⁸⁴ ThD 282.

³⁸⁵ R. Colon 51.

shall fast on Mondays and Thursdays, and give something to charity on the fast days before eating.

II.B.4.4.3. Lost Thing

Another case of dishonesty is also connected to a ban. In Colon 110 we read that in a community some people transgress the ban of R. Gershom, which decrees that all who know about a lost thing must publicly proclaim it in the synagogue. They claim that they do not want to obey the ban, because they have received the information about the lost thing secretly, and they are not permitted to disclose anything about a lost thing. The respondent says that the answer can not be accepted, and if they do not want to obey the ban, they shall be excommunicated.

II.B.4.5. Conclusions

The following penances are imposed on robbers (with or without repairing the damages), who do not pay taxes or are dishonest in tax-paying, or do not inform the community leaders about a lost thing proclaimed in the synagogue: confession, asking for forgiveness, fasting, giving to charity, and praying.

II.B.5. Cursing

Cursing³⁸⁶ was not a rare offence in medieval Ashkenazi Jewish communities, and the reason for its relative graveness is the importance of the contrary values of honor and shame. We can state that even if it was not considered a major transgression in the enactments of the great synods of the Tosafist period, later, in the 14– 15th centuries it became central. In SHP it also plays an eminent role.

Robert Jütte, in his study³⁸⁷ about the honor (*kavod*) and shame sanctions in the European (German) Jewish communities in the Middle Ages and early modern period, tries to define the notion of “honor” in this society in the same manner as for the non-Jewish society it has already been given a specific significance in the studies of the scholarship about honor,

³⁸⁶ In the Kid. 28a he who calls his fellow man a “bastard” (*mamzer*) receives the flogging of 40 lashes. In the Middle Ages, in most of the cases, this meant disciplinary flogging, which was more severe, since the number of the lashes was not limited to 39, but it was left to the discretion of the court or judge (‘until his soul departs’, or until he is willing to pay or accept the other measures of the court; bShab. 40b) The Ṭur rules that disciplinary flogging can be changed to fine if the offender begs the pardon of the offended person, and this one consents to the changing of the punishment (Ṭur HM 420.33).

³⁸⁷ Jütte, “Verletzte Ehre“.

shame and shame sanction.³⁸⁸ He states that in medieval Ashkenaz the precepts and rules of the Talmud for guarding the honor of one Jew against another were not enough for the communities to live together peacefully. This is indicated by the Jewish sources, above all by community enactments; for example, by one from the 15th century community of Regensburg, in which it is stated: “*kain mensch aufsten sole sich zu unterwinden, es sey zue drauen oder schlagen, es sey schelten oder drauen, zu varraten kainen Juden oder Judin oder suenst kainerlay auruer zue thuen*”. (‘Nobody is allowed to threaten, to beat, to curse or to inform against another Jew or Jewess or to cause any other disorder’)³⁸⁹. The register books of the city of Zürich in the second half of the 14th century and in Frankfurt at the same time contain many cases of honor harm between Jews.³⁹⁰ These sources show, on the one hand, that the Jews litigated about honor harm among themselves in Gentile courts as well. They show, that the Jews could defend themselves not only against other Jews but also against Christians. And there were cases when the Jews had to beg the pardon of the Christians. The punishments imposed in the Gentile courts were like those in the Jewish courts, both shame sanctions and other kinds of punishments, corporal and monetary.

II.B.5.1 *Taqqanot Rabbenu Tam (1160) and Takkanot Shum (1196, 1220)*

According to the enactments of R. Tam, the curser must not be beaten. In the enactments of Shum, it is declared that it is not allowed to call the other one a “bastard”, but the punishment for it is not mentioned.

II.B.5.2. SHP –

Lifnim mi-Shurat ha-Din; Sins Which Are Graver than Murder

According to the author of SHP, the shaming of the fellow man a great sin. This is due to the centrality of the values of honor and good renown in the society of *haside Ashkenaz* and the disadvantages of the bearing of public shame and dishonor. If the curser comes to ask for penance by himself, the sage must let him know the greatness of his sin, and then he receives the penance of fasting and charity for good householders, but they shall not know who has given them the charity, in order not to shame him. His penance shall be proportional to his sin,

³⁸⁸ *Ehre, Ehrenstrafe*, Jütte p. 148.

³⁸⁹ Jütte p. 148 and note. 13: Raphael Straus : *Urkunden und Aktenstücke zur Geschichte der Juden in Regensburg 1453–1738* (Quellen und Erörterungen zur Bayerischen Geschichte, N. F. XVIII, München 1960) Nr. 676, p. 28.

³⁹⁰ S. Burghartz, Leib, 192ff, Burghartz, *Juden*, 234ff. Walter Baumann: *Der gute Smaria*. Aus Zürichs Judengasse im 14. Jahrhundert, in: *Turicum* 7 (1976), 3., 18–24 (19ff). Isidor Kracauer: *Urkundebuch zur Geschichte der Juden in Frankfurt am Main von 1150–1400*, I. (Frankfurt, 1914), 483 (1371), 486 (1371), 588 (1376).

and the sage shall know how grave sin he has committed. After he who has shamed the other, and has regretted it and comes before the fearers of God to receive penance, they shall say to him: “Know that your wickedness is great, because you have shed his blood.”³⁹¹ If he has shamed his fellow man and nobody has heard it, and the matter has not become known, it is possible that it is like he who steals something from his fellow Jew and returns it to him immediately, before he needs it, and the damage is small.³⁹² In another paragraph it is stated that he who shames his fellow man publicly is exempted according to the “human law” but guilty according to the “divine law”. He shall beg his pardon publicly if he has not forgiven him for three times between them.³⁹³

Patience is the virtue which is considered the root of fighting the evil inclination for shaming, disgracing, cursing the other. There is a story about a man who is asked what the explanation is for having reached such an old age. He says that he has forgiven everyone who has shamed him with patience. Thus each man must be patient and endure cursing, and the bystanders are not allowed to quarrel with the man who curses if he does not pay attention to them; if he never says, “you are under ban”, they are also due to keep silence.³⁹⁴ Another story is told about a pious man who is disgraced by somebody all the time and the community members tell him to ban the offender, but he does not want to do that; instead he says that they should act like he himself, and suffer the disgrace.³⁹⁵ Another sage is also disgraced by one, and the community wants to ban the man, but the sage says that they should not, because his sins have caused being shamed by that man.³⁹⁶

In connection with fighting the evil inclination for cursing, there is a story about a man who used to curse, and wanted to know how he could avoid this sin. They told him to say to himself, whenever he wanted to curse, that his curses would come back upon him, but he was not willing to do so; instead he gave money to charity as many times as he cursed, and in this way he avoided to sin, and the money given to charity was a kind of atonement to him, and a benefit to the one who received the charity.³⁹⁷

³⁹¹ SHP 86.

³⁹² SHP 87.

³⁹³ SHP 90.

³⁹⁴ SHP 118.

³⁹⁵ SHP 119.

³⁹⁶ SHP 120.

³⁹⁷ SHP 127.

II.B.5.3. HTR

For cursing, in HTR fasting, flogging and begging pardon are ordered as penances. And he shall bear the blame when people mock him and say to him that he is a disgraceful person. He who hurts a proselyte must give him money, and shall beg his pardon publicly, and if he has died, must bring ten men to his grave and beg there pardon from him.³⁹⁸ In HTRB³⁹⁹ fasting, flogging, and confession are detailed in the case of each particular kind of shaming: he who makes pale, he who nicknames his fellow, he who causes trouble to the proselyte, he who does wrong to his wife. The sin of not honoring the father and the mother in IT Ms. Vat. 183 fol. 180b–181a can only be atoned by great penance, in the way required in HTR and HTRB mentioned above. In MH Ms. Parma 2999 fol. 58a (16th century) the penance for not honoring the parents must be atoned also by great penances and begging their pardon, and also by fasting three days a year.

II.B.5.4. *Responsa*

Although the enactments of the great synods in the Tosafist period deal not stringently with cursing, the *responsa* testify that they were dealt with stringency, or sometimes even more rigorously than beating. Some general rules are to be found in the sources. According to R. Isaac b. Samuel the Elder in a quotation in *Sefer Mordehai*⁴⁰⁰, he who begins to curse, must pay the fine. As we have seen in the enactments of R. Tam, cursing is not punished by beating or flogging, and regarding the fines for cursing the enactments do not decree anything. In NMM, for cursing the fines from the Talmud are prescribed, but according to the author of NMM since there are no fines outside Israel (in Babel), the curser must receive flogging proportional to the fines: for each *mane* forty lashes. He who says to his fellow “bastard” or “slave” or “evil-doer”, “fornicator” or “disqualified” or “fool” [or “abominated’] shall receive forty lashes, and if he does not attend the law, he must be excommunicated.” Further the following curses are punished in this way : ‘*Kena’ani*’ is judged as though he had said “slave’. In another decision of this book, for the curses “slave” “bastard” “evil-doer” the punishments from the Talmud are to be ordained, and he explains the meaning of these punishments as “measure for measure’. For the curses “defiled’, “dog” he must beg his pardon publicly.

³⁹⁸ HTR 16.

³⁹⁹ Ms. Parma de Rossi 2295 pars. 182–5.

⁴⁰⁰ *Mordehai Qiddushin* 554.

As for cases from the *responsa* of the Tosafist period from the *responsa*, we have in the *responsum* of Ra'avan⁴⁰¹ that for calling the fellow man a “bastard”, the curser must fast on Mondays, Thursdays and Mondays, to receive flogging, to practice charity, to ask for forgiveness from the shamed person, to go barefoot to the graves of his parents and beg their pardon from them. In this *responsum* of Ra'avan we have an early example for the penance for cursing, with all the kinds of atonements which came into use for this kind of transgression in Ashkenaz later in the Middle Ages. R. Meir of Rothenburg decreed about a rich man who had called a son of a noble family a “bastard”, that he was to be punished, flogged and fined more severely than usually; to do penance through fasting, charity, and flogging.⁴⁰² In the *responsum* of R. Avigdor b. Menachem⁴⁰³ a case of calling someone a “bastard” is judged by the respondent, and he mentions in connection with the problem of cursing that he has introduced in his city a new law, because so far they have not been used to punish the curser. He also informs us about excommunication in the case of a certain kind of cursing, and he holds that the excommunication for it should last seven days, and that the excommunicated person must behave himself accordingly at the time of the prayer.⁴⁰⁴ In a *responsum* of R. J. Weil's, a case is retold in the name of R. Hayyim b. Isaac Or Zarua, somebody hits another one, with hot anger in his heart calls him a “bastard”. They go to R. Hayyim b. Isaac Or Zarua, and he exempts the curser because of the “hour of wrath”.⁴⁰⁵ If one curses a woman, he must sit barefoot before the synagogue and beg her pardon before the *bimah*, according to R. Mordehai b. Hillel.⁴⁰⁶

In NMM in the case when one calls another one a “bastard” by whispering into his ears, and the other shames him in the same way, the latter must swear that the former has cursed him first, and he will be exempted.⁴⁰⁷ For calling someone a “bastard” in German, “Hurensohn”, one must go to the grave of the parents barefoot and beg pardon, and if the graves are far away, he can send his messenger.⁴⁰⁸ If one calls another one an “apostate”, everything must be judged in accordance with the deliberation of the judges of the town. Calling someone an “informer” is punished by flogging.⁴⁰⁹ For cursing the dead, desecrating

⁴⁰¹ Maharam Lvov 492.

⁴⁰² Maharam Prague, 132.

⁴⁰³ Maharam Lvov 491.

⁴⁰⁴ Maharam Lvov 491.

⁴⁰⁵ Weil 28. About the “*sha'at ha-za'am*” see also II.B.1.3.

⁴⁰⁶ *Mordehai Qid.* 558.

⁴⁰⁷ NMM.

⁴⁰⁸ NMM.

⁴⁰⁹ In two decisions of NMM.

a grave, and if the cursed one has died, the offender must go to the grave and ask there for forgiveness publicly, in the presence of ten men.⁴¹⁰

In the *responsa* of R. Weil, there are more cases of cursing. In Weil 28, discussed earlier in the chapter on beatings, curses are also judged: “bastard”, “murderer”, “abuser of women”, “evil-doer”, “pimpled with boils and leprous”, “you are not in peace with the people”, “you have no faith”, from all these the cursers were exempted. In the case of Simelin from Ulm, the offender was condemned also because of calling the rabbi Seligman of Ulm a “bastard”, and for cursing the judges.⁴¹¹ And he did not return truly after the decree of R. Weil, therefore he was warned once again under threat of excommunication to return from all.⁴¹² A case is answered by R. J. Weil, concerning one who said to his fellow “you are though you were a bastard”, which was not a very grave sin in the opinion of the respondent.⁴¹³ In Weil 60 the same quarrel is discussed, and claimed that the accused himself admitted that he had said, “you are lying as a bastard”, but the other one started the quarrel saying, “you are a thief and an informer”. About the same cursing, in the Weil 61, it is answered that if the accused does not admit the charge, he must not be made even liable to take an oath to be exempted from the charge of cursing.

In a *responsum* of R. I. Bruna’s the curse “prostitute” is also to be judged according to the intention of the caller, because maybe the intention was to say something else.⁴¹⁴ R. Bruna dealt also with a case in which one called the other an “apostate”; the respondent explains that all must be judged according to the estimation of the intention: if it is judged that he really wanted to say about him that he denied God, then he must be punished accordingly.⁴¹⁵

R. J. Colon judged about the false accusation of threat to bring to the Gentile court the respondent mentions also that to call “informer” in these times is graver than to call him “one transgresses what is written in the Torah”.⁴¹⁶

According to the decision of R. I. Isserlein the offender who in his childhood cursed his father, is exempted according to the law, but when he grew up, it is good, according to the respondent to receive some *mishqal*-penance, this is torture.⁴¹⁷ This decision can be interpreted also as a liability according to the “law of Heaven”. For curses in the childhood

⁴¹⁰ In three decisions of NMM.

⁴¹¹ Weil 147.

⁴¹² Weil 178.

⁴¹³ Weil 59, 60, 61.

⁴¹⁴ Bruna 76.

⁴¹⁵ Bruna 203.

⁴¹⁶ Colon 185.

⁴¹⁷ Isserlein PuK 62.

in SHP there are contradictory regulations: there are paragraphs which rule that he is punishable⁴¹⁸, in another paragraph the ruling is contrary.⁴¹⁹

II.B.5.5. Conclusions

For cursing, fines were imposed almost in every place, either on the basis of the Talmud or on the basis of enactments. At some places monetary fines were not in use; flogging was applied instead. As penance, besides flogging – which could be counted both as punishment or penance –, fasting was prescribed. Excommunication (*niddui* or *herem*) was applied in cases when the offender did not want to receive the punishment or penance decreed (flogging, fine, fasting, begging pardon), or as a punishment in its lesser form (= *niddui*, thirty, seven or eight days). For cursers, begging pardon was a requirement; in most cases, it was done in most of the cases publicly, before ten men, either in the synagogue, before the *bimah* and the Torah scroll, or in the synagogue of the women, if the offender was a woman, or in the courtyard of the synagogue, or at the grave of the cursed one if he died; or if the curse was “bastard”, at the graves of the parents of the cursed one. Asking for forgiveness at the graves could be performed as a procession or pilgrimage barefoot to a near or far place; begging pardon in the synagogue could also be required to be done barefoot.

II.B.6. Slander

Slander, just as cursing, is a frequent transgression in medieval Ashkenazi Jewish communities, and it is also a relatively grave offense.⁴²⁰ The reason for this lies – like that for the gravity of cursing – in the central value of honor in medieval Jewish society. By speaking evil on somebody, the honor of the offended person was harmed and his/her status in the Jewish society was endangered. Therefore, the offender was required to clarify the truth about

⁴¹⁸ SHP 1773.

⁴¹⁹ SHP 1966, 216, discussed above in B4. About the age for a child to be commanded for the performance of the *mizvot* or to be punishable S. Goldin wrote in his article that “there is in him knowledge” meant that the child understood his deeds, therefore even at an age of four he is punishable (Goldin, “*יפן יבואו*”).

⁴²⁰ According to the Talmud, slander – the spreading of evil reports in order to injure a reputable name – is punishable by a fine and an assessment for damages (bArachin 15b). The “*mozi shem ra*” (one who invents an evil reputation) is to be distinguished from the “*mesapper leshon ha-ra*” (one who speaks with an evil tongue), which is calumny. The latter makes malicious but true statements, with the intention of exposing the subject of them to public hatred, contempt or ridicule, which offense is prohibited but is not punishable by fine and a penalty for damages.

the slandered person, to ask him for forgiveness, mostly within the frame of a ritual, and to perform other public and private acts of penance.

II.B.6.1. Slander in SHP

SHP 91 connects the sin of slander to *hillul ha-Shem*. It is stated here that he who slanders another Jew must not only beg his pardon but must also publicly clarify before those who have heard the slander that it is a lie; and if he can not do that, there is no pardon for him at all. On the other hand, the paragraph states that it is also a bad and harmful thing to speak good of evil people.⁴²¹

II.B.6.2. HTR

According to HTR, the heavenly punishment for slander is leper on the basis of the *midrash* in *Sifra*. The penance for slander is fasting and flogging.⁴²² The slanderer must beg the pardon of those whom he has slandered, and without this there is no remedy for him:

“The slanderer has no remedy if he does not beg pardon and appease all whom he has slandered, and he shall deal with the commission to peace and with the [fulfillment] of the commandments.” (HTR 28)

In MH Ms. Parma 2410, on fol. 16b, there is a gloss, that states that for slander the offender must be tormented and punished:

“There is a sin which is worse than the grave sins, he who tells gossip about his fellow or ill fame, it is worse than fornication [or adultery], and he shall be tormented and punished [for this].”⁴²³

II.B.6.3. Responsa

The collection of decisions and excerpts of *responsa*, NMM, contains especially many cases of slander. There are many slander cases about un-chastity, impurity, or fornication of women. (1) In one of the decisions, a man slanders his own wife saying that she had intercourse with him, the husband, when she was a *niddah*. The relatives of the wife make it clear that this is slander, and the slanderer must receive flogging and must clarify that he has accused her falsely; thence, under threat of excommunication, it is forbidden to him to slander the woman.

(2) In another decision of NMM, the *responsum* of Meir b. Baruch of Rothenburg is quoted: one slandered the wife of another Jew saying that she was a prostitute⁴²⁴. This one

⁴²¹ See App. II.B.6. for translation.

⁴²² HTR 16. See App. for translation.

⁴²³ Ms. Parma 2410 16b.

denies it, therefore he is exempted if there are no witnesses; the community can also proclaim the truth in the synagogue in order to clarify the truth.

(3) According to another *pesaq* of NMM, one slandered the grandmother of another one saying that she was not a Jew. If the slander proves to be false, and there are no witnesses to the contrary, he is liable to punishment and excommunication. (4) In another case in NMM, a woman slandered another woman and her father; for the first she is liable to excommunication thirty days and must beg her pardon in the synagogue of the women; for the second she must receive flogging, but being a woman it is enough if she sits outside the synagogue (excommunicated) eight days instead, and she must go to the grave of the father with ten men and ask for forgiveness before them from the dead person. If the husband does not want his wife to be excommunicated, he can redeem it by money. (5) In another case in NMM, slander about fornication of a woman is spread. A man harmed the son of the slandered woman in a quarrel because of his mother. The slanderer must beg the pardon of the son in the court of the synagogue. (6) According to another *pesaq* in NMM, one says to his wife that her daughter is a bastard, then he changes his mind; if he gives pretext to his words, he can be exempted.

Another group in NMM and in the *responsa* of the rabbis of the 15th century deals with cases in which slander endangered the status, profession, legal properness of the slandered persons and even there were cases in which the slandered persons were threatened to be excommunicated. The primary goal of these examples was to clarify the principle that in certain cases one can not be disqualified, excommunicated, deposited etc because of defamation. (7) For example, in a decision of NMM it is stated that one can not be disqualified from testimony on the basis of slander, even if he does not reply to the accusations or admits them, because he can not incriminate himself. (8) According to another *pesaq* in NMM, slander is spread about a false oath, then clarified by witnesses that it is a slander; the decisor forbids to slander about the falsely accused Jew. (9) In another *pesaq* in NMM, it is stated that if a Jew prohibits another Jew from praying with the community – which means that he considers him as excommunicated – he can not be condemned, because his intention may be good, thinking that it is a justifiable prohibition.

(10) In one of R. I. Isserlein's *responsa*, a Jew has spread a rumor about a prayer leader in a community of having fornicated with a certain woman, in consequence of which he

⁴²⁴ This is a responsum of Meir b. Baruch of Rothenburg, see *Mordehai* BQ par. 81: "What is for you to be alone with your wife etc.", see also the responsum of J. Colon No. 186.

has lost his position as prayer leader in the community.⁴²⁵ Afterwards it has been clarified that the accusation has been false, but the community has already hired another prayer leader. R. Isserlein decides that the offender must ask for forgiveness from the offended man and do penance. The offended man is not due to forgive the offender. The offender does not have to pay the financial loss, because it is only an indirect damage (*garme*). But if the court decides to punish the offender in order to “make a fence” around the law, it is allowed.

(11) According to another *responsum*, R. Isserlein arrived at the decision that the one who had spread rumors did not have pay for damage, but he had to appease the slandered person with words, and the offended one was not due to forgive him.⁴²⁶

(12) According to a *responsum* of R. M. Minz’s a woman is slandered about false oath on property. She made the oath seven years earlier, and now she is married to a rabbi and her marriage dowry is bigger.⁴²⁷ The respondent clarifies that her property could increase in the meantime manifold, so she can not be disqualified. The slanderers have transgressed a negative commandment and they are liable to flogging, and the offender must do penance through fasts, flogging, charity, and beg both the pardon of the woman and of her husband, because by slandering a rabbi the slanderers harmed also the honor of the Rav. And she is not due to forgive the offenders. From now on, under threat of excommunication, it is forbidden to slander about her.

II.B.6.4. Conclusions

On the basis of slander, one can not be legally disqualified, excommunicated or punished. If the slander is proven to be false, the slanderer must beg the pardon of the slandered person, in most of the cases publicly, but the slandered one is not expected to forgive the slanderer. It is a duty for the offender or the community to publicly clarify the truth about the offended one in the synagogue or in another public place. The offender is not due to pay for the loss, because slander is an “indirect damage”. Regarding the punishment or penance: according to one of NMM’s decisions, the slanderer must be flogged; according to another one, he is liable to punishment and excommunication; according to a third one, the penance imposed on a woman who has slandered others is excommunication for thirty days and flogging redeemable by eight days of excommunication. According to ThD 307, the slanderer is required to do penance through self-mortification. According to M. Minz 75,

⁴²⁵ Isserlein 307.

⁴²⁶ PuK 212.

⁴²⁷ R. Minz 75.

slanderers are liable to flogging for transgression of a negative commandment; therefore, they are required to do penance through flogging, fasting and charity.

II.B.7. Arson. Desecration of the Sabbath in Times of Fire; Accusation of Arson against the Fellow Jew before the Gentile Court

Arson⁴²⁸ is an especially grave offence in the Middle Ages, punishable with death by secular law. Arson, as the Jewish *responsa* demonstrate, is an exceptional case also to Jewish jurisdiction, but for other reasons. There are two categories of cases connected to arson: (1) the problem of the allowance of extinguishing the fire on the Sabbath, and (2) the problem of false accusation against another Jew before Gentile authorities in times of fire. Related to the first, the cases show that at least from the time of R. Isaac b. Moses Or Zarua, there was a consensus as to allowing the Jews to extinguish the fire on the Sabbath and on holidays, because of an imminent danger threatening the Jews of death. This danger is to be understood in different ways, and in a very little degree as danger of arson; often as danger of attack on the part of the Gentiles, and more often as danger of false accusation brought against the Jews by the Gentiles. This is also the reason for the stringency by which, in case a fire broke out, the false accusation brought against a fellow Jew was judged, this kind of complaint being qualified as the gravest offence, considering that the Gentiles threw into the fire the Jews at whose houses the fire broke out.

II.B.7.1. Extinguishing the Fire on the Sabbath and on Festival Days

In three places of the *Sefer Or Zarua*, we find the decision of the author in connection with the allowance of extinguishing the fire on the Sabbath. The reason is that at the time discussed the Jews lived among the Gentiles, and they were exposed to danger of death, because the Gentiles came and plundered and killed when a fire broke out. According to the explanation of Isaac b. Moses Or Zarua, plunder and killing in times of fire were threats on the basis of which the rabbis decreed that the community had to extinguish the fire – this was an enactment of the rabbis, a general one, or there were more local enactments. Nevertheless, the author also emphasizes that after the fire the same rabbis decreed punishments or penances – fasting, flogging, excommunication, practicing charity – for the desecration of the Sabbath, and next time they again ordered the community to extinguish the fire. With this the author

⁴²⁸ About arson in medieval Ashkenaz and about some of the sources I have learnt on the courses of Simcha Emanuel. I owe thanks to him.

disagrees, because there was a threat that next time they should not extinguish the fire. Therefore, no penance should be imposed for extinguishing the fire on the Sabbath or on festival days.⁴²⁹

The earliest source which explains the danger for Jews in time of fire, is a *responsum* of R. Meir b. Baruch: there was a danger of death accusing the Jews when a fire broke out, because the Gentiles had the custom of throwing into the fire the Jew at whose house the fire started.⁴³⁰ R. Hayyim Or Zarua even decided that if a fire broke out at the house of a Jew, he was allowed to extinguish it by himself. Moreover, even if there was a Gentile near him, he should not have him extinguish it. It was a *mizvah* to do it by himself, because there was a threat that the Gentiles would come and shed blood.⁴³¹

In the *Laws of 'Issur va-He'etter* R. Abraham Kaz concludes that it is not allowed to delay the desecration of the Sabbath in case of danger of death, and it is commanded to extinguish the fire on Sabbath even if one can run away, because the other Jews remain in danger of death (because of false accusation).⁴³²

It is clearly stated in the name of two rabbis, R. Jacob Mollin and R. Abraham Kaz of Halle (whose opinion is quoted above from his work), who both preached publicly, that the fire broken out on Sabbath, even on the Sabbath which falling on Yom Kippur (the desecration of which was a grave sin) could be put out, if the Jews can not have the Gentiles extinguish it, because the Gentiles pursue the Jews by false accusations and this is a case of danger of death.⁴³³

In the *responsum* of R. I. Isserlein two quotations are brought by R. Isserlein in the name of two of his teachers in connection with the allowance of extinguishing the fire on Sabbath.⁴³⁴ The first is a decision of R. Solomon of Neustadt's⁴³⁵, the teacher of R. Isserlein, judging it is even allowed to extinguish the fire at a Gentile house, because in times of fire the Gentiles are inclined to kill the Jews who are not ready to help them, and also because they come to rob the burnt houses, which can also be an imminent danger of death.⁴³⁶ Therefore, it

⁴²⁹ OZ II. H. Erev Shabbat No. 38, OZ II. Eruv. No. 149; OZ II. Sanh. No. 23–24. For the translation of this latter see App..

⁴³⁰ Teshuvot Maharam Prague 140.

⁴³¹ Derashot R.. Hayyim OZ No. 9.

⁴³² Quoted in *Sha'are Dura* of R. Isaac b. Meir of Dura, p. 163.

⁴³³ In the *Sefer Maharil (Minhagim) Hil. Shab. 22.*

⁴³⁴ Isserlein PuK 158.

⁴³⁵ Of Neustadt, the teacher of R. I. Isserlein.

⁴³⁶ About the fire in the year 1406 in the city of Vienna and the attacks on the Jews in the time of the fire, the most elaborate study is in the book of Krauss, Samuel: *Die Wiener Geserah vom Jahre 1421.* (Wien 1920), 1–19. In this year a fire broke out in the *Judengasse* (Jewish quarter in Vienna) which was the opening of catastrophes leading to the martyrdom of the Jews and their burning at the stake in 1421.

is even allowed to save the property. The other quotation is from the preaching of R. Aaron of Neustadt⁴³⁷, the uncle of R. Isserlein, who preached publicly that the Jews had to extinguish the fire on the Sabbath, even if it broke out at a Gentile house, and he disagreed with those who said that they should extinguish it only if it broke out at a Jewish house, arguing that in such cases the Gentiles were always eager to throw the Jews into the fire, moreover, there were cases when even if the fire broke out at a Gentile house, the Jews were thrown into the fire.

II.B.7.2. False Accusation of Arson Brought by a Jew against Another Jew before the Gentiles in Time of Fire

In Ms. Hamburg 45 par. 168 there is a case of false accusation of arson against a Jew before the Gentiles in a time of fire. The respondent answers to the court or the community concerning the informer or accuser, who is still in the custody of the Jews. The question is related to the enactment of the rabbis who decree in such cases of false accusation of arson that the offender must be excommunicated. Nonetheless, the respondent holds that if it is to be feared that the offender will escape and take refuge at the Gentiles, and leave the accused fellow Jew and all his family in danger of death, he must be not excommunicated, because that could be a stumbling block. Consequently he decides that the offender is liable to flogging.

In NMM the false accusation of arson, or even the threat of false accusation, against a Jew by another Jew is considered information and judged as the law of the pursuer, therefore he who makes the threat or accusation can be killed as the pursuer. This decree is based on the principle of *hora'at sha'ah*, brought at the end of the responsum though the classical place – Sanh. 46a – to support the decision:

II.B.7.3. Conclusions

In case of fire, the main idea is that if a fire broke out in Europe in the Middle Ages, a danger of death emerged because of the false accusations of arson brought against a Jew or the whole Jewish community. That was a situation in which the courts or rabbis decreed enactments based on the principle of *hora'at sha'ah* (emergency decree). One enactment was that on the Sabbaths and on festival days the community had to be ordered to extinguish the fire, that being an emergency situation; some of them decreed penance for the desecration of

⁴³⁷ The uncle of R. I. Isserlein, he was executed as a martyr in 1421 by the Gentiles, as well as the mother of R. I. Isserlein.

the Sabbath and festivals; Or Zarua disagreed with this. On the other hand, if somebody accused his fellow Jew in a time of fire, he was considered a pursuer, and before denunciation he could be killed, after denunciation punished severely by excommunication and flogging. But if there was an even greater threat, namely that he would escape and leave the community in danger of death, he had to be treated carefully and leniently.

II.B.8. Contempt of Court and “Contempt of Rabbi”

The existence of the medieval Ashkenazi Jewish communities was based on the interdependence of individual and community. The category of transgressions discussed in this chapter is the disobedience of a member of the community to the representative(s) of the institutions or to the law. This category contains (1) disobedience in its most basic form, as an illegal act, that is to say, disobedience to the court – either to its summon or to its decision –, called “contempt of court”⁴³⁸; but it also contains (2) the disobedience to or the transgression of a *herem* – a community decree pronounced under threat of excommunication –; and (3) the harm done to the honor or reputation of a rabbi (or community leader) in his quality of being the representative of the Law (the Torah); further, (4) the abuse of power by this representative either against the community or an individual, or against another rabbi or rabbis. The consequence of these kinds of disobedience was the threat or actual decree of excommunication – lesser (*niddui* – of thirty days) and greater (*herem* – for indefinite time). This was the normal course of the legal process in cases of disobedience, and in most of the cases discussed below, this is explicitly stated. But even if excommunication or the threat of excommunication is not contained in the sources, it is an implicit requisite to certain decisions of the court, community, or rabbi. Excommunication could only be released by repentance. We do not always have a record of the kind of repentance – whether it was a ritualized one or the offender was only required to pay and publicly beg the pardon of the court, rabbi, or/and community; but in some cases we have a very detailed description of the penances which the excommunicated one or the person threatened with excommunication had to perform (e.g. the case of Simelin of Ulm). Therefore, we shall treat these kinds of legally punishable offenses and their relation to the repentance and penance performed within the frame of a public ritual (in the majority of cases) and/or privately. The key notion for most of the cases discussed

⁴³⁸ For the Talmudic law regarding contempt of court, see App. II.B.8.

below is *herem* (ban). In his article about the notion of “family” in the Middle Ages⁴³⁹, S. Goldin states that *herem* (ban) was the most important and necessary institution in the Jewish communities, as the sages of the time themselves put it:

“In our days there is no *taqqanah* for Israel, except the ban and oath, and every one who transgresses them shall be punished, both he and his descendants. And to him who observes the ban God shall give good [things].”⁴⁴⁰

The meaning of the ban is deep commitment to one another, which is highlighted by the oath to accept the decisions of the community. It was decreed in the framework of a ritual in the synagogue on the Sabbath. After the reading of the Torah, before the Torah scroll was put back into the Ark, all the community swore to accept the decision. The Jewish community had no other tools to enforce decisions. Concerning the legitimization of this important institution, S. Goldin explains that Ashkenazi Jews used the *midrash*⁴⁴¹ about Joseph’s brothers who after selling Joseph, took an oath not to reveal their deed, but being only nine, they had to add God so that the ban be valid. The notion of “family” played an important role in the legitimization of the ban. R. Hayyim Or Zarua uses this *midrashic* motif in one of its *responsa* to demonstrate that a ban which is received in the presence of less than ten adult Jews is not valid.⁴⁴²

II.B.8.1. *Taqqanot Rabbenu Tam* (=TRT, 1160) and *Taqqanot Shum* (=TSh, 1196, 1220)⁴⁴³

Enactments related to the ban: (*Taqqanot Rabbenu Tam*) (1) The first enactment states that the Jewish community has the right to enact decrees under threat of excommunication (for this the term *herem* = ban is used); and to release the decrees for the individual in case of emergency or for each other. If the time for which the ban is enacted passes, there is no need for release. (2) It is stated in the name of R. Yehiel (13th century, Paris) that the community members can release the ban for each other; if the whole community accepts the ban, the

⁴³⁹ Goldin, “השימוש במושג ‘משפחה’”, 51.

⁴⁴⁰ SHP 1286, 1386.

⁴⁴¹ *Midr. Tanhuma* to the place and *Pirque de-Rabbi Eliezer* 37.

⁴⁴² Shut Hayyim OZ (Jerusalem 1972), par. 2.

⁴⁴³ The basis for the enactment is in the Talmud BB 8b: “The townspeople are also at liberty to fix weights and measures, prices and wages, and to inflict penalties for the infringement of their rules.” See concerning the different opinions regarding the requirement of simple majority or unanimous consent for enacting a decree: *Resp.* of Rif, ed. Leiter No. 13 (Alfasi, requirement of “simple majority”); *Mordehai* BB 8b (R. Tam, requirement of unanimous consent); *Mordehai* BQ 179 (requirement of “unanimous consent of the majority”, and agreement of the Rabbi; but the prominent of the generation and his *bet din* can enact enactments and extract property also without the unanimous consent of the majority.)

individual can not be exempted from it (which is disagreed by some rabbis in France). (3) Regarding the collection of tithes, one can not exempt himself, and the collector must be accepted by the community. (4) Regarding the proclamation of the ban, the community blesses after the ban is pronounced. (5) In a place where a ban is pronounced, and a stranger comes to that place, and someone summons him to the court on the basis of the ban, he is due to appear; if he disobeys and there are witnesses, the *bet din* can write “writ of disobedience” for him. After he appears in court, the defendant can leave and the claimer must send him the verdict.

(*Taqqanot Shum*)⁴⁴⁴ (1) The punishment for the transgressor of the ban is excommunication, and if he remains disobedient more than one month, his property must be confiscated and delivered into the hands of the Gentiles. The court has the right to punish and fine the transgressor as it deems advisable. (2) The release of the ban can only be performed only with the consent of the entire community; the rabbi or community leader is not entitled to lift the ban.

Enactments concerning a process in the *bet din*: (*Taqqanot Rabbenu Tam*) (1) The plaintiff must summon the defendant to court in one of the three nearest towns to the hometown of the defendant. (2) He who is summoned to court before witnesses is not allowed to disobey; he must go to one of the three courts nearby, or, according to R. Gershom, to the Supreme Court. The messenger of the court, on the other hand, is regarded as two witnesses, and it is not allowed to disobey him; the defendant must choose one of two days offered by the messenger, and if he does not appear in court, the judges have the right to write a writ of disobedience against him.

(*Taqqanot Shum*) (1) The delay time for appearing in court is three days. (2) The individual is not allowed to prevent the judges from commencing a lawsuit. (3) Excommunication is only accepted with the agreement of the rabbi and the community. Even with the support of other rabbis, without the agreement of the community, a rabbi can not excommunicate, and if he does, his decision is not valid.

II.B.8.2. *Haside Ashkenaz*. Transgression of a *Herem* and Disobedience in SHP and HT

In the penitential writings of *haside Ashkenaz* the transgression of a *herem* is often connected either with perjury or robbery. Contempt of court appears in SHP and HT not as an offence. Instead, the offences discussed under the headlines “leading others astray”,

⁴⁴⁴ See: Auerbach, S. *Die rheinischen Rabbinerversammlungen im 13. Jahrhundert*.

“separating oneself from the community”, “desecration of the Name” refer to transgressions whose content is frequently identical with disobedience to the community enactments.⁴⁴⁵

In SHP, bans, the laws concerning it, as well as cases of its transgression are prominent subjects, the ban being the basis of the functioning of the community government. In SHP, there are two sequences of paragraphs with the inscription: “The laws of ban and oath”. In one of them, it is stated that the perjury concerning tax-paying is punished in the world to come, even if the offenders escape unpunished in this world.⁴⁴⁶ The transgression of a ban is regarded as a sin which has no remedy, because the offender defrauds many people.⁴⁴⁷ The graveness of the transgression of a ban and the “curse” implicitly connected to it is expressed in an instruction of SHP, according to which a good and proper man is not advised to live in a place where people transgress bans.⁴⁴⁸

According to HTR 28, one who leads others astray can only atone for his sins through perfect penance (confessing, fasting, flogging, practicing charity and supporting Torah study). According to IT Ms. Vat. 183 (fol. 164a), the sin of leading others astray can not be atoned for through penance. According to the same treatise (fol. 180a), the desecration of the Name and separating oneself from the ways of the community are considered grave sins, which can only be atoned for through perfect repentance.⁴⁴⁹

II.B.8.4. *Responsa*⁴⁵⁰

II.B.8.4.1. Contempt of Court, Disobedience

In two *responsa* (Weil 147 and 178), R. Weil answers in connection with the famous case of the rabbi and community spokesman, Simelin of Ulm⁴⁵¹, who has transgressed a ban

⁴⁴⁵ For these categories of sins and their punishment in *Gehinnom*, see Flusser, *Judaism*, Chapter 8, 66–110, and Introduction 4.1.

⁴⁴⁶ SHP 1386.

⁴⁴⁷ SHP 1303. See the II.B.4 for the *responsum* of Colon concerning the repentance in a case when some of the community of Ancona have transgressed an enactment concerning tax-paying.

⁴⁴⁸ For further discussion based on paragraphs in SHP, HTR and IT concerning ban and sinners who have no share in the world to come, see App. II.B.8.

⁴⁴⁹ All these belong in the category of those who have no share in the world to come; see Flusser, *Judaism*, locus quoted above.

⁴⁵⁰ Other cases of ban: R. I. Isserlein ThD No. 276; PuK Nos. 126, 144; R. Moses Minz Nos. 48, 56, 89; R. J. Colon Nos. 25, 32, 57, 93, 127, 128, 141, 178.

⁴⁵¹ Sion or Samuel b. Menachem Walch, moneylender and *haver* (that is, not yet an ordained rabbi). After 1428 he was the successor of his father, R. Meinleint or Menly or Mellingen, who was received in the city in 1423. He was the member of the *bet din* and the member of the council of the community, who decided about acceptance of new members in the community and about tax-matters. This position of his became endangered when in 1430 the renowned rabbi R. Seligman (Isaac b. Abraham, called in Italy Bonaventura) came to the city from Coburg, bought the most noble house in the Jewish quarter, and hired another one for *yeshivah*. He and his wife, Jentlin, from Konstanz, had remarkable businesses. Simelin wanted to hamper the integration of R. Seligman in the community. Keil, “Gott, Gemeinde”, 489–494; Strassburger, “Zur Geschichte”, 229; *Germania Judaica*, III, 2, 1507.

on tax-paying enacted in Nürnberg in 1440 which he also undersigned. In 1440, he made an individual contract with the ruler to pay separately was been forbidden by the ban decreed in Nürnberg. Therefore, two members of the community of Ulm, friends of rabbi Seligman (the Rav of Ulm), delayed the prayer because of him three times (*'iqquv tefillah*). By this they wanted to compel him to convince the ruler to lower the tax for the whole community. Since he was not willing to do that, they wanted to compel him to annul his personal agreement with the ruler, which he also refused to do. They delayed the prayer for the third time to force him to pay together with the community as though he did not pay separately, or to give a pledge, but he did not want to do that, either. Consequently, R. Seligman and other leaders of the community of Ulm spoke with the Gentile mayor of the city that he should speak with R. Simelin and force him to pay. They were entitled to do that, on the basis of the same ban of Nürnberg. The mayor arrested R. Simelin on 27th of August 1440.⁴⁵² He charged the community before the mayor with pushing him in the synagogue and wanting to kill him. The mayor obliged him to undersign a promissory note that he would not harm the community. He called R. Seligman a “bastard” and the community “proselytes”. Another time, he betrayed one of the community members, R. Joseph Levi, summoned him before the Gentile court. He did not have the approval of the Jewish court, and R. Joseph Levi lost money. Finally, R. Simelin was summoned before the Jewish court to pay the damage. He warned R. Joseph Levi not to testify and wanted to force him to sign a writ which would exempt him.

Because of contempt of court, the transgression of the community ban, denunciation, cursing R. Seligman, the community, and the judges, R. J. Weil prescribed for him penance for one year, beginning by thirty days of excommunication, sitting at home; public flogging in the synagogue along with public confession and asking for forgiveness with a certain fixed text; going to the graves of the parents of the rabbi and asking for forgiveness from them for calling the Rabbi a “bastard”; fasting every day during that year. He was also required to pay the damage caused to Joseph Levi and the expenses spent by the community on sending his case to Nürnberg, and if he wanted to commute the fasting for alms-giving, he was also bound to pay. After completing his penance, he would be legally qualified. R. Weil also specified that when the leaders of the community came to collect taxes, it had to be done according to their estimation, and not according to Simelin’s oath. He lost his right to sit in the council, and his name had been erased from the enactments. He could no longer be called a sage and *haver*. If he refused to do penance, he would be excommunicated.

⁴⁵² The date of the arrest is known to us from other sources. See Straßburger, “Zur Geschichte”, 229; Germania Judaica, III, 2, 1507.

However, it was proved that Simelin did not confess the words which had been fixed by R. Weil, did not perform the penance as required, and repented by falsehood. Consequently, in another *responsum* to the judge, R. Weil decided that he could not regain his legal status until he performed the fasts, floggings, alms-giving, confessions, and asking for forgiveness as required. Here, R. Weil mentioned that Simelin had cursed him too. We do not know how the affair ended: whether Simelin was excommunicated or not.

A legally similar case is discussed in Minz 57: a Jew, R. Liezer in Schlettstadt, has not been willing to pay his taxes assessed by the community, therefore the leader of the community, R. Liwman has delayed the prayer (*'iqquv tefillah*). R. Liezer did not obey, instead he has gone to the Gentile court to complain, although the leader of the community, R. Samuel has warned him not to do that. R. Samuel has suggested that R. Liezer and R. Liwman should litigate in Jewish court of arbitration (*bererut*)⁴⁵³, that is to say, they should choose each one a judge and the two judges should choose a third one. The prayer has been delayed once more, but R. Liezer has disobeyed again. Therefore, the respondent, R. Minz has warned him under threat of excommunication to repent, and has given him thirty days to repent.

Disobedience of a court order is discussed in Minz 83. In Frankfurt, R. David has been cited to court by Maharam Zvi. R. David has appeared in court, but he has not been willing to obey the decision and fled (*boreah din*). The answer of R. M. Minz is written to the judge, R. Simon Kaz, who has refused to provide a written document concerning the verdict passed on the other party, Maharam Zvi. Consequently, R. Minz instructs the community of Frankfurt to emit a written document regarding the verdict. He agrees with the judges on having decided to excommunicate R. David because for fleeing the judges, and adds that they have the right to issue a written certificate of disobedience (*sarbanut*).

A case of not appearing in court upon a summons, and using a legally justifiable pretext to be exempted, is discussed in the *responsum* Minz 101. A Jew has summoned another Jew to a Jewish court which has been far away from both, and on which both have agreed, in connection with a debt which the defendant has owed the claimant. The claimant has been required to send a surety to the appointed place until a certain date, and the seal of the writ has gotten accidentally damaged, so the claimant has been compelled to send another writ. But the specific date has been exceeded, and the defendant has taken the opportunity not to evade court appearance and annul the suit, to which he has had the right, according to Jewish law. The plaintiff has tried to make him indebted for the costs of the litigation, and

⁴⁵³ See glossary in Introduction 3.2.

also for not paying back the debt, which has been the reason for quarrel between them. After several years, when the litigants have been ready to hear the decision, the case has been sent to R. Minz. He has decided that according to the “law of men” the defendant must be exempted, but he has been liable according to the “law of Heaven”. In other words, according to the decision of R. Minz, he has been due to ask for forgiveness, but he has not been liable to pay for the costs of the litigation and the debt. R. Minz has asked the opinion of another rabbi; the rabbi has also said that the defendant has been responsible according to the “law of Heaven”, but he has been of the opinion that the costs of the litigation and the debt must be paid to the plaintiff if the defendant has been willing to do penance, otherwise his repentance cannot be accepted. No threat of excommunication has been pronounced, since penance has only been a requirement according to the “law of Heaven”.

The last two examples pertain to marital law. According to Colon 57, a man has unlawfully taken away his wife’s bride outfit, claiming that she has quarreled with him. He has already been warned by the rabbis of Prague when the case has been sent to R. Colon, but he has disobeyed. R. Colon has decreed under threat of excommunication to return the outfit. He has also instructed the man and his wife to choose each a judge, and if they can not arrive to a conclusion, both judges should choose a third one to find out who has started the quarrel. The man has wanted to divorce his wife without *ketubbah*, claiming that she has been a *moredet* (rebellious wife), but since the woman has denied his accusation, the case has needed legal settlement.

The last example is formally a disobedience to the decision of the court in a *shiddukhin* case.⁴⁵⁴ According to Minz 97, two noble community leaders in Italy have engaged their children to each other: R. Cosi has been the father of the bridegroom, and R. Sūsman, the father of the bride. But the father of the girl has changed his mind, and has promised to give his daughter in marriage to the son of another wealthy community leader, the son of R. Wiz Kohen of Meisteri. R. Cosi has made a complaint in the court of Padua against the two, R. Sūsman and R. Wiz, that they have shamed him and transgressed the ban of R. Gershom. The rabbis of Padua have decided that R. Wiz can not pay a surety in Meisteri (for the engagement of the daughter of R. Sūsman), because the girl has already been engaged. But he has disobeyed and has paid a surety, although R. Joseph Triws has protested. The rabbis of

⁴⁵⁴ That is to say, an agreement between two parents to engage their children to each other, about which a formal protocol was written in the *bet din* by placing a surety fine (*qenas*) for the party which transgresses the agreement. By a difference to *erusin*, *nissuin*, *hatuna*, the *shiddukhin* is not binding, according to Talmudic law. But it became a widespread custom in the European Jewish Middle Ages to consider it as binding and to prohibit to be broken. The custom of *shiddukhin* was so strong that there were places and times, when it could not be released even by paying the *qenas*.

Padua have declared excommunication against R. Wiz and his son for disobedience. R. Liwa Landau has supported R. Wiz and his son in the quarrel, and has encouraged R. Wiz and his son to say *adrabe* (on the contrary) against the excommunication declared by the court of Padua. He has also decreed – under threat of excommunication – against the rabbis of Padua that they must repent, do penance, and ask for forgiveness from R. Wiz and his son. The rabbis of Germany and France have been divided on the issue; some have supported R. Wiz, others R. Cosi. R. Bruna, R. Judah Minz and R. Moses Minz have supported R. Cosi and his son. After the quarrel has deteriorated, R. Moses Minz has decided that R. Wiz and his son must do penance and accept everything what the rabbis of Padua have decided, and R. Landau must ask for forgiveness, do penance and do what he himself has decided concerning the rabbis of Padua.⁴⁵⁵

II.B.8.4.2. Abuse by the Plaintiff to Sue the Defendant Unlawfully in a Court of His Own City and Not in One of the Defendant's

Isserlein PuK 64 deals with the abuses committed by R. Eliyyah of Prague. Rav Eliyyah has claimed that somebody has withheld his money unlawfully somewhere else than Prague, and R. Eliyyah has required the defendant to come to Prague. R. Isserlein answers that he can not summon the defendant to Prague; firstly, because the court has the right to keep the money where it has been deposited and they shall litigate at that place; secondly, the money has been withheld lawfully, and not as the Rav has written. All the more so since it is evident that the Rav has wanted to litigate in Prague, because he is a rabbi and *av bet din* there. Three other transgressions committed by the Rav are recounted in the letter of R. Isserlein: (1) R. Luria has written against him (R. Eliyyah of Prague) to R. Isserlein that R. Eliyyah has wanted to compel the wife of his (R. Eliyyah's) late father to give all the legacy of his (R. Eliyyah's) brother to him, and since she has not been willing to give it, R. Eliyyah has threatened to deliver her into the hands of the secular power; he has done all this by taking advantage of his power as a rabbi; R. Luria has supported the wife. (2) R. Bruna has written against him (R. Eliyyah of Prague) to R. Isserlein that R. Eliyyah has commanded by the secular power to withhold the books of R. Bruna unlawfully. (3) R. Moses of Halle has written against him (R. Eliyyah of Prague) to R. Isserlein that R. Eliyyah has ordered the city of Halle to pay thirty pounds for the redemption of the daughter of R. Paltiel z'l, and a Jew has ransomed her with his own money; and because the money has no been needed, he has

⁴⁵⁵ Cf. Emanuel, "ביטול שידוכין".

withheld it for himself. It is obvious that in the first two instances the Gentile power is used to threaten those who are disobedient to R. Eliyyah's decree, which is a grave sin; the third case is robbery by the abuse of his power as a Rav. It is also evident that concerning the litigation in Prague, he has wanted to take advantage of his position as a rabbi and vice-president of the court. R. Isserlein warns him to repent and mend his ways.

In Colon 1 the case is as follows: the members of the city council of Würzburg have wanted to sue R. Moses who has been a citizen of the city but has left before the taxes have been collected, and thus they have not had the authority to claim the tax from him. However. They have tried to compel him, and after he has not been willing to obey, they have resorted to the Gentile authorities to force him to go before the Jewish court in their city. Consequently, of this, R. Aaron of Würzburg, who has not been involved, and his court has excommunicated and banned the members of the city council of Würzburg. The members of the city council (*parnasim*) have declared that the excommunication pronounced is not valid, and have also asked the support of the rabbis of Ulm. On the basis of the claim of the *parnasim* of Würzburg, the rabbis of Ulm have also consented to the invalidation of the excommunication of R. Aaron by the *parnasim* of Würzburg and signed the writ of invalidation, but their signature, according to the opinion of R. Colon, has been falsified. Therefore the respondent R. Colon answers that, firstly, they can not summon R. Moses to court in their city, because they are the plaintiffs, and they must go for the defendant who lives in another town. Secondly, they are involved in the case and can not judge. Thirdly, the excommunication decreed by R. Aaron and his court, who has not been involved in the case, is valid, and they can not disregard it. Lastly, the rabbis of Germany must punish them because of disobedience to the sentence of excommunication and ban of R. Aaron.

According to Colon 58, a son has tried to compel his mother to litigate with him in a *bet din* nearby. The respondent has been upset about the case and has decreed under threat of *naḥash* that after receiving the letter, in twelve days he should come to Pavia (the place of the mother and R.Colon) and litigate there. If this is not convenient to him, they must choose each one a judge and the two a third judge, and litigate in Pavia, even if it is going to be expensive for R. Asher b. Judah. Otherwise, he will be excommunicated.

According to the *responsum* Colon 90, in the litigation between two Jews– the plaintiff from Italy and the defendant from *Erez Israel* – the question is whether the plaintiff can sue the defendant in one of the cities of North-Italy because of two reasons: firstly, because the plaintiff is poor; secondly, because he is not allowed to go to the Holy Land. The answer of R. Colon is that he can not, because the litigation must be settled where the defendant lives, it

does not matter whether he is poor or rich, is or is not allowed to go to the Holy Land; and if he is not allowed, he can assign a messenger.

In the Isserlein PuK 217, the questioner asks R. Isserlein whether the claimer is entitled to authorize somebody to litigate with the defendant in a *bet din* which is far away from the home of the plaintiff. The question is based on Rambam's decision that if in the authorization is not written, "go and litigate and seize", the authorization is not valid. The respondent answers that this only applies to a case when the plaintiff is already dead, and his messenger wants to litigate, either out of jealousy or in order to threaten the defendant, and he claims in the name of the plaintiff. But if he intervenes with the intention of representing the rights of the plaintiff, who can not be present, and he does not harm the defendant, the authorization is good and valid.

II.B.8.4.3. Quarrels between Rabbis

Besides disobedience to and abuse of law, a third group of cases in the *responsa* literature of the 15th century, which entailed excommunication or threat of excommunication, consist of quarrels between rabbis. Four of the six cases discussed are so-called "transgressions of the borders of other rabbis". Only in the first one was the accusation of "transgression the border of another rabbi" justified.

These four cases concern quarrels between rabbis who performed their duties in the same cities: Prague, Regensburg, Oppenheim and Nürnberg. The accusation was always brought by the rabbi who arrived earlier against the one who came later, claiming that the new rabbi interfered with the domain of the old one. Reference is made to the "*herem ha-yishuv*"⁴⁵⁶. In the last three examples it is clarified that the *herem ha-yishuv* does not regard rabbis, only other professions. Rabbis either had an additional profession and income (e.g. money lending) or the community provided for them. The first example is an exception, because there was an agreement between the rabbis "not to exercise the rights of a rabbi", and also because the rabbi who came later rendered an erroneous *halakhic* decision. In the first two cases several rabbis expressed their views on the matter. In each of the second two cases a prominent rabbi wrote in favor of the oppressed rabbi, namely R. M. Minz and R. I. Isserlein.

(1) In a *responsum* written by R. Perez⁴⁵⁷ to R. Eliezer of Passau, we read in connection with the latter, R. Eliezer of Passau, that he disregarded the agreement between

⁴⁵⁶ "Ban on settling down", BB 21b. The communities had the right to prohibit the settling of newcomers who meant rivalry to the old members of the same profession and endangered their livelihood.

⁴⁵⁷ About R. Perez see Dinari. *חכמי אשכנז*, p. 239, n. 49.

him and the other rabbi of Prague, R. Eliyyah, decreed more than two years earlier, that he would not take the liberty to teach or judge in the same town, Prague, where R. Eliyyah had been the honored Rav for many years.⁴⁵⁸ According to the words of the respondent R. Eliezer was a stubborn man already from the years of R. Jacob Weil. Indeed, he was a pupil of the latter and ordained rabbi by him. He also did not respect the custom in the synagogue during Torah reading to call the Rav (R. Eliyya) as second reader, and because of this he deserved to be punished with excommunication (*niddui*) and monetary fine of one gulden. He also did not obey the Rabbis of Neustadt who rebuked him because of an erroneous decision, and requested him to follow their indications. He also scorned the honor of R. Eliyya. Therefore, the respondent concludes that he must be removed from his position and he must also leave the city of Prague in 8 days after the ban is pronounced against him, and move to a distant place. If he does not obey the sentence, he will be excommunicated from all the communities and not counted to the ten adult Jews in the prayer and so on. The responsum of Israel Bruna to Eliezer of Passau⁴⁵⁹ reaffirms the rebukes and admonitions pronounced by R. Perez against him. A further letter was written by R. Perez⁴⁶⁰ to Eliyya and the community of Prague that the ban pronounced by him be respected under the threat of a similar ban and excommunication for all who disobeyed. R. Perez wrote a further letter to the community of Prague⁴⁶¹ in connection with the community leaders (*parnasim*) who disobeyed the ban pronounced three times to testify, but they obeyed R. Eliezer of Passau. According to R. Perez, they had to repent and make atonement, and seek the pardon of God. The named Weibs had to repent and testify first, because the others would follow him. Furthermore, a man called Meir, who threatened the Rav publicly that he would kill him in his bed, had to be excommunicated and was required to follow the instructions of R. Eliyya or R. Israel Bruna.

(2) In Regensburg a quarrel broke out between R. Anshil and R. Bruna. The first was there before the latter, and wanted to push R. Bruna down from the rabbinate in order to disgrace him and to deprive him of his rabbinic authority. R. Weil of Erfurt, R. David Sprinz of Nürnberg, R. Isserlein of Neustadt, and R. Moses Minz of Mainz wrote to the community of Regensburg in support on behalf of R. Bruna, explaining to them that the other rabbi had no right to disgrace him, and had no privileges. R. Weil, who was the father-in-law of R. Bruna, wrote first that R. Anshel had no right to push down R. Bruna, and that there was no right of settlement in the case of Talmudic sages. He brought examples that in many places

⁴⁵⁸ Bruna 278.

⁴⁵⁹ Bruna 282.

⁴⁶⁰ Bruna 283.

⁴⁶¹ Bruna 284.

there were two rabbis at the same time exercising their rights as rabbis fully: in Vienna Maharam ha-Levi z”l and Mahara Klausner z”l, in Krems Mahari Eger z”l and Mahar Nahlifa z”l, in Nürnberg R. Israel and R. Kuppelman z”l, in Mainz Maharaz Ronkel z”l and R. Todros z”l, and he himself had studied in the *yeshivah* of R. Z. Ronqel z”l, and R. J. Mollin allowed him to set up a *yeshivah* of his own in Nürnberg, although Maharaz Kaz z”l had been there for some years.⁴⁶² Therefore, R. Bruna had full right to his rabbinate, to render decisions, to have a study-house.⁴⁶³ R. David Sprinz⁴⁶⁴ also wrote to the community of Regensburg concerning the case of R. Bruna, and he made it clear that R. Bruna had the right to exercise his rabbinical authority in everything just as R. Anshel, and that it was also a duty to honor the words of R. Weil who had supported R. Bruna in everything.⁴⁶⁵ R. Isserlein also wrote to the community of Regensburg and asked them to honor R. Bruna and prevent R. Anshel from harming and disgracing him, and from trying to push him down from his place. He explained that there was no law for a Talmudic scholar to question the right of another one to settle down, to render decisions or even to teach in his own *yeshivha*, even if the other rabbi had been there first; because there was no such thing as “borders of a rabbi” and “transgressing the borders of the rabbi”. R. Isserlein quoted the words of one of his relatives, R. Jonah b. Shalom of Neustadt – “I wonder where the claim of the leaders against the transgression of the borders comes from” – for supporting his own view that such a claim was not justified, and stated that R. Jonah b. Shalom of Neustadt had never denied the right of another teacher, rabbi, and leader to settle down in Neustadt. R. Isserlein wrote that he had never denied it either, and he had instructed R. Bruna in the same way, when R. Gidel of Orenburg wished to settle down in Brünn. There was no reason for that, because their livelihood did not depend on it, as in other professions where the rivals endangered the interests of one another. He also warned R. Bruna to care for the honor of the elder R. Anshil.⁴⁶⁶

In a *responsum*, R. M. Minz writes to the community of Regensburg in the case of R. Bruna who once, during the quarrel, was publicly disgraced by an unknown offender, who had drawn on his sitting place in the synagogue of Regensburg crosses and had written “*apikoros*” (‘unbeliever’). By this not only the honor of the Rav and prominent scholar was disgraced but also the synagogue was desecrated, which was the synagogue of R. Juda Ḥasid

⁴⁶² However, R. Weil did not want to accept to have an own *yeshivah*. Despite this, he probably stayed in Nürnberg for some years, after he had married a woman from Nürnberg. See Rosenzweig, *Ashkenazic Jewry*, 12–15.

⁴⁶³ Weil 151 = Isserlein PuK 126.

⁴⁶⁴ Rabbi in Nürnberg, his rival was R. David Frank, who together with his father-in-law delivered him the Gentiles.

⁴⁶⁵ Isserlein PuK 127.

⁴⁶⁶ R. Isserlein PuK 128.

two hundred fifty years before. R. Minz decrees that they must proclaim a ban (decree under threat of excommunication) against the offender and against all who know about him and do not report, in every synagogue nearby, accompanied by imprecations and curses, and they must sanctify their synagogue by fasts, charity and prayer.⁴⁶⁷

(3) R. M. Minz wrote to R. David Oppenheim⁴⁶⁸, a communal leader in Oppenheim, who wanted to prevent R. Seligman Oppenheim of Bingen⁴⁶⁹ from settling in Oppenheim.⁴⁷⁰ R. David Oppenheim resorted to the Gentiles authorities to achieve his aim. R. Minz called his act “denunciation” (treason, information) and warned him to stop denying the right of R. Seligman Oppenheim of Bingen to settle in Oppenheim, because there was no law which could prevent a Talmudic sage from settling down in a place, even if another rabbi was already there; on the contrary, the community had the duty to support the Talmudic sage materially if he had no other profession or if he needed it. The warning was pronounced under threat of excommunication.

(4) In Nürnberg R. David Frank, the leader of the community, accused falsely R. David Tebel Sprinz, the learned rabbi of the city before the Gentiles, concerning matters of taxes and money-lending, and R. David Tebel Sprinz was due to pay a large amount of money. Moreover, because of false accusation brought before the bishop, R. David Tebel Sprinz had to leave the city, after which R. D. Frank kept telling to the Gentile head of the citizens (Rav *Iron*) that R. David Tebel Sprinz was an evil man until the Gentile head of the citizens said that R. David Tebel Sprinz deserved to be captured and imprisoned in order not to harm the citizens. Therefore, R. Isserlein warned R. David Frank in a letter under threat of excommunication to repair the damage caused.⁴⁷¹ R. Isserlein wrote another letter to the community of Nürnberg, and requested them to testify to the truth even in the absence of the defendant.

(5) R. Isserlein wrote to three communities in the districts of North-West and Central Germany in answer to their letter which expressed fears regarding the enactments of R. Seligman of Bingen and R. Menahem Bakharakh who had issued enactments for all the communities of Germany against the will of the community members.⁴⁷² R. Isserlein made it

⁴⁶⁷ Minz 76.

⁴⁶⁸ Minz 89.

⁴⁶⁹ The famous and learned rabbi who wanted to enact decrees in Bingen together with R. Mann (= R. Menahem Bachrach, see below).

⁴⁷⁰ Rabinowitz, L., “The *Herem Hayishub*”; Id., “The Talmudic Basis”. Schwartzfuchs. “השתלשלותו של חרם”
”היישוב”; Fuchs. “שתיתפיסות בעניין חרם הישוב”. Goldstein–Kastenberg. “חרם היישוב בהקשר מחודש”.

⁴⁷¹ PuK 174.

⁴⁷² See: Berliner, „Rabbi Israel Isserlein“, MGWJ, Id.: „Seligmann Bing Oppenheim.“ *Hebräische Bibliographie*; Tamar, “דמותו הרוחנית”.

clear that those enactments did not concern them, and that many rabbis had already expressed their disagreement – among them R. Moses Minz and R. Weibs, the latter being the leader of the communities that had turned to R. Isserlein for help. R. Weibs, who had been invited by R. Seligman to the gathering that would issue the enactments, was not ready to sign the enactments, but first wanted to know exactly what they contained and to whom they referred. He received no precise and clear answer, therefore he was not willing to be present at the meeting, instead he sent his son, but he did not allow him or empowered him to sign the enactments. His son, however, forced by rabbi Seligman and the others, signed it, but R. Isserlein clarified that his signature was not valid; firstly, because he was not empowered by his father; secondly, because he was coerced. He also made it clear that the communities and rabbis had no reason to worry, because the enactments were not valid, and if they were to be punished by excommunication for having transgressed the enactments, the excommunication of the two rabbis would not be valid; and if they said “*adrabe*” (‘on the contrary’), the excommunication pronounced by them against the two rabbis would be valid.⁴⁷³ R. Isserlein also wrote to R. Seligman of Bingen that the majority of the communities and rabbis did not want to accept the enactments, although they were from among the great and prominent rabbis of Germany. In his *responsum*, he states that until then there has been no need to punish anyone on the basis of the enactments, but if that were the case, and he, R. Seligman of Bingen, excommunicated them for their transgressions, it is clear that after they have rejected the enactments, the excommunication would not be valid; but if a community, a group of Jews or an individual, excommunicated by him on the basis of his enactments, stood up and said “*adrae*”, the excommunication pronounced by them would be valid.⁴⁷⁴

(6) The *responsa* Nos. 83–87 of R. Joseph Colon, Rabbi of Mantova, whose authority was recognized by the Jews everywhere, contain his interdiction for the Chief Rabbi of Constantinople, R. Moshe Capsali to fulfill the role of a rabbi anymore. The latter was the official Jewish representative at the court of the Sultan and responsible for the collection of taxes which the Jews had to pay to the Sultan. Rabbi Moshe Capsali placed the main burden of the taxes on the wealthy members of the community; therefore, he had many enemies who tried to remove him from his position. R. Colon, misled by false witnesses, wrote a letter to him and to the community, and required him to be removed from his position. Later he realized that he had made a mistake, and sent his son, R. Perez to Constantinople to convey his humble apology and ask forgiveness. R. Moshe Capsali forgave him with all his heart.

⁴⁷³ For the *niddui* of the sage (and *adrabe*) see II.C.6.4–5.

⁴⁷⁴ Isserlein PuK 253.

Colon 83 contains the letter to and against Moshe Capsali (based on false testimonies): “The wrath of God is against this man, Moshe Capsali, who has misled the community and committed blasphemy by casting a stumbling-block in the way of the community, as I have seen it written and sealed, [...] therefore I order him, [...] to repent and mend his ways and to prohibit what he has permitted: the [...] *yebamah* whom he has permitted to marry without a *halizah*, and the woman who has been known as a married woman for a long time, and whom he has permitted to marry without a *get*, [...] from all this he shall return and beg for penance and make atonement...”. The *responsa* 84–87 contain the *halakhic* clarification of the allegedly “false decisions” of R. Capsali.

II.B.8.4.4. Conclusion

In the above mentioned examples, disobedience to law, abuse of law, and struggle for power between religious and community leaders are judged severely, under threat or actual decree of excommunication. The alternative is obedience, which in some cases requires additional schedules of penance or at least a ritualized forms of repentance, as in Weil 147, Colon 83, Bruna 278, 282–284, Isserlein 126–128, and Minz 76, 57, 97.

II.B.9. Perjury and False Testimony

In this chapter cases of false oath⁴⁷⁵ will be discussed, in connection with which penance for the perjurer is mentioned.⁴⁷⁶ Most of the cases are false oaths concerning property taxes. In the community enactments (*taqqanot*), false oath concerning property taxes is punished by disqualification from taking an oath; if there is a claim against such person, the creditor shall swear and take the money.

⁴⁷⁵ In the laws regarding false oath discussed in the Talmud, there are four types of perjury. (1) Violation of oaths which have no civil consequences and which only affect the individual who takes them (*shevu'at bittui*); (2) Oaths taken in vain (*shvu'at shav*); (3) False oaths taken in *bet din* (*shvu'at hefked* and *shevu'at ha-dayyanim*) (4) Refusal to testify when required to do so (*shevu'at ha-edut*) Even he receives punishment, the perjurer is responsible before God, because perjury involves desecration of God's Name. One who has perjured himself can no longer take an oath; if he receives lashes or manifests signs of contrition, he is regains his former status.

⁴⁷⁶ Other cases which deal with oath and the release of oath: Mollin 101; R. I. Isserlein PuK No. 58; R. J. Colon 50, 52, 95.

II.B.9.1. *Taqanot Shum* Regarding Taxes

If one swears falsely concerning property taxes, and people know that he has more, he must be legally disqualified from taking an oath⁴⁷⁷.

II.B.9.2. SHP

II.B.9.2.1. Penance for Lying, False Oath, *Lifnim mi-Shurat ha-Din* Concerning Swearing in SHP

Perjury is more than simply lying, not only because it is mostly (but not always) performed in a legal framework and the case frequently entails major financial loss for the opponent of the perjurer, but also because it involves the desecration of God's Name. Nevertheless, the essential element in the sin of false oath remains lying. SHP actually regards lying as a very grave sin. On the other hand, refraining from this sin (telling the truth) is the key to repentance in general, since according to SHP doctrines true confession is the basis for the process of repentance, even if refraining from lying does not automatically implies confession in case of transgression.

Thus, in one of the paragraphs, a wicked person asks the sage for a piece of advice, which would lead him to repentance; the sage tells him that he should never lie. The man promises the sage that he shall never lie, and in order to avoid breaking his promise by denying his transgressions he has been liable to commit, he returns from all his sins and does not commit evil.⁴⁷⁸

As stated earlier, false oath involves desecration of the Name. Therefore, SHP rules for a judge in a monetary litigation between a good and a wicked person, in which there is a danger that the wicked one will swear falsely, in the following manner: if the judge knows that the possible perjurer will not be ready to repent, and he is also sure that the righteous one will not take an oath even on the truth, he shall give the money – which is the object of litigation between the two – to the wicked person instead of the righteous one without swearing, so that the wicked one shall not transgress.⁴⁷⁹

The prohibition of swearing before a Gentile even on the truth is illustrated in an example. A Jew has been forced to swear before the Gentiles (concerning a past event), being falsely accused by them, and he has only been able to escape by swearing on the truth that he is innocent. Then he has gone to a sage and has asked him for penance for committing the sin

⁴⁷⁷ Maharam Prague no. 1022, fol. 158b.

⁴⁷⁸ SHP 113.

⁴⁷⁹ SHP 1314. For translation, see App.

of swearing before Gentiles. Despite the difficult situation in which he has been, the sage has decided that the penance for taking an oath before the Gentiles is to swear that he will never take an oath in the future.⁴⁸⁰

On the other hand, if the situation requires a Jew to take the oath before Gentiles (concerning a future event), he must take it so that God's Name should not be desecrated before the Gentiles. The gravity of the transgression of an oath is exemplified by two stories about Jews who are held captives by the Gentiles. In the first story, the Jews want to ask the Gentiles to let them leave. The Gentiles are ready to set them free only on condition that they take an oath that they will return. The decision of the sage is that they must fulfill their oaths made to the Gentiles. The second story is about a Jew who is in the captivity of the Gentiles; in his cell he only has un-*kosher* food and is forced to transgress in order to save his life. He also asks the Gentiles to let him out to gather money for his redemption. They let him leave on condition that he takes an oath that he will return. He leaves, but knows that if he returns, he will be forced to transgress the dietary laws. The sage advises him to return and transgress the dietary laws, because the transgression of his oath would be a deliberate sin. The prohibition of transgressing an oath made before Gentiles is even stricter than that of breaking one taken before Jews, because of the desecration of God's Name.⁴⁸¹

II.B.9.3. HTR

According to HTR 25, the penance for false oath is fasting, flogging and confession. In MH Ms. Parma 2999⁴⁸² fol. 58a, the transgression of an oath is to be atoned for through ten fasts, and by not shaving for forty days.⁴⁸³ If men mock him, he must not answer them, but bear the shame; each year he shall fast ten fasts in the next forty years at least, and he shall multiply his prayers.

II.B.9.4. *Responsa*

II.B.9.4.1. False Oath Concerning Property Taxes

In medieval Ashkenazi Jewish communities, the most severe penances imposed on perjurers were connected to tax-matters. The community members had to take the oath concerning their properties by putting their hands on the Torah scroll or other sacred object.⁴⁸⁴

⁴⁸⁰ SHP 1397. For translation, see Appendix.

⁴⁸¹ SHP 1403. For translation, see Appendix.

⁴⁸² Italian Ms. of the 16th century.

⁴⁸³ Apparently the ruling is to fast on Mondays and Thursdays only.

⁴⁸⁴ For example, see Martha Keil, "Business Success", p. 6.

The severity of penances – which usually lasted one or more years – imposed for false declaration of property, can be explained by the fact that the perjurers were rich people, and very often prominent leaders, thus the interests of the whole community were involved.

According to Weil 123, a rich man from München (called Weibs) has taken a false oath concerning his property, and R. Weil has required him to be flogged publicly and to fast.⁴⁸⁵

According to one of R. Isserlein's *responsa* addressed to the community of Regensburg⁴⁸⁶, one has taken a false oath concerning his property while he has been a member of the community council; the decision of R. Isserlein has been that he can not sit in the community council, only after completing his penance.⁴⁸⁷

II.B.9.4.2. False Oath Concerning the Pledge Deposited

In Minz 93, we can read about a quarrel between a woman (called in the *responsum* Lea) and a man (called in the *responsum* Simon) over a pledge allegedly deposited at Simon by the father of Lea, according to the claim of Lea. The claim of Lea on the pledge has been denied by Simon. Lea has also maintained that Simon admitted that he has got the pledge, but there has not been enough testimony to prove the fact. Lea has tried to disqualify Simon from taking an oath that he has not got the pledge, on the basis of perjury, beating, and desecrating the Sabbath. But the respondent has clarified that there has not been enough evidence for any of these transgressions, so Lea has not been able to disqualify him. He has decided that the defendant must do penance for three transgressions: (1) for transgressing an oath regarding the future, which he has taken before the respondent, promising that he will change his residence, (2) for beating, which has been a transgression liable according to the law of Heaven (for lack of proper evidence), and (3) for desecrating the Sabbath, which he has admitted. After completing his penance – through public flogging, confession, fasts, asking for forgiveness and charity – he will be fit to take a rabbinic oath concerning the pledge.⁴⁸⁸

II.B.9.4.3. Release of Oath Concerning Marriage and Divorce – Through Penance

Release of a vain oath can only be done by doing penance, flogging for disobedience, or almsgiving, and fasts. This is the decision of R. Weil who answers to R. Solomon Yatz in connection with the case of a Jew among the inhabitants of Heilperon. Witnesses have written

⁴⁸⁵ Weil 123. For translation, see Appendix.

⁴⁸⁶ To the judges R. Benjamin, R. Abulon, R. Moses Saulman, and R. Meir Levi.

⁴⁸⁷ R. Isserlein PuK 214. See App. for translation.

⁴⁸⁸ Minz 93. See App. for translation.

to R. Solomon Yatz that the Jew has publicly sworn in the form of an oath from the Torah, by placing his hand on the *humesh*, that he prohibits her wife from entering his house.⁴⁸⁹ Afterwards he has changed his mind and asked whether his oath can be annulled. The answer has been that this is considered a vain oath and can only be released by doing penance in the manner mentioned above. Consequently, although the annulment of a vain oath would not require penance according to Talmudic law, R. Weil imposes penance for it.

According to one of R. Joseph Colon's *responsa*, a man swears not to marry without the knowledge of his father. The son wants to marry a girl from a good family, but the father does not give his consent. The question to R. Colon is whether the oath of the son can be annulled. R. Colon first replies according to the *halakhah* regarding the oath of the son, and writes that it can not be annulled, since there has been no coercion on the part of the father. However, he decides according to what he sees that is proper from the point of view of the freedom of the son to marry whom he loves, and writes that no protest can be made by the father against the marriage of his son if the girl is from a proper family.⁴⁹⁰ Implicitly, R. Colon's answer is that the son must break his oath if he wants to marry the girl. However, his answer also implies that he must do penance if he breaks his oath.

Consequently, for the release or annulment of a vain oath and for the transgression of an oath, penance is required.⁴⁹¹

II.B.9.4.4. Slander about Perjury Not Accepted, Coerced False Oath Invalid

Slander and false accusation of perjury can not be basis for legal disqualification from taking an oath. This is the case of the men who spread false accusation about a woman that

⁴⁸⁹ Weil 172. See App. for translation.

⁴⁹⁰ Colon 166. For translation, see Appendix. In *Pious and Rebellious*, Grossman discusses this *responsum* in connection with the contradiction between the ban against canceling engagements in Ashkenaz and the freedom of choice of marriage partner (57–58, nos. 27, 28). However, the question in Colon's answer is discussed in connection with the oath and the transgression of the oath, and Colon decides according to the *halakhah*, claiming that the oath can not be released. R. Colon divides his answer into points, and answers them one by one. The result is that the answers contradict one another. See also: Woolf, "The Authority of Custom"; Id., "Between diffidence and initiative". The transgression of an engagement (*shiddukhin*) agreement (in Minz 97) has already been discussed in II.B.8, and the stringency of this agreement has been explained, despite the fact that it was only developed as a custom in European communities in the Middle Ages, and had no Talmudic basis.

⁴⁹¹ Three further *responsa* from the 15th century deal with the release of an oath concerning divorce from one's wife, which has been stringently judged by R. Hai Gaon. According to all three *responsa*, the oath can be released, if there is a good reason for it. According to the decision of R. Bruna, the oath which a man takes to divorce his wife and swears in the name *Deo* – that is, on God's name, and not in Hebrew – is to be considered an oath, and it must be released like an oath taken in Hebrew so that the husband should be exempted from punishment for its transgression (Bruna 172). According to the answer of R. Isserlein, the oath taken by a man not to divorce his wife can only be released if the divorce is for the sake of a commandment. According to R. Isserlein, the decision of R. Hai that such oaths can not be released is a restriction which has not been followed in Europe (PuK 58). R. M. Minz (M. Minz 18) also believes that in his generation there are good reasons to release such vows.

she has falsely sworn concerning property taxes. M. Minz has clarified that in this way one can not be disqualified' and has required the slanderer to do penance.⁴⁹² In NMM there is another case of slander about the oath of a woman, which is not accepted, and on this basis she can not be disqualified. Likewise, the accusation of false oath against a trustworthy man is not believed by the respondent (R. Colon).⁴⁹³ A false oath made under the coercion of the Christians is not valid: in captivity, a Jew called R. Abraham of Ferrara has taken a false oath because of being forced, threatened and tortured of the; the oath has been declared false by the community and has also been invalidated by R. Abraham before the community.⁴⁹⁴

In the above discussed cases of false accusation of perjury and perjury committed under coercion, the Jew in case is not disqualified from taking an oath and is not required to do penance. In cases of slander, the accusers are required to do penance.

For false testimony given in the childhood, R. Isserlein has decided that the person must mortify himself for the sake of penance when he grows up.⁴⁹⁵

II.B.9.5. Summary

The cases discussed above are either oaths concerning property taxes and pledges or oaths regarding marriage or divorce of a wife taken for the future. In the two cases of false oath concerning property taxes, R. Weil has prescribed penance through public flogging and confession in the synagogue, fasting, charity, and that immediately after receiving the penance, before performing it, the penitent has been legally qualified to take an oath. R. Isserlein has decided in a similar case – in which, however, the offender has not received the penance yet – that he can only sit in the community council after fulfilling the penance. In the case of the oath concerning the pledge, the defendant has been required to do penance for an oath sworn for the future, for beating, and desecration of the Sabbath, as transgressions according to the law of Heaven, through public flogging, public confession, asking for forgiveness, fasting, and charity. After completing his penance, he has been allowed to take the rabbinic oath and has been exempted. In the case of the oath taken before one's father not to marry without his knowledge, the annulment is not allowed. For breaking his oath, the son has apparently been punished or has been required to do penance. In the case of a man who has broken his oath not to divorce his wife, R. Weil has concluded that he has severely

⁴⁹² M. Minz 75. The *responsum* has already been discussed as a case of slander; like the case in NMM. See for both II.B.6.

⁴⁹³ Colon 28.

⁴⁹⁴ R. Colon 68.

⁴⁹⁵ Isserlein PuK 62. See App. for translation.

transgressed, consequently he must make atonement through flogging or he may redeem flogging by almsgiving and fasting, and the oath has to be released for him so that he should not transgress. Neither slander nor false accusation of perjury and extorted false oath can be basis for condemning someone for perjury, and the slanderers must do penance through fasting, flogging, charity, and asking for forgiveness from the slandered person. False testimony given in one's childhood can not be punished, but it is advisable for the offender to do some penance on himself when he grows up. The penance for false oath concerning property taxes or oath in vain is as HTR has decided: fasts, flogging, confession, and practicing charity.

II.B.10. Transgression of a Vow

In medieval Ashkenazi communities, penance related to vows was connected with the release of vows by a sage, rabbi or three laymen. The release of a vow was asked when the person had not fulfilled a vow made for the future with the knowledge that he would not be able to fulfill it, or when he did not want to fulfill it. Since making vows was very frequent in European Jewish communities among people of all kind, asking for release was also frequent. Talmudic law does not require penance for annulment or release of vows, only a reason for release and regret (*petah ve- harata*) is required. Beyond Talmudic law applied to the release of vows, there were additional customs developed in medieval communities, especially the imposition of penances. The first mention of penances for both the transgression of a vow and the release of vows one encounters in the literature of *haside Ashkenaz*.

Vows were made above all in connection with private fasting. Special vows were made in times of trouble. Vows of abstinence were also frequent, e.g. the vow not to gamble. Another kind of vow concerned pilgrimage to the Holy Land. The release of vows for married women meant a special problem in medieval Ashkenazi communities.

II.B.10.1. RJH and HTR

According to RJH, if one transgresses a vow by not fulfilling it in due time, he is required to fast at least 45 times. If one fulfills his vow after the time required, it is not a remedy for him, so he must atone for his sin through fasting. This *responsum* formulates an important rule concerning vows: the fulfillment of a vow can not be delayed. This is not only a technical difference – between fulfilling the vow another time and penance for not fulfilling

it in due time for which one vowed –, but a question of principle: already a *baraita* says: “Do not make a habit of taking vows” (Ned. 20a), vows could not be taken light-headedly.

Another principle can be learned from another answer of Judah Ḥasid in the same *responsum*. One has vowed to go to another place to study the Torah for one year, later he has asked the sage for the release of his vow. The sage has required from him to make atonement by giving the study expenses to another Jew. The sage has also advised him that if he can not give money to charity, it is better to fulfill the vow, since Torah learning has additional advantages: it can lead the student to holiness. Further, Judah Ḥasid is asked, whether one can take an oath to invalidate another one. The answer is that although the law is that oaths and vows do not invalidate each other, the vow to become a *nazir* can invalidate the vow to drink wine, according to the words of Raba. This answer reflects the principle that the vows of *nazirut* are of greater sanctity.

In HTR, the *gader* penance and a kind of *mishqal* atonement through fasting is imposed for transgressing a vow or an oath, even if one swears on the truth. The first is that he shall no longer swear or take a vow anymore. If he needs to do it so that people should believe him, he must clarify the reason why he can not do it and refrain himself from vowing. He must fast in each year on the day he has transgressed the vow.

II.B.10.2. *Responsa*⁴⁹⁶

According to the *responsa*, in medieval Ashkenaz penance was imposed by sages, as one can see in the literature of the *ḥaside Ashkenaz*, either for the transgression of vows or for their release.

In medieval Ashkenaz, women often took vows of fasting or abstinence. Medieval Ashkenazi sages dealt with the question whether the sage was entitled to release the vow of a woman after the confirmation of her husband. There were two opinions, pro and contra, the widespread custom being that sages released such vows.⁴⁹⁷

II.B.10.2.1. Penance for Transgressing the Vow Not to Gamble

In a *responsum* to rabbi Mendel, penance for transgressing the vow not to gamble is advised by R. Israel Isserlein, to be imposed by R. Weibs.⁴⁹⁸ In medieval Ashkenaz, the vow

⁴⁹⁶ Other *responsa* concerning release of a vow: R. I. Isserlein ThD Nos. 275, 277, 279, PuK 53, I. Bruna No. 57; R. M. Minz Nos. 14, 18, 78, 79, 111, 113, 115; R. J. Colon Nos. 99, 165 (*nazir*), 176.

⁴⁹⁷ See App. II.B.10. Women also often transgressed vows. There is even a case in which the husband wanted to divorce his wife because she had often taken vows and had never fulfilled them. (Isserlein PuK 68)

⁴⁹⁸ PuK 62.

In his *responsum*, R. Moses Minz explicitly states that vows to go on pilgrimage to the Holy Land for the sake of atonement were frequent. R. Minz answers two questions: (1) whether vows made in times of trouble to go on pilgrimage to the Holy Land can be released?⁵⁰⁴ (2) if they can, whether the widespread custom of the rabbis to require penance for release is approved by R. Minz? The answer to the first question is positive.

(2) The second answer is that R. Minz agrees that it is a widespread custom, and admits that he also was several times a member of *bet dins* which imposed penances for the release of vows of pilgrimage to the Holy Land. He adds that the custom concerning the release of vows to go on pilgrimage to the graves of the ancestors or holy men in Europe is the same, because the roads are full of dangers or the pilgrim is too weak to perform the pilgrimage. The rabbis require pilgrims to give to charity for a *mizvah* as atonement, what is even better than fulfilling the vow, considering that many rabbis oppose the custom to go on pilgrimage to graves in Europe, because it resembles necromancy. But for the release of a vow to go on pilgrimage to the Holy Land there is no reason to impose penance, since there is nothing of necromancy in that kind of pilgrimage. However, R. Minz concludes that he usually imposes penance for the release of a vow to go on pilgrimage to the Holy Land, because people of his generation are make vows rashly. Therefore, he imposes alms-giving and self-mortification for the release of vows.⁵⁰⁵

In a *responsum*, R. Bruna answers to the question whether one who vows to go on pilgrimage to the holy Land and half-way he is compelled to break his journey is pardoned for the breaking of his vow. His answer can be divided into four cases:

(1) He quotes the bSota 14a, in which Moses asks the Holy One to allow to him to enter the Holy Land, and it is denied to him, but God answers him that it will be considered as though he had entered the Holy Land. So, R. Bruna's argument is that those who vow to go on pilgrimage to the Holy Land and on the way are forced to break their journey are considered as though they had fulfilled their vows.

(2) If someone asks for the release of a vow to go on pilgrimage to the Holy Land, and there is "reason and regret for it" (*petah ve- harata*)⁵⁰⁶, his vow can certainly be released like all other vows, because there is nothing particular in it. And R. Bruna heard about an old man

⁵⁰⁴ (1) Firstly, R. Minz answers that there are two questions in the first one: (a) whether vows made in trouble can be released; and (b) whether a vow to go on pilgrimage to the Holy Land can be released. Both answers are positive. The second one is answered by three different arguments: (I) it falls into the category of vows that can be released; (II) one of R. Shimshon b. Abraham's *responsa* is quoted as precedent: he argues that it is allowed to release such vows;⁵⁰⁴ (III) R. Minz's own arguments: (A) the roads to the Holy Land are full dangers; (B) it is difficult to earn a livelihood in the Holy Land.

⁵⁰⁵ R. Minz 79. See App. for translation.

⁵⁰⁶ Talmudic expression: the two conditions by which vows can be released.

who has asked for the release of his vow of pilgrimage to the Holy Land because of the dangers of the journey and his old age; and the rabbis have hesitated to release it for him. R. Bruna wonders at their hesitation, and thinks that maybe they have hesitated because of the beliefs connected to the Holy Land, namely that he who has broken such a vow is as though he had denied the resurrection of the dead or God's existence.

(3) If someone is compelled to break his pilgrimage because he falls ill, he can ask for release, and he also must give the expenses of the way to the poor of Jerusalem. R. Bruna tries to find in the Talmud an '*asmakhta*' for this custom, and finds it in BQ 111a, according to which money atones for half [of the sin]⁵⁰⁷, and in Sanh. 37b, according to which exile atones for half (of the sin committed).

(4) R. Bruna has heard that rabbis release vows of pilgrimage to the graves of holy men and ancestors in Europe by requiring alms-giving for atonement, and without exile. And so it is also according to the decision of the Rosh.⁵⁰⁸

II.B.10.3. Conclusions

RJH prescribes fasting for 45 days for transgressing a vow. It also decides that vows can not be fulfilled after the appointed time passed, and they must be either released or – if broken – atoned for by penance. According to the *responsa* of the 13–15th centuries, the transgression of a vow was to be atoned for through penance, and vows were released by performing penance. In the majority of the cases, vows, either those of women or those taken in times of trouble, or those taken to go on pilgrimage to the Holy Land, were released by the sage. There were cases when the respondent explicitly decided that a vow could only be released by penance. A man who vowed not to gamble and later transgressed his vow, he was required to do *mishqal*-penance. When one was unable to fulfill his vow to go on pilgrimage to the Holy Land or was stopped on the way to the Holy Land and could not reach it, both R. Moses Minz and R. Bruna decided that it was allowed to release his vow. The penance prescribed was alms-giving, and, according to R. Minz, even self-mortification (fasting, for example). Both decisors (R. Minz and R. Bruna) mention the custom that rabbis release vows to go on pilgrimage to the graves of holy men in Europe by requiring alms-giving. According to R. Bruna, not fulfilling the vow of *aliyyah* is atoned partly through giving alms to the poor

⁵⁰⁷ In case of robbery, the *asham* sacrifice atones only if restitution is paid; but if someone robs a proselyte and this one dies, restitution must be given to the *kohen*, just as the *ahsam* sacrifice.

⁵⁰⁸ Bruna 77; TshRosh 12.17; Tur 228. See App. for translation. Three *responsa* of R. Isserlein connected to vows in times of trouble are not relevant to penance, therefore we do not discuss them here (ThD 277, ThD 275, ThD 280).

of Jerusalem and partly through exile. He mentions that rabbis even release vows of pilgrimage to graves in Europe without exile. But if someone vowed to go on pilgrimage to *Erez Israel* and died on the way, and the money for expenses was given to charity for the poor of Jerusalem, his exile and the money were certainly perfect atonement for not fulfilling his vow, and it was considered as though he had arrived to the Holy Land.

II.B.11. Offences against Kashrut, Offenses of the Ritual Slaughterer

Offences against *kashrut* can be divided into two categories: (1) offences of the ordinary man;⁵⁰⁹ (2) offences of the ritual slaughterer.⁵¹⁰ In this chapter both categories are discussed, and in the next chapter the transgression of the laws of *yayin nesekeh* is treated.

II.B.11.1. *Taqqanot Shum* (1196, 1220)

The five enactments mentioned below either reinforce Talmudic regulations regarding *kashrut* and *avodah zarah* (idolatry) or prescribe new ones.

(1) The first example is a reinforcement of the prohibition of the Talmud regarding the eating of *shelaqot* of the Gentiles. It seems that there was a need for this enactment, because the Jews used the cooked things of the Gentiles:

“... it is prohibited to eat the seethed food [*shelaqot*]⁵¹¹ of the Gentiles.”

(2) The second example is a special enactment of the communities of Rhine, in which Gentiles (especially Gentile servants and maidservants, or servants and maidservants who had been proselytized, but differed in many respects⁵¹² from the Jewish servants and maidservants) were “at hand” in Jewish houses and Jewish weddings:

⁵⁰⁹ The offences of an ordinary man can also be divided in two categories: a. offences related to the *kashrut*, in which there is no publicity and no desecration of the Name – these were to be atoned for by private fasts (regularly forty days, or less); b. offences committed publicly – like in the case of eating the bread of the Gentiles baked on the Sabbath, for which Ra’avyah used to flogged people – these were punished publicly.

⁵¹⁰ Because he causes others to sin – i.e. he gives, even if involuntarily, un-*kosher* food to people –, his penance sever, and contains both private fast and public flogging and/or removal.

⁵¹¹ See mAZ 2,6 and bAZ 37b–38b, meaning the cooked things. In Maharam Prague no. 1022, fol. 158c.

⁵¹² For example, the Jewish servant was due to fulfill all the commandments like free Jews, whereas the *‘eved kena’ani* only the not time-bound commandments like Jewish women and maidservants; it was allowed to require forced labor of the *‘eved kena’ani*, whereas of the *‘eved ‘ivri* could not; the law concerning the *‘eved ‘ivri* was only practiced at the time when the *yovel* was practiced (the Jubilee year), whereas the law concerning the *‘eved kena’ani* at any time; the *‘eved kena’ani* was the property of the master, whereas the *‘eved ‘ivri* was not considered as such; the *‘eved ‘ivri* and *’ammah ‘ivriyyah* were differently freed; the *‘eved kena’ani* and *shifḥah kena’anit* do not differ in this respect.

“[...] And we have also decreed that at the [Jewish] weddings they shall put a Jewish watchman to prevent the Gentiles [or Gentile maidservants] from pouring water into the cooking pot, from which the Jews eat on the Sabbath.”⁵¹³

(3) The third decrees prescribes that ritual slaughterers must be supervised by the Rav, and the unlearned slaughterers of the villages must learn the *hilkhot sheḥitah* from experts (in the towns, apparently):

“[...] And nobody is allowed to slaughter and examine⁵¹⁴ unless the Rav has tried him. And the men from the villages must go to the expert [ritual slaughterer] to learn [the laws of ritual slaughter]”.⁵¹⁵

(4) Another decree reinforces the Talmudic prohibition to send *kosher* meat by a non-Jew to another Jew. Probably, the decree has been especially enacted for ritual slaughterers:

“[...] and it is not allowed to send to the [Jewish] houses meat, except by a Jew”.⁵¹⁶

(5) The following decree reinforces the Talmudic ruling for ritual slaughterers connected with “*niqqur*”: the sinews in the groin must be removed, because they might contain the prohibited fat of the tails:

“[...] and they shall remove the sinews of the groin [= because they might contain prohibited fat] as our Rabbis have decided [...]”.⁵¹⁷

II.B.11.2. *Ḥaside Ashkenaz*

The stringency of *ḥaside Ashkenaz* concerning laws of *kashrut* can be exemplified by a passage from the *Commentary on Shi'ur Qomah*, in which it is stated that one is permitted to eat meat only if he himself slaughters the animal:

“[...] he shall not eat meat unless he himself slaughters the animal and examines it, and he shall not believe anyone unless they behave themselves in this way.”

⁵¹³ Fol. 158d. It is not clear what this decree meant. [וגם גזרנו בנישואין שיתנו שומר יהודי שלא יניחו להשליך מים ביורה] שיש להן לאכול בשבת

⁵¹⁴ That is to say, check the lungs of the animal to see whether there are traces of disease or adherence on them, which makes it *unkosher* and prohibited.

⁵¹⁵ Fol. 158d [ולא ישחוט ולא יבדוק שום אדם אם לא ינסהו הרב ובני הכפר] ילכו לחזור לפני הבקין

⁵¹⁶ Fols. 158d–159a. In the bHul. 93b on the *gid ha-nasheh* it is only prohibited to send to a Gentile or by a Gentile to a Jew a thigh in which there is yet the sciatic nerve and which was cut up, because its place is not known.

⁵¹⁷ Fol. 159a. [ויסיר חוטי דכפלי] For the expression חוטי דכפלי the synonym or translation גידי is given by Shlomo Jacob, in “Sources of *niqqur*” [Hebrew], p. 168. See bHul. 49a. See about the rabbinic synods of the towns on the Rhine in the thirteenth century: Auerbach, S.: *Die rheinischen Rabbinerversammlungen im 13. Jahrhundert*.

According to HT, the ritual slaughterer who transgresses the laws of ritual slaughter, and the ordinary Jew who transgresses the laws of *kashrut* can atone for their sins in different ways. The penance for the ritual slaughterer is above all, public penance, and only additionally contains private fasts. The penance of the Jew who transgresses the dietary laws, especially if he does it unintentionally, is private fasting. If the Name is desecrated, that is to say, the transgression is committed publicly, the penance also contains public aspects, e.g. public flogging.

According to HTR (=MH) 28, the penance for the ritual slaughterer who errs once is flogging and admonition; if he does not obey the warning, he must be dismissed and flogged; and it must be proclaimed in the synagogue that he has been removed.

Also he who prepares cheese or milk, the preparation of which is not supervised by a Jew; because all who are suspected of one thing are disqualified from judging and giving testimony.”⁵¹⁸

Not only for eating un-kosher food but also for transgressing by drunkenness and gluttony, that is to say, for transgressing at a meal, which is not a *mizvah*, by revelry and drinking beyond measure, there is a penance in HTR 22 (contained also in MH).⁵¹⁹

According to a gloss in MH Ms. Parma 2999⁵²⁰, he who eats carcass, pork, milk with meat, must fast for forty days twice a year, and shall not eat meat during that year, except on holidays and on the Sabbaths and shall receive flogging as many times as he eats forbidden things. If he sells un-kosher food saying that it is kosher, his penance shall also contain public flogging once a month during the year of his penance.⁵²¹

II.B.11.3. *Responsa*

II.B.11.3.1. The Ritual Slaughterer

The legal basis for the decisions of later rabbis in the Middle Ages concerning the penance of the ritual slaughterer who errs is the Or Zarua I.448, where these laws are discussed. R. Isaac b. Moses' decision is quoted by later authorities and decisors. According to the decision of R. Isaac b. Moses the ritual slaughterer who errs in *niqqur*, and is found to have overlooked forbidden fat, even only as much as a barley grain, must be removed for one month.⁵²² It must be proclaimed in the synagogue that he has been discharged, and he must do

⁵¹⁸ HTR= MH 28.

⁵¹⁹ See translation in Appendix II.B.11.

⁵²⁰ See about the manuscript II.A.3.4.

⁵²¹ MH Ms Parma 2999 fol. 58a. For translation, see Appendix.

⁵²² This is in accordance with the bHull. 93b.

penance as the sages of his town decide. After one month, he must go to the sages of his town, confess and say that he has mended his ways. Then he is suitable to be a slaughterer for the community again. The ritual slaughterer, after whom forbidden fat is found, even as small as an olive size, must be publicly flogged in the synagogue three times, on Monday, Thursday, and Monday. After public flogging, he must publicly confess his sin in the synagogue. Then he must be removed for a month. Having completed his penance, he must be returned to his profession. But he who sells un-kosher food, must do penance by going to a place where nobody knows him, and by returning a lost thing of great value to his owner.⁵²³

Apparently, the pattern prescribed by R. Isaac b. Moses was the standard penance for ritual slaughterers in Ashkenazi Jewish communities. It is quoted by later authorities as legal basis for their decisions, e.g. by R. Moses Minz in his *responsum* No. 25. R. Minz answers the question of R. Menachem Bacharach concerning a case of a ritual slaughterer who has transgressed in not removing the sinew from one side of the spine. The ritual slaughterer has already been dismissed once from his duties for two weeks. R. M. Bacharach lets R. Minz know that he has sent a letter to R. Solomon Shapiro, in which he has included the answer of R. Shapiro to R. Minz. R. Shapiro has written about a similar case that once happened to him in Worms, where the ritual slaughterer was discharged by the rabbis only for six weeks. After learning the laws of slaughtering together with R. Shapiro, he was allowed to return to his profession. R. Minz uses the *responsum* of the Or Zarua as legal basis for his decision concerning the penance of the ritual slaughterer mentioned by R. M. Bacharach. R. Minz has answered R. Bacharach that the slaughterer in question had to be dismissed, in addition to the two weeks for which he had already been dismissed, in order to reach the one month. Then he was allowed to return to his profession. He was also required to fast for forty days to atone for his transgression.

In a *responsum*, R. Weil writes about a ritual slaughterer in Ulm, who has committed a mistake during the examination of the lungs, and has already been removed for a certain time. R. Weil answers the rabbi of Ulm that the man did not have to be removed for more than the time he had already been discharged. Besides making reference to the Or Zarua, he mentions two similar cases: one has happened in Augsburg, the other in Mainz; the slaughterers have only been removed for a limited time – in the latter case for one month. The ritual slaughterer in Ulm, namely R. Mollin has been in fact the son of R. Jacob Mollin of Mainz,⁵²⁴ the

⁵²³ As in the Sanh. 25a is written.

⁵²⁴ See Bernard Rosenzweig, "Ashkenazic Jewry in Transition", 1975, p. 15.

prominent teacher of R. Weil, and served as a ritual slaughterer. The *responsum* has been written to R. Seligman of Ulm who has wanted to punish him more severely.⁵²⁵

II.B.11.3.2. The Bread of the Gentiles Baked on the Sabbath

In the *Or Zarua*, the author tells the Ra'avyah that he has seen his master flogging Jews for eating bread baked by Gentiles on the Sabbath:

“[...] And I, the writer, have seen my master, R. *Avi ha-Ezri* [R. Eliezer bar Yoel], ztzk”l flogging men have eaten baked by Gentiles on the Sabbath. [...]”⁵²⁶

The transgression here is, however, connected to the commandment not to make use of the work of the Gentiles performed on the Sabbath, and not to the prohibition of eating the bread of the Gentiles in general (i.e. the prohibition for developing closer relationship with Gentiles – *mishum hatnut*, a rabbinic prescription in bAZ 37b–38a).

II.B.11.4. Conclusions

According to HTR, the ritual slaughterer who transgresses must be flogged and admonished; if he remains disobedient to the warning, he must be removed and flogged. According to an Italian Ms. in MH, there are glosses containing penances related to un-kosher meat: (1) for eating un-kosher meat willingly, fasting for forty days twice a year is prescribed; (2) for eating un-kosher meat un-willingly, fasting for three days is prescribed; (3) for the ritual slaughterer who sells un-kosher meat, fasting for forty days twice a year and public flogging once a month that year are prescribed.

On the basis of available evidence (12–15th century penitentials and *responsa*), one can conclude that for the ritual slaughterer who transgressed the penance of fasting for forty days was prescribed additionally to public flogging and removal. The source for the penance can be the penitentials of *haside Ashkenaz*, but not necessarily: fasting for forty days was a common penance from the end of the 12th century until the 15th century for all kind of light and grave transgressions. According to the *Or Zarua*, (1) for transgressing once by a piece of fat the size of a barley grain, the ritual slaughterer must be removed for one month, and must be proclaimed in the synagogue that he has been suspended. He must go to the sages of his town, and receive penance; after one month, he can return to his profession. (2) For overlooking a piece of fat the size of an olive, the ritual slaughterer must be publicly flogged

⁵²⁵ More about the reasons and ways of disqualification or removal of the ritual slaughterer for a certain period of time see in II.C.6a. Concerning the professional knowledge of the ritual slaughterers was in medieval Ashkenaz, see App. II.B.11.

⁵²⁶ *Or. Zarua* II.358 (*Hilkhot Yom Tov*).

in the synagogue; after flogging he is required to confess his sin and is removed for one month. Apparently, HTR and the *Or Zarua* disagree as to which one is the heavier punishment, removing or flogging; the first thinks that removing, the second that flogging. (3) For selling un-kosher food, the *Or Zarua* decides that the ritual slaughterer must go to a place where nobody knows him and return the price of a lost thing of great value. Later, in the 15th century, we find in one of R. Moses Minz's *responsa* that the penance is modified; the removal is still of six weeks or a month, but a penance of fasting for forty days is also prescribed as a rule. Here public flogging is not mentioned anymore, but public proclamation is advised. With regard to eating the bread of the Gentiles, R. Isaac b. Moses *Or Zarua* once witnessed his master Ra'avyah flogging Jews who had eaten bread baked by Gentiles on the Sabbath.

II.B.12. Drinking the Wine of Gentiles

In his book about the *yayin nesekh* (or “idolatrous wine”, wine touched by Gentiles and for that reason forbidden for Jews) in medieval Jewish society, Haym Soloveitchik demonstrates how the problems connected to *yayin nesekh* affected the everyday life of the medieval German Jewry.⁵²⁷ The book traces the development of *halakhah* as it related to each stage of production: winemaking, transport, household use, and purification of wine vessels. The enactments of the cities of *Shum* prevented the Jews from transgressing the laws connected to the wine touched by Gentiles. The penances for transgressions connected to these prohibitions appear in the penitentials and are quoted in the name of R. Judah Hasid, inflicting five or more days of fasting for different involuntary transgressions related to the wine of Gentiles.

II.B.12.1. *Taqqanot Shum* (1196, 1220)

One of the decrees of *Shum* prescribes that vessels borrowed from Gentiles and used in wine-making must be ritually cleansed. It is also prohibited to buy grapes trodden by Gentiles. This prohibition contradicts the rulings of Rashbam, the grandchild of Rashi, who in his commentary to the *Avodah Zarah* allows the Jews to buy grapes trodden by Gentiles, only touching with hands is considered to make the wine *yayin nesekh*⁵²⁸:

⁵²⁷ Soloveitchik, *היין בימי הביניים*; see also his other book about the handle of Gentile wine by Jews, *סחר בינים של גויים*.

⁵²⁸ See the commentary of Rashbam to the AZ edited by A. Epstein, *פירוש הרשב"ם לע"ז*, 1–7.

“[...] It is prohibited to pour the wine into the barrels of Gentiles if one does not make transfusion [‘*iruy*] or ritual cleansing [*hag‘alah*]. It is forbidden to have Gentiles tread his wine [viz. grape].”⁵²⁹

II.B.12.2 *Ḥaside Ashkenaz*

IT contains a lengthy penance for drinking *yayin nesekh* unknowingly or knowingly, which is missing from other *recensions*. The paragraph is worth quoting in its entirety just to illustrate the severity with which the drinking of *yayin nesekh* is treated by R. Judah Ḥasid. This section is also interesting because of the method of *gematria*, by means of which the duration of the penance is calculated, and because of the biblical references made in this paragraph. At the end of the paragraph the penance is applied to the improper preparation of cheese in the houses of Gentiles without proper Jewish supervision.⁵³⁰

II.B.12.3 *Responsa*

For the sin of drinking involuntarily the wine of Gentiles, the penance of five days of fasting is imposed in the decision of Rosh, in the name of R. Judah Ḥasid, which corresponds to the above mentioned source quoted from IT⁵³¹. It seems that this penitential composition, the IT, or a lost version or source of it circulated in the 13th century, and constituted the basis for the decision of Rosh. The same penance for drinking involuntarily the wine of Gentiles is to be found in one of Maharil’s *responsa*, in the name of Rosh and of Judah Ḥasid⁵³².

In one of R. Colon’s *responsa* (No. 32), a Tosafist is quoted in connection with the laws concerning *yayin nesekh*. R. Colon mentions that R. Tam has wanted to excommunicate some Jews for buying big vats full of grapes from Gentiles.

II.B.12.4. Conclusions

For drinking unknowingly wine made or touched by Gentiles, fasting for five days was prescribed between the 12th and 15th centuries, on the basis of the version of IT and some manuscripts of MH and HTR, in the name of R. Judah Ḥasid. For drinking knowingly of *yayin nesekh*, a lengthier fast (of forty days) was imposed.

⁵²⁹ Maharam Prague, no 1022, fol. 158c.

⁵³⁰ IT Ms. Vat. 183 fols. 177a–178a (=ST Mun. 232; HTRB Mos. 221 fol. 22a–b, Jer. 621. For translation, see Appendix.

⁵³¹ Rosh 19.16.

⁵³² Mollin TH 89.

II.B.13. Transgression by Dressing, Behavior, and Benediction in Vain

Both in the community enactments (*taqqanot*) and in the different versions of HTR, MH, and IT, there are rulings connected to clothing, to the *tallit*, *tzitzit*, *mezuzot*, and to the prohibition of imitating Gentile customs. Other instructions encountered both in the penitentials and communal enactments are of disciplinary character: they prohibit too much rejoicing or limit the times of taking part in a meal or rejoicing. These rulings, enactments, and commandments aimed at preventing Jews from mingling with Gentiles and also from irreligious behavior. Penances imposed for these transgressions were fasting for forty days or for less than forty days; public flogging, and other public shame sanctions if willingness or publicity entailed the desecration of the Name.

II.B.13.1. *Taqqanot Shum 1223*

One of the prohibitions regards the physical appearance of the Jews and aims at preventing any resemblance with the Christians. No Jew was allowed to wear Christian clothes, shave like the Christians or wear a cloak resembling that worn by a monk'.⁵³³ Another enactment has the purpose of preventing revelry and receiving gifts of great value at weddings and other celebrations.

II.B.13.2. *Haside Ashkenaz*

II.B.13.2.1. Penance for Irreligious Behavior in the Teaching of *Haside Ashkenaz*

Penance for irreligious behavior is prescribed in SHP for one who has wanted to teach Torah to young children by gambling. He has been required to do penance through fasting and giving alms to poor children for learning⁵³⁴. In medieval Ashkenaz, gambling was considered condemnable: according to one of Ra'avan's decisions, a gambler was chased out of the synagogue.⁵³⁵

⁵³³ David Viskot and Moses Kaplan, *Taqqanot Shum 1223*. For translation, see Appendix.

⁵³⁴ SHP 109.

⁵³⁵ Ra'avan Prague p. 112a. Woolf, "Between Law and Society". See other cases about vowing not to gamble in the II.B.10.

II.B.13.2.2. Penances for Inappropriate Clothing and Blessing in Vain in the Teaching of *Haside Ashkenaz*

HTR 28 repeats a statement of the Talmud,⁵³⁶ namely, that shaving off one's beard with a razor is a transgression of several negative commandments.⁵³⁷ The prohibition of shaving off one's beard and hair tries to prevent Jews from following the customs of the inhabitants of the land of Canaan, and in the interpretation of HTR, the customs of the Christians.⁵³⁸

IT also contains detailed penances for a benediction pronounced in vain, as well as penances for transgressing the rules of proper appearance, laws of *tallit* and *zizit*, which are missing from other versions⁵³⁹. The sections are worth quoting in their entirety, because they reflect the spirit of SH (and even explicitly quote SHP).⁵⁴⁰

The *Sefer Minhag Tov* contains special rulings regarding the physical appearance and clothing of pious men for whom the author of SMT has collected these customs. The clothes of the God-fearers, according to the author of the composition, must express humbleness. Therefore, it is prohibited to wear colorful clothes, only modest, simple, gray dresses are allowed.

28. And it is a good custom to carry a Jewish cloth [*malbush yehudi*] all the time, that is, a cloak [*sarbal*], because a cloak which has no arm sleeves teaches about modesty and Jewish character; and if someone does not wear it, there is in him something from the ways of the Amorites who used to walk lightly and did not set God before them.⁵⁴¹

II.B.13.3. Conclusion

For transgressing a negative commandment regarding prohibited clothes, shaving off the beard or hair with a razor, or for blessing in vain, fasting or charity was imposed as penance in the medieval Ashkenazi Jewish communities.

II.B.14. Speaking or Behaving Irreligiously in the Synagogue as Blasphemy

⁵³⁶ See bMak. 21a, bNazir 40b–41b, bQid. 35b–36a.

⁵³⁷ E.g. Lev. 18,3: “You shall not follow their customs”.

⁵³⁸ See App. for translation.

⁵³⁹ Vat. 183 fols.178a–180a (=bST Ms. Mun. 232; HTRB Ms. Mos. 221 fol. 22a–b, Jer. 621). See about the manuscript Beit-Arié, Richler, Pasternak: *Hebrew manuscripts in the Vatican Library: catalogue*.

⁵⁴⁰ See for text and translation Appendix. About the special *tallit* worn by the *haside Ashkenaz* see R. Samson of Shanz's *resp.* in Maharam Prague 287.

⁵⁴¹ An instruction found also in SHP.

In an article on the integral character of the synagogue⁵⁴², S. Goldin states that beyond its function as a place of worship, the synagogue was also a social institution in the Middle Ages. Warnings to keep the sanctity of the synagogue were decreed time and again on the basis of Talmudic injunctions. At the end of the Tosafist period, the author of the *Sefer ha-Aguddah* quoted the decision of R. Meir of Rothenburg about preserving the sanctity of the synagogue:

“It is forbidden to lie in the synagogue, or to perform any profane act; for example, where prayers are held (in houses), in the rooms above or in the cellars, profane acts are forbidden”.⁵⁴³

II.B.14.1. *Taqqanot Shum* (1196, 1220)

According to the enactments of Shum, the following decree was issued concerning the behavior of the Jews in the synagogue during prayer:

“[...] In the synagogue it is not allowed to speak, but they shall sit there in fear and awe and shall worship their Father in Heaven. All this we have decreed under threat of severe excommunication [*herem*].[...]”⁵⁴⁴

The importance of this decree can be seen, on the one hand, from the fact that it was issued under threat of excommunication; on the other hand, from the many quotations in the *responsa* literature, which show that it was not always respected and needed reinforcement.

II.B.14.2. *Ḥaside Ashkenaz*

Commentary on Shi'ur Qomah

In SHP, there are many paragraphs which deal with appropriate behavior in the synagogue and the concentration of thoughts on God during prayer.⁵⁴⁵ The concern for appropriate behavior in the synagogue is also connected to the belief that the Divine Presence [sometimes called *Shekhina*, more often *Kavod* (Divine Glory)] is contained in the Divine Name. Therefore, the *Kavod* is present in the Holy Ark and in the synagogue and sanctifies the place. This idea, as a specific *ḥaside Ashkenaz* belief, is also expressed in the *Commentary on Shi'ur Qomah* of R. Moshe b. Eleazar, not in connection with the Holy Ark, but in connection with the commentary on the “measurements of the Divine Body”: the holiness of

⁵⁴² Goldin, “The Synagogue”, p. 16.

⁵⁴³ Hagahot Maimoniyot Hil. Tefillah 11,3; Sefer Aguddah, Sabbath 1,14.

⁵⁴⁴ Maharam Prague 1022 p. 159; Maharam Minz 102 p. 95.

⁵⁴⁵ SHP 1589, 224, 1484.

the Divine Name sanctifies the ark or chest in which the book containing It is placed. So, keeping the Ark and the synagogue pure and separating the holy place from unholy things are stringent requirements.⁵⁴⁶

II.B.14.3. *Hilkhot Teshuvah*

The penance for transgressing the prohibition of speaking in the synagogue during prayer resembles the enactment of the communities of Shum (1220). Probably, R. Eleazar contributed to the wording of the enactment, because he decided in the same way in his penitential (HTR and HTRB):⁵⁴⁷

“He who speaks in the synagogue [when] his fellow Jews praise [God] and sing, I call them “wicked neighbors [who seize the inheritance]” (Jer. 12,14) “because the ways of the Lord are right, the righteous walk in them, but the rebellious stumble in them” (Hosea 14,9); he will not be counted to his fellows, because despises the praise of his Creator, and removes the boundaries set by of the Creator. [...] confess your sin and seek Him; then He will find you and bless you.”⁵⁴⁸

The prohibition of desecrating God’s Name is a more comprehensive and grave commandment than the prohibitions of speaking and behaving irreligiously or inappropriately in the synagogue. It can mean profanation of God’s honor not only in sacred places and times but also by publicly committing a transgression in unholy places and times. It can also mean profanation expressed in words against the Divine honor. It is the opposite of *qiddush ha-Shem*, which is the highest religious requirement, to the extremes of self-sacrifice.⁵⁴⁹ In the categories of sins, according to the way of their atonement transmitted in the name of R. Ishmael, *hillul ha-Shem* is the gravest sin, after the sins punished with death penalty and *karet*, which can only be atoned for fully by death, besides *teshuvah*, Yom Kippur and (corporal) sufferings (tortures or punishments; Yoma 86a). According to Brewer, in the first century blasphemy was considered the only transgression for which no atonement could be made.⁵⁵⁰ At the beginning of the second century C.E., R. Ishmael’s innovation in his teaching on

⁵⁴⁶ See II.A.4.1. for the quotation from CShQ, “And he must be careful”.

⁵⁴⁷ The supposition of I. Marcus in connection with the law concerning the informer, which is also present in the enactments of Shum (1220), is the same (see *Piety and Society*, 127). Marcus does not mention the case of speaking in the synagogue. About the transgression of the prohibition of speaking in the synagogue, and R. Isaac of Corbeil’s view that many synagogues were transformed into churches because people acted “foolishly” in them (in *Semaq* seq. 11, end), see Kanarfogel, *Peering*, p. 83 and n. 150 there. See also Marcus, “Jews and Christians”, 220–21; M. Hallamish, שיחת חרליך, 226–7, 243–4.

⁵⁴⁸ HTR 26.

⁵⁴⁹ The biblical source for the commandment of *qiddush ha-Shem* and the prohibition of *hillul ha-Shem* is Leviticus 22,32, “And ye shall not profane my Holy Name; but I will be hallowed among the children of Israel: I am the Lord, who hallow you”.

⁵⁵⁰ Brewer. *Traditions of the Rabbis*. 313–318. Brewer also brings examples from the New Testament as well to demonstrate this statement.

atonement was even that he considered death as a means of atonement for the sin of blasphemy.

What is considered *hillul ha-Shem* by R. Ishmael? An allusion can be found in the teaching of R. Ishmael on the prohibition of transgressing certain commandments in times of persecution. In *Sifra Ahare mot* 13.14, R. Ishmael says that transgressing any commandment publicly in times of persecution is considered *hillul ha-Shem*; transgressing in private the prohibitions of idolatry, incest and homicide in times of persecution is considered *hillul ha-Shem*. The only thing worth accepting martyrdom is Torah, and transgressing a commandment for the sake of lifesaving is sanctioned by the Torah.

This system of values expressed in the categories of sins of the atonement-doctrine of R. Ishmael is also maintained in the *teshuvah*-teaching of *haside Ashkenaz*. In HTRB, a long section about the desecration of God's Name is inserted.⁵⁵¹

In HTRB Ms. Jer. 621, there is a gloss that can be considered a "*hasidic* definition" of the expression "desecration of the Name":

"[...] What is the profanation of the Name like? It is like a *talmid hakham* whom people are ashamed due to his sins.⁵⁵² Or a Jew about whom Gentiles say, 'Behold, he does as the Gentiles do!'.⁵⁵³ Or a *hasid* who steals and sins. And if he sins and does penance, his sins will be forgiven in the world to come. But he must suffer in this world."⁵⁵⁴

II.B.14.4. *Responsa*

II.B.14.4.1. Pushing and Beating in the Synagogue

Pushing and beating in the synagogue has been the most coarse form of expressing disrespectfulness towards the sanctity of the place where God's Presence manifests itself through the Torah scroll, ritual reading, services and the prayer of the community. Pushing the prayer leader and interrupting the divine service have occurred, as one can read in a *responsum* of R. Weil's. He condemns the offender for the harm caused to the honor of the prayer leader, but he thinks that damaging the honor of the Divine Presence is a graver.⁵⁵⁵ The

⁵⁵¹ HTRB: Ms. Parma de Rossi 2295 par. 187. See Appendix for translation.

⁵⁵² bYoma 86a: "Isaac, of the School of R. Jannai, said..."

⁵⁵³ bBQb 113: "It has been taught: R. Phinehas b. Yair has said that where there is a risk of causing a profanation of the Name, even retaining of a lost article of a heathen is a crime".

⁵⁵⁴ HTRB Ms. Jer. 621fol. 22a.

⁵⁵⁵ Weil 152.

penance for the sin committed is public confession and asking for forgiveness before the Torah scroll and in the presence of the community.

Pushing the fellow Jew in the synagogue during *hakkafah* on *Hoshana Rabbah*, *Sukkoth*, is discussed by R. Isserlein in connection with the injury caused. He decides rigorously, since the offence has been committed during the performance of a *mizvah*.⁵⁵⁶ Also In this case, public ritual of begging pardon before the Torah scroll is prescribed.

In one of his *responsa*,⁵⁵⁷ R. Colon discusses a quarrel between a father and a son about a house is discussed. In the course of the quarrel, the associates of the father have publicly beaten the son in the synagogue of Verona. The beating is not punished by Colon, but left “for the day of the last judgment”. The denunciation of the son by the father to the Gentile court of justice after the assault in the synagogue is considered a graver sin, and harshly condemned.⁵⁵⁸ However, by the wording of the *responsum*, it is obvious that R. Colon condemns the act as well due to the desecration of the place by shedding blood at the place where the “holy sacrifice” is to be performed by the pious:

“[...] he was hit repeatedly in the synagogue until his blood fell on the earth, and they tore his *tallit* and *tefillin*, and the blood was poured out on the *mahzor* from which he was praying, as I have been told; will this blood be welcome or will it go up as the good fragrance of the incense [*reah nihoah*]?”

II.B.14.4.2. Desecration of God’s Name in the Synagogue in Other Ways

Another grave sin has been committed by Jews who have desecrated the sanctity of the synagogue by using the symbols of the Christian religion or the presence of Gentiles with hostile intentions. In one of his *responsa*, R. Moses Minz answers to a question in connection with a quarrel between R. Bruna and R. Anshil in Regensburg. Anonym offenders against R. Bruna’s honor and against the sanctity of the synagogue have drawn crosses and have written the word “*apikoros*” (unbeliever) on R. Bruna’s seat. R. Minz has threatened the offenders and all who have known about them with excommunication. For all the community of Regensburg, he has prescribed fasting and charity as penance to atone for the desecration of the synagogue, which once was the synagogue of R. Judah Ḥasid, and in which the Divine Name rested (*Shem ha-Meforash*). The community has been required to consecrate the synagogue again.⁵⁵⁹

⁵⁵⁶ Isserlein PuK 210. See translation in the Appendix.

⁵⁵⁷ Colon 154.

⁵⁵⁸ See the discussion concerning the denunciation in II.B.16, and concerning the beating in II.B.3.

⁵⁵⁹ Minz 76. On the other hand, it was also an offence against R. Bruna’s status in the community, which status was expressed by the seat in the synagogue. As S. Goldin writes in his article, “A person’s seat served to demonstrate the status he had obtained among his peers (Tos. Meg. 4,21; in Maimonides, *Mishneh Torah Hilkhos*

Once, during the High Holidays in Neustadt, wealthy Jews desecrated God's Name by bringing Gentile officers into the synagogue. These Jews were men who had refused to fulfill the words of the ban decreed by the community concerning tax-paying, and so they wanted to force the majority and the community council by the aid of the Gentile authorities to exempt them from tax-paying, on which they had agreed with the Gentiles beforehand. R. Weil, who answered in a *responsum* to the question of the community, considered this an act of desecration of the Divine Name and Divine Presence, and warned under threat of excommunication the Jews who had committed it to mend their ways and obey the decree.⁵⁶⁰

II.B.14.5. Conclusions

In medieval Ashkenaz, for desecrating the Name in the synagogue during prayer, the following public penances were prescribed: public confession and asking for forgiveness before the *bimah* and the Torah Scroll. Besides, private penances were imposed: fasting, almsgiving, and prayer.

II.B.15. Desecration of the Sabbath

In the Middle Ages, in the European Jewish communities, the desecration of the Sabbath was regarded as a serious transgression between man and God, and it was punished with flogging for disobedience (*makkat mardut*), excommunication for a certain period of time (30, 40 or 50 days), fines, and sometimes also with severe corporal punishment (e.g. blinding) if the offense was committed publicly or/and willingly.

II.B.15.1. Before *Ḥaside Ashkenaz* and *Ḥaside Ashkenaz*

According to one of his *responsa*, R. Gershom, the Light of the exile, imposes penance for the desecration of the Sabbath. An offender has agreed with someone on the price of a horse on the Sabbath and has introduced the horse into his domain. R. Gershom decides that the offender must atone for his sin by flogging, and if he has profited from the bargain, he must give the money to the poor.⁵⁶¹

Tefillah 11,4). That seat belonged to that person, his name was often inscribed on the seat, and he could have passed it on as an inheritance, sold it or mortgaged it.” (Goldin, “The Synagogue”, 23). See Appendix for translation.

⁵⁶⁰ Weil 140. See Appendix for translation.

⁵⁶¹ TshḤZL 93.

In Hungary, probably in the 11th century, two rabbis, Qalonymus and R. Shabbatai he-Ḥazan, required R. Abraham bar Ḥiyyah of Regensburg and his brother, R. Jacob, who had come from Russia with loaded wagons on the Sabbath evening, and entered the community; to do penance of fifty days of fasting, flogging and charity, and then fasting for a year three times a month, on Mondays and Thursdays (36 fasts). If they had desecrated the Sabbath intentionally, their punishment would have been excommunication for 30 days and prohibition from shaving during that time.⁵⁶²

In some of the exempla of SHP, the penances prescribed by the sage for the desecration of the Sabbath are very severe. One form of *mishqal*-penance is especially cruel. For a man who desecrated the Sabbath, the sage prescribed to mortify himself by loading his own wagon with clothes in the same way he had done it when he had committed the transgression and passing the wheels through his hands.⁵⁶³

In another paragraph, the general principle of atonement in the spirit of *ḥaside Ashkenaz* is adapted to the desecration of the Sabbath: good deeds can not atone for transgressions, but every transgression is to be atoned for through penance, viz. suffering proportional to the punishment of the Torah or to the pleasure contained in the sin committed. An exemplum in the same paragraph also points out that the penitent has no choice; he must accept the penance imposed by the sage, even if it seems difficult. Once a – probably wealthy – Jew went to receive penance from a sage, for desecrating the Sabbath; the sage required him to give charity to the children of the poor for Torah learning, but he refused it, so the sage did not impose any penance on him.⁵⁶⁴

In SHP, there are regulations concerning the education of little children with respect to Sabbath observance, and certain stringent views are formulated – even if one of the extremist regulations does not regard Sabbath observance: a child who desecrates the Sabbath “can not be punished with the death penalty”, “but a [child] who teaches in the presence of his master must be sentenced to death”.⁵⁶⁵ A sage has decided not to punish but to teach a child to respect and observe the Sabbath.⁵⁶⁶

In IT,⁵⁶⁷ there is a particularly detailed penance for desecrating the Sabbath. If one desecrates the Sabbath unknowingly, he is required to fast for two days; but he who desecrate it intentionally must fast for half a year, receive flogging, and confess on Mondays and

⁵⁶² *Shibbole ha-Leqet* 60.

⁵⁶³ SHP 630. See Appendix II.B.15 for translaiton.

⁵⁶⁴ SHP 692. See Appendix II.B.15 for translaiton.

⁵⁶⁵ SHP 217.

⁵⁶⁶ SHP 1773.

⁵⁶⁷ Ms. Vat. 183 fol. 174a.

Thursdays. Hiring Gentiles to do work on the Sabbath is considered an especially grave sin. In IT, for warming oneself by a fire lighted by a Gentile on the Sabbath a severe penance of half a year is imposed.⁵⁶⁸

According to MH Ms. Parma 2999, desecrating the Sabbath through work is to be atoned for through forty days of continuous fasting; then the three days of “fasting of Esther” must be performed.⁵⁶⁹

II.B.15.2. *Responsa*

According to medieval Ashkenazi *responsa*, there is a difference between penance for intentional and unintentional desecration of the Sabbath. The first is usually atoned for through three days of fasting and a fine, the second one through flogging or other corporal punishments. A third category is the desecration of the Sabbath in times of danger.

(1) According to one of Meir b. Baruch’s decisions, for unintentional desecration of the Sabbath, the offender must give five *denars halish* to charity as atonement, because when the Temple stood, the Sabbath desecrator was due to give a sin offering. R. Meir also prescribes fasting (on Mondays and Thursdays).⁵⁷⁰

In the lawsuit between a woman and a man concerning a pledge deposited, the plaintiff (Lea) has charged the defendant (Simon) with three transgressions – false oath, beating, and the desecration of the Sabbath –, and has wanted to disqualify him from taking an oath. Although it has been obvious that the man has committed those transgressions, there has not been enough witnesses to prove it. Therefore, R. Minz has prescribed penance for him, and so he has become qualified for taking the oath regarding the pledge deposited.⁵⁷¹

(2) Intentional desecration of the Sabbath, however, is to be punished severely. R. Shalom of Halle writes to R. Weil about a man who has intentionally desecrated the Sabbath and the Yom Kippur in Braunschweig. R. Shalom asks R. Weil whether it is allowed to blind the offender as punishment. The answer of R. Weil has been definitely positive.⁵⁷²

⁵⁶⁸ See Appendix for translation. This was the German viewpoint until the late 13th century (namely, that a Jew can not warm himself by a fire lighted by a Gentile on the Sabbath, held by R. Simḥa of Speyer, R. Avigdor Kohen Zedeq, R. Isaac b. Moses Or Zarua, and R. Meir b. Baruch of Rothenburg), the basis of which was in the Talmud Yerushalmi, contrary to the French lenient viewpoint, originating with R. Tam (and held, among others, by R. Yom Tov of Joigny and R. Joseph of Orleans). See Kanarfogel, *Peering*, p. 46–47 and n. 36.

⁵⁶⁹ For translation, see Appendix.

⁵⁷⁰ Maharam Lvov 431.

⁵⁷¹ Minz 93. For translation, see Appendix. See II.B.3 for beating and II.B.9 for false oath; see also II.C.4, II.C.9, II.D.1.

⁵⁷² Weil 58.

(3) In danger of death or emergency situations – e.g. if Gentiles have laid siege to the town or a fire has broken out –, the desecration of the Sabbath – either by extinguishing the fire or by doing other works, or by transgressing the Sabbath border –, has not been punished so severely; the penance (fasting) has usually lasted for 40 days. There are several decisions in the name of R. Isserlein which demonstrate that. He once answered his friend, R. I. Ellenburg about a Jew, called R. Samuel, who had run away in danger of death from the city of Shtendil, desecrating the Sabbath.⁵⁷³ R. Isserlein prescribed forty days of fasting for him, performed not continuously but on Mondays and Thursdays each week. In this *responsum*, R. Isserlein mentions that he has had a copy of the decisions of NMM about a woman who has crossed the Sabbath borders; the author of NMM writes that the woman has been chased by Gentiles and forced to cross the Sabbath border, so he has only required her to fast for forty days. R. Isserlein also writes that if a man had only desecrated the Sabbath by fire making, which is prohibited by the Torah, the penance of fasting for forty days would have been enough for him.⁵⁷⁴

Regarding the desecration of the Sabbath in times of fire, one of R. Isserlein's disciples has sent R. Abraham a decision, in the name of R. Isserlein, which has also been included in the *Leqet Yosher*.⁵⁷⁵ In the next paragraph of PuK, a tradition from R. Isserlein is mentioned, namely, that the continuous fasting for two days and nights is equal with the forty days of fasting.⁵⁷⁶

For desecrating the Sabbath by digging holes in the ground, for instance, in order to hide one's property when a fire has broken out and Gentiles have plundered the Jews, R. Petahiah, the son of R. Isserlein imposes, making reference to a decision in the name of his father, forty days of fasting.⁵⁷⁷

II.B.15.3. Conclusions

In medieval Ashkenaz, for unintentional desecration of the Sabbath, the following penances were imposed: fasting, charity, and prayer. For intentional desecration of the Sabbath, besides these, flogging, excommunication, and sometimes lengthier fasts were inflicted. In the 15th century, there was a case in which even the blinding of the offender was approved by R. Weil – for voluntary desecration of the Sabbath – on Yom Kippur. For the

⁵⁷³ Besides, he complained to the Gentile authorities.

⁵⁷⁴ Isserlein PuK 55.

⁵⁷⁵ Isserlein PuK 60, *Leqet Yosher* I.60.

⁵⁷⁶ Isserlein PuK 61.

⁵⁷⁷ *LeqYosh* I.63.

desecration of the Sabbath or festivals by extinguishing the fire when it broke out, some rabbis prescribed the following penances: fasting, flogging, excommunication, prayer, and charity; R. Isaac b. Moses Or Zarua, however, disagreed with their decisions.

II.B.16. Informer

In medieval Ashkenazi Jewish society, severe punishments were imposed on informers.⁵⁷⁸ There are Talmudic laws concerning informers. In the Middle Ages, new laws were developed from the Talmud, and new decrees enacted by necessity, since the informer endangered the whole community.

II.B.16.1. *Taqqanot Rabbenu Tam* (1160, TRT1–4), *Taqqanot Shum* (1096, 1220, TSh 1–6), *Taqqanot in the Name of R. Gershom*

According to *Taqqanot Rabbenu Tam*, the “sages of Troyes and all the inhabitants of France” issued, under threat of excommunication, three important enactments regarding the relation of the individuals of the Jewish community to the Gentile authorities:

(1) it is prohibited to summon the fellow Jew to a Gentile court (without his consent or the permission of the Jewish community);

2) it is prohibited to threaten the seven leaders of a Jewish community (*tove ha-‘ir*);

(3) it is prohibited to obtain any position in the Jewish community by the aid of the Gentile authorities.

At the end of the enactments, the signatures of the French rabbis follow:

[...] And this enactment is undersigned by Samuel b. Meir, Jacob b. Meir, Eliezer bar Natan, and 150 Rabbis.”⁵⁷⁹

Two of these decrees (TRT1=TSh4 and TRT3=TSh3) are repeated in *Taqqanot Shum*. Four other enactments were added: one which contains a stringent form of the law concerning the informer, and states that he who only threatens to inform is to be judged according to the law regarding the informer (that is to say, he must pay the damage caused to his fellow man, TSh1); one which rules that informers must be cursed on every Sabbath (TSh2); one which prohibits the leaders of the community from acting for their own interests by the aid of Gentiles from divulging the secrets of the community to them (TSh5); one which prohibits the

⁵⁷⁸ The words “informer”, “denunciator”, “information” and “denunciation” are used for *moser*, (*masor*), *mesirah*, *malshin*, *malshinut*.

⁵⁷⁹ Maharam Prague No. 1022 P. 159a–b; Maharam Minz No. 102.

individuals of the community (the rich and noble members) from exempting themselves from tax-paying and from agreeing with the ruler individually (TSh6). The six enactments of *Taqqanot Shum* are as follows:

(1) If a Jew threatens another Jew before witnesses that he will denounce him to the Gentiles, and shortly after the threatened Jew loses his property, the *bet din* is empowered to compel the threatener to repair the damage. The denounced Jew must take an oath before the Jewish court concerning the goods which he has lost as a consequence of the denunciation.⁵⁸⁰ If there are witnesses that the threatened one has lost his property, the informer must pay immediately. If there are witnesses that he has informed against his fellow Jew, the informer must be disqualified from giving testimony and taking an oath until he repairs the damage. He receives the sentence of excommunication from the leaders of three communities (Mainz, Worms, and Speyer), and he shall be excommunicated by *niddui* [“lesser excommunication”] from all the communities, until he mends his ways as the *tove ha-‘ir* (the leaders of the Jewish community) decide for him. He who is excommunicated from one city, is excommunicated from all other places;

(2) The informers are to be cursed on each Sabbath.

(3) Every one who appoints somebody cantor by the aid of the Gentiles, or a Jew who rolls up the Torah scroll, or any other person who deals with the needs of the community, shall be excommunicated, separated and excluded.

(4) It is prohibited to litigate by the aid of the Gentiles, because matters between Jews are subject to Jewish law, and they must be judged by Jewish judges.

(5) [...] The community leaders and the rabbis of the community are not allowed to resort to the aid of the Gentiles for their own interests. [...] They are not allowed to disclose any secret concerning the inner affairs of the community to the Gentiles.

(6) Nobody can exempt himself from paying taxes, because he is a “*rokhev*”⁵⁸¹ in the court of the king.[...]”⁵⁸²

The *taqqanot* in the name of *Rabbenu Gershom* about the informer are quoted in the enactments which were added to those of R. Tam and his fellows.⁵⁸³ One of these *taqqanot*

⁵⁸⁰ There is a decision quoted in the Maharam Prague No. 307 from the *Sefer Hafez*, in the name of Rav Palṭoi Gaon, according to which the informer who only threatens to denounce his fellow Jew is disqualified from giving testimony. The *Sefer Hafez* is also quoted in Maharam Prague No. 485, without mentioning the name of Rav Palṭoi. Here the case is that there are no witnesses testifying to the fact that the threatener has informed, though the threatened one has been denounced.

⁵⁸¹ The meaning of the word is not clear to me.

⁵⁸² Fol. 158b.

⁵⁸³ At the end of Maharam Prague No. 1022.

states that deficient testimony is enough for condemning the informer if the denounced Jew is falsely accused afterwards by the Gentile ruler.⁵⁸⁴

At the same place, the following enactments are added, in the name of the “Geonim”,⁵⁸⁵ in connection with denunciation: if a Jew knows that another Jew has informed against him or has accused him falsely before the ruler or the king, and the accused one speaks to the ruler in order to clear himself of the false accusation, the latter cannot be condemned for information, and the former is liable to all the fines decreed for informers.⁵⁸⁶

II.B.16.2 HTR

Many early enactments of the European Jewish communities in the Middle Ages deal with the laws concerning informers and information. In the same manner, and partly using the same words, HTR contains the law and the severe penance imposable on the informer.⁵⁸⁷

In a gloss in MH Ms. Parma 2999,⁵⁸⁸ the penance for the informer lasts one year, during which he is forbidden to speak about Jews to the ruler; he must also pay to the denounced Jew the damage caused, ask him for forgiveness, receive flogging, and fast for 40 days.

II.B.16.3. *Responsa*

Maharam of Rothenburg has dealt with the law concerning the informer and also with cases of information, and he has judged informers severely. The law regarding the informer declares, according to one of Maharam’s *responsa*, that the informer can be killed before he informs, as the Rambam states, whom Maharam quotes.⁵⁸⁹ Maharam argues for this decree with a reference to the actual situation of denounced Jews in his time:

“On the day when he falls in the hands of the Gentiles, maybe they will increase the price of false accusation so that he can not ransom himself, and they will kill him in the prison.”

⁵⁸⁴ See App. II.B.16 for translation.

⁵⁸⁵ See the decision in the name of Rav Paltoi Gaon in Maharam Prague 307 and 485, quoted above. The name of the Gaon in this enactment is not mentioned.

⁵⁸⁶ Fol. 160a. See App. II.B.16 for translation.

⁵⁸⁷ I. Marcus thinks that the law concerning the informer in HTR of R. Eleazar of Worms has influenced the wording of the law regarding informers in the enactments of Shum, 1220, on which R. Eleazar has also been present and undersigned it. See *Piety and Society*, 127. HTR 27. See translation in Appendix II.B.16.

⁵⁸⁸ About the manuscript see II.A.3.4. It is an Italian manuscript from the 15th or 16th century. See translation in Appendix II.B.16.

⁵⁸⁹ Maharam adds that this is the case if he is warned, as in the story with Rav Kahana (BQ 117a). Mishneh Torah, *Hovel u-Mazzik*, ch. 8, h. 11.

Consequently, the informer is considered an evil-doer and he is legally disqualified; his penance is fasting and flogging, as the Roqeah prescribes.⁵⁹⁰

Another time, Maharam has answered in a case in which a Jew has been killed because of information. An informer has summoned his adversary to the Gentile court; the summoned Jew has refused to obey the Gentiles, and has been killed by the hands of the Gentiles. The crime was severely condemned by Maharam. In his *responsum*, he explains why information is a crime as grave as murder, and he requires that the offender be punished by flogging, fasting, and repaying the money. The iron chain, which he must put around his neck, indicates that HTR of the Roqeah is adapted to his penance. This part is written in rhymes.⁵⁹¹

In another case as well, Maharam harshly condemns the informer. The case has started with beating and wounding and has resulted in information. One of them has summoned his adversary to the Gentile court, only because he wanted to compel him to judge their case in the Jewish court. Maharam decides that the informer must be punished, by flogging and repaying the money on the basis of what the court and the community decide for him, since he has acted without the approval of the Jewish court and community.⁵⁹²

According to a *pesaq* of NMM's, the informer is disqualified from giving testimony, therefore his opponent must take an oath, and the informer is due to repair the damage.⁵⁹³

In the 14th and 15th centuries, the rabbis, just as Maharam of Rothenburg in the 13th century, fought against denunciation, which mostly occurred in the form of the transgression of the 12–13th century enactments discussed above. The dangers of condemning informers by the Jewish communities were great, especially when the treason was of considerable weight and endangered the existence of a whole Jewish community. Therefore, the cases were to be treated very carefully and according to laws, rules, and enactments that governed the decision-making process in the case of informers.⁵⁹⁴ Consequently, the most efficient punitive sanction for informers was excommunication (the *niddui* and *herem*) or the threat of excommunication. The pronouncement of the *herem* against an informer could be avoided and the sentence could only be lifted by public (and private) penance.

According to J. Mollin 86, two high-ranking Jewish officers, both cup-bearers of the Gentile ruler, R. David and R. Yishai, have betrayed each other, one of them successfully,

⁵⁹⁰ Maharam Prague 485. For translation, see Appendix.

⁵⁹¹ Maharam TshM Neziqim 14.

⁵⁹² This *responsum* of Maharam is quoted at the end of the *Mordehai Ha-gozel*. See translation in Appendix II.B.16.

⁵⁹³ See translation in Appendix II.B.16.

⁵⁹⁴ For example, large-scale denunciation happened in the Jewish community of Strassburg about 1370. See the case in App. II.B.16. The case is presented on the basis of the narrative of Joseph Loanz, published by Grätz, MGWJ 24, 408.

causing his fellow Jew to lose his position and to be taken captive. Therefore, he has been required to repair the damage, on the basis of the oath of the damaged one – he himself being disqualified from taking an oath –; he has also been required to ask publicly for forgiveness from the offended person.

In the 15th century, most cases of information were connected to (1) tax-paying; for instance, a community member agreed individually with the ruler and he refused to pay community tax, or (2) litigations, during which one of the parties summoned the other one to the court of the Gentiles without the consent of the other one and without the permission of the Jewish court, or (3) struggle for power between rabbis of a certain city, in which one of the rabbis used the power of the Gentiles to expel the other rabbi from the city. [(4) False accusation of arson by a Jew against another Jew in times of fire or in danger of fire has already been discussed separately.⁵⁹⁵]

(1) As for cases connected to tax-paying, the case of Simelin of Ulm, who has betrayed the whole community and members of the community several times, has already been discussed as disobedience.⁵⁹⁶ His penance decided by R. Weil has lasted one year; it included *niddui*, public flogging, fasting, alms-giving, repairing the damage, public asking for forgiveness in the synagogue and at the graves of the harmed persons, and confession.⁵⁹⁷

A similar case happened to R. Liezer in Schlettstadt about the same time,⁵⁹⁸ related in Minz 57, in which R. Liezer agreed with the ruler privately, and he did not want to obey the community leaders and pay the tax together with the community. Consequently, they delayed the prayer several times, but he still was not ready to obey. R. Minz warned him under threat of excommunication to yield.⁵⁹⁹

Another type of betrayal occurred when the tax-payers denounced the community to the Gentiles: certain rich men in Neustadt transgressed the ban of the community regarding tax-paying and they also brought Gentile officers into the synagogue on the High Holidays; R. Weil warned them under threat of excommunication to mend their ways.⁶⁰⁰

The reverse of these cases was when the community denounced the individual taxpayer to the Gentiles: the property of a widow was delivered to the Gentiles because she had failed to pay the tax. R. Colon made it clear that there was other means of compelling her to

⁵⁹⁵ See II.B.7.

⁵⁹⁶ See II.B.8.

⁵⁹⁷ See II.B.8.

⁵⁹⁸ That is, in the 40s or 50s of the 15th century. The *responsum* cannot be dated precisely.

⁵⁹⁹ See the *responsum* discussed in II.B.8.

⁶⁰⁰ Weil 140.

pay, but this one was not allowed; consequently, he threatened the community with excommunication and required to repair the damage and stop doing wrong.⁶⁰¹

Gentile power was also used against the tax-payer in Colon 1; the case has already been discussed.⁶⁰²

(2) Denunciation the Gentiles occurred when a Jew went to the Gentiles law court in order to compel his opponent to litigate according to Jewish law. In this case, R. Weil decided that the plaintiff was liable to pay the denounced one the expenses of litigation and the damage caused.⁶⁰³

In Verona, as a result of a quarrel about a house, a father has brought his son to the Gentile court and has had him incarcerated. R. Colon has warned the father to save his son from the Gentiles, and also the community of Verona that the two should choose Jewish judges to litigate; all this under threat of ban for the father and son, and for the community.⁶⁰⁴

The case of the abuses committed by R. Eliyya (Isserlein PuK 64), in which the Gentile authorities have also been involved, has already discussed.⁶⁰⁵

Illegitimate transactions with the aid of the Gentile courts were prohibited. According one of Maharal Landau's *responsa*, it is prohibited to transfer property by the aid of the Gentiles.⁶⁰⁶ According to one of R. Colon's *responsa*, a bill issued by the Gentile courts is not to be accepted if someone wants to make a profit on it, because the rules in the Gentile courts are other than in the Jewish court.⁶⁰⁷

(3) Struggle for power between two rabbis has been the reason that in the town of Oppenheim, R. David Oppenheim has prevented, by the aid of the Gentiles, R. S. Oppenheim from settling down. Therefore, R. Minz has written a warning against R. David Oppenheim under threat of excommunication to mend his ways.⁶⁰⁸

In Nürnberg R. David Frank, the leader of the community has falsely accused R. David Tebel Sprinz, the learned rabbi of the city, before the Gentiles. R. Isserlein has warned him under threat of excommunication to repair the damage⁶⁰⁹.

In the 13–15th centuries, excommunication was the ultimate measure against informers. Therefore, we encounter the threat of excommunication in many instances when

⁶⁰¹ Colon 127.

⁶⁰² See II.B.8.

⁶⁰³ Weil 111.

⁶⁰⁴ Colon 154.

⁶⁰⁵ See II.B.8.

⁶⁰⁶ Bruna 281.

⁶⁰⁷ Colon 187.

⁶⁰⁸ See B.8.4.3.4.

⁶⁰⁹ Isserlein PuK 174–5. See II.B.8.3.5.

betrayal was involved. But there were immediate and direct measures of punishments applied against them. The immediate punishments imposed on informers were legal disqualification and seizure of property. According to R. Weil, the moment that he threatens to inform, the informer is disqualified from giving testimony, and his property can be destroyed, indirectly.⁶¹⁰ According to Bruna 59, too, the property of the informer can be seized “indirectly”, and it can be destroyed.⁶¹¹ According to the decision of R. Colon, the moment he starts threatening to inform, the informer is disqualified from giving testimony and is liable to pay the damage.⁶¹²

There were special cases in which the complaint made at the Gentile authorities was not condemned as “information”, and the claim of the opponent that the damage be repaired was not justified. Exemption from paying the damage was decided in cases when the complain in Gentile courts was made in *sha'at ha-za'am*. This expression (“the hour of wrath”)⁶¹³ was mostly used in cases of assault and battery.

According to one of R. Ḥayyim b. Isaac Or Zarua's *responsa*, (at the end of the 13th century), during a battery in a guesthouse one of the two parties or their messenger brought the Gentiles, causing the death of one of the members of the party that had started the quarrel. The other party, R. Moses and his son and son-in-law, were exempted – on the one hand, because they were found not guilty in the killing of the member of the other party; on the other hand, because they had made the complaint in “hour of wrath”.⁶¹⁴

According to a *responsum* from the 15th century, written by R. Jacob Weil, the offended one made a complaint to the Gentile court in “the hour of anger”, and the offender lost a large amount of money. R. Weil arrived at the decision that the offender was liable to pay the fine for beating besides other penances which he was expected to perform, namely public flogging and asking for forgiveness, in order to atone for his sin. The plaintiff, however, was not liable to pay the money which the “betrayed” one had lost owing to the complaint, regarding the fact that he had acted in “the hour of wrath” (*sha'at ha-za'am*).⁶¹⁵

In one of R. Colon's *responsa*, one of the litigants claimed back his property from his opponent. According to the decision of R. Colon, the claim that a person has given his property to another one out of fear, namely because he has been threatened with being brought

⁶¹⁰ Weil 160. “Seized indirectly” means that it can be seized with the aid of the Gentile power; “destroyed” means that it can be handed over to the Gentiles.

⁶¹¹ Bruna 59.

⁶¹² Colon 126.

⁶¹³ See on the case II.B.1.3, and on the “hour of wrath” II.B.3.3.

⁶¹⁴ See II.B.1.

⁶¹⁵ See II.B.3.

to the Gentile law-court, cannot be accepted, since such claims lack any credibility.⁶¹⁶ It is obvious that the system of self-defense of the communities and the system of jurisdiction took care of such cases, and the threatened one had the possibility to turn to the Jewish court in order to force his opponent to obey the law. Therefore, his claim that he renounced his property out of fear could not be accepted.

In one of his *responsa*, R. Jacob Weil deals with a case involving his rich and prestigious relative, R. Abraham Ezra who has failed to fulfill his duty of ransoming captives from the Gentiles. R. Abraham Ezra, the father-in-law of R. Weil, has not redeemed his wife and his great-granddaughter from captivity; instead of him, R. David has redeemed them by paying a great amount of money. They have been in danger of death, and the Gentiles have wanted to convert the little girl to Christianity. R. Weil has ordered R. Abraham Ezra to repay the price of redemption to R. David, and at the same time he has made it clear that R. Abraham Ezra is not allowed to litigate in another court. The order has been strengthened under threat of excommunication.⁶¹⁷ In this case the failure to fulfill the duty of ransoming captives and the disobedience to repay the price of the ransom has been considered a betrayal, and punished accordingly. The case of R. Eliyyah of Prague, who has misused the money gathered for the ransom of a captive girl, has already been discussed.⁶¹⁸

II.B.16.4. Conclusions

Between the 12th and the 15th centuries, because of the special situation of the Jewish communities, the prohibition of denunciation was one of the most severe prohibitions among the laws that governed these communities. According to three *responsa* of Maharam and a *pesaq* in NMM discussed above, the law regarding the informer was the same as that regarding the pursuer; therefore the denunciator could even be killed before he made a denunciation; if he committed the offence, his punishment was severe: his penance was as great as that of the murderer in HTR; he was disqualified from giving testimony, and his property could be destroyed.

In several cases discussed, informers occupied high positions in the community, sometimes in the court of the Gentile ruler as well, and their betrayal endangered and even damaged severely the integrity of the community. In one of these (Weil 147), a detailed schedule of penance was prescribed for the denunciators so that they may be legally

⁶¹⁶ Colon 185.

⁶¹⁷ Weil 149.

⁶¹⁸ Isserlein PuK 64, see II.B.8.

readmitted into the community, but by losing their previous status as leaders of the community.

False accusation of arson in times of fire also endangered the life of the whole community, therefore the accuser was liable to severe punishment, but he was to be treated carefully even because of the danger of further betrayal.

Concerning tax matters, if the individual refused to pay, either the community or the tax-payer could complain to the Gentile authorities or summon the other party before the Gentile court, and by the aid of the Gentile authorities they could force the other one to pay or reject payment. This was also considered a betrayal, and offenders were warned, under threat of excommunication, to repair the damage.

Similarly, if one of the litigants wanted to compel the other one to go with him to the Jewish court, and he did not achieve his aim, he summoned the other Jew before the Gentile court, which was prohibited – unless the Jewish court had agreed on it beforehand –, and he was punished severely, or at least warned to repair the damage, under threat of excommunication. It was prohibited under threat of excommunication to make transactions by the aid of the Gentiles, or use the bills issued by Gentile courts, in cases when one would probably lose the suit in the Jewish court.

In quarrels between rival rabbis, several rabbis used the power of the Gentile authorities to prevent the other rabbi from taking his place in the city; for this the offender was also severely punished or warned.

The punishment of the informer could be seizure of property and legal disqualification.

Exemptions from the law regarding denunciation occurred in cases of assault and battery, and in danger of death; the endangered one could be exempted from punishment if he denounced the other one in the Gentiles law-court, or resorted to the Gentile authorities in “the hour of wrath”.

Calling someone an informer without basis was severely punished; a claim on the basis of a false accusation of denunciation was not accepted.

Ransoming captured Jews was a duty; for not fulfilling that duty, or for not repaying the price of redemption to one who had paid it instead of others, the offender was warned under threat of excommunication; it was considered a betrayal.

II.B.17. Jewish Apostate

According to the *halakhah*, no special ritual is required of an apostate who repents, since technically he never left Judaism. For Ashkenazi Middle Ages this is a simplified view, and many modern scholars have already dealt with the question that readmission in this period meant not only a symbolic act but a more radical readmission.⁶¹⁹

The status of the apostate himself/herself was also more complicated. Their status – whether they were regarded as Jews or Gentiles – depended on the case. Sometimes and in some cases they were regarded as Jews, sometimes and in some respects as Gentiles.⁶²⁰

II.B.17.1. *Ḥaside Ashkenaz*

In two paragraphs of SHP, the law concerning repenting apostates is discussed.⁶²¹ According to the first example, a Jew has not only converted to Christianity of his own free will but has also persuaded others to convert and led them to sin. However, the author highlights by the example of the king Manasseh that even one who leads others to sin has the possibility to repent if he persuades them to follow him.⁶²² According to the other example, a repenting apostate who has already accepted to do penance is considered a Jew, and it is allowed to drink wine with him and be counted to the prayer.⁶²³

In two other paragraphs, the dangers of repenting are explained by two examples. Living among the Gentiles and returning afterwards could create dangerous situations for the entire community. In medieval Ashkenaz, Jews were often captured and forced to apostatize; and then the Gentiles would prevent them from returning to the Jewish community. According to these two paragraphs, if the return – that is to say, the running away – of apostates endangered the Jewish community, it was better not to flee, as the sages advised. But if there was no danger, the sages would instruct them to return.⁶²⁴ According to SHP 201, if there was no danger, one was even allowed to cheat the Christians and flee.

⁶¹⁹ Concerning the marriage of an apostate, the status of a child born from an apostate parent, divorce, competency as a witness, inheritance, mourning rites see E. Kanarfogel: “Returning”; Goldin, *הייחוד והיחוד*, Blidstein, *”מעמדן”*; Malkiel, *Reconstructing*.

⁶²⁰ *Responsa* related to the status of the apostate from the fifteenth century demonstrate this statement. See App. II.B.17.

⁶²¹ SHP 208–209.

⁶²² SHP 209. Manasseh is the example for the repentant apostate in IT as well, and for the “power of repentance”. See 2Chron. 33,12–19, mSanh. 10, Tos. Sanh. 12. See the midrashic source for Manasseh’s repentance in bSanh. 90a, 101b, 103a–b (ch. 11 *Ḥeleq*), ySanh ch. 10, NumR. *Naso’* par. 14, DeutR. *’Ekev*, EstherR. Par. 9, *Pesiqta de-Rav Kahana, pisqa 24, Shuvah*, and *Pesiqta Rabbati 21*.

⁶²³ SHP 208. He does not make the wine *yayin nesekh* as a Gentile or unrepentant apostate.

⁶²⁴ SHP 200 and 201. For translations, see Appendix.

In HTR, ritual immersion and strict penance are required of the repentant apostate, according to most versions of the *recensions*. But in the quotations of the sages of the time and in those of later sages, the penances and the ritual immersion are missing.⁶²⁵

II.B.17.2. *Responsa*

II.B.17.2.1. Ritual Immersion for Repenting Apostates

According to S. Goldin, in the 12–15th centuries, in the German lands, there was a harsher attitude towards repenting apostates. Rather severe penances were required of them.⁶²⁶ Besides penances, ritual immersion resembling a quasi-*giyyur*⁶²⁷ came in fashion for readmitting repentant apostates. According to the 12–15th century *halakhic* sources, three types of readmission can be distinguished on the basis of the view of the *halakhic* authority concerning ritual immersion: (1) there is no need for ritual immersion before three laymen⁶²⁸; (2) there is need for ritual immersion before three laymen, however not for *giyyur*⁶²⁹; (3) ritual immersion must be performed before a *bet din*, with the promise to keep the commandments.⁶³⁰

II.B.17.2.2. Penitential Schedule for Repentant Apostates

In the 13–15th centuries, even more important than the requirement of a quasi-*giyyur* was the development of a penitential schedule for repentant apostates similar to the schedule of the penitent murderer or adulteress. However, there was no consensus among the decisors whether severe penances were necessary for repentant apostates.

⁶²⁵ For example, in a quotation of R. Isaac b. Abraham's. To this contradiction: Y. Dinari: *Hakhme Ashkenaz be-shalhe yene ha-benayim*. (Jerusalem 1984), p. 86 n. 74. For translation, see Appendix.

⁶²⁶ Goldin, הייחוד והחידו, 86–100.

⁶²⁷ *Giyyur*, that is conversion to Judaism.

⁶²⁸ R. Isaac b. Samuel (Ri ha-Zaken) (Ms. Vercelli); R. Isaac b. Abraham, R. Isaac b. Samuel's disciple, in his commentary on the *Yev.* 47b (C235/4), id.; R. Samson of Shanz, R. Isaac b. Abraham's brother, in a *responsum* written to his brother (Ms. Ox 844 par. 206). See more in detail E.1.2.6.(a).

⁶²⁹ *Tosafot Shittah* to the *Yev.* 47b (Ms. Vercelli C235/4); Ra'avyah (*Semaq of Zürich*); R. Bonfent (R. Simḥa of Speyer's disciple, *TuPHAZ* 171); Maharam (Maharam TshM Nashim 10); R. Avigdor b. Eliyyah of Vienna (Avigdor b. Eliyyah of Vienna PuP 454); R. I. Isserlein (Isserlein ThD 86); R. I. Isserlein (Isserlein PuK 198). See more in detail E.1.2.6.(b).

⁶³⁰ See more in detail E.1.2.6.(c). See Kanarfogel, "Changing Attitudes".

According to ThD, R. Isserlein is asked whether the repentant apostate must undergo severer self-mortifications than other penitents. The answer is that he does not need to, because it is enough for him not to enjoy the pleasures which the Christians enjoy.⁶³¹

According to a *responsum* of R. Avigdor b. Eliyyah Kaz's, an apostate couple who has returned to Judaism must perform a penitential schedule, but is not required to wait three months after ritual immersion; they are allowed to live together as a married couple immediately after ritual immersion.⁶³²

According to Ms. Oxford Catalogue Neubauer no. 784 fol. 28a, R. Isaac of Tyrnau prescribes a penitential schedule for an apostate couple who has returned to Judaism. The schedule contains fasting, charity, and self-mortification (flogging for the man and sitting in cold water for a while every day in winter for both); but they are considered Jews immediately after immersion.⁶³³ According to the *Leqet Yosher*, the penitential schedule prescribed in the name of R. Isserlein for repentant apostates is quite similar to the one discussed above: it begins with ritual immersion and continues with fasting, confessions, self-mortification, prayers, and charity.⁶³⁴ The penitential schedule contained in a *responsum* in the same manuscript prescribed for a forcibly converted Jew who has returned to Judaism after being held captive by the Christians for three weeks is also similar.⁶³⁵

II.B.17.3. Conclusions

According to HTR, the repenting apostate must confess, ritually immerse, humiliate himself, avoid the Christians, fast, and mortify himself with physical pains (e.g. flogging). Ritual immersion was seemingly a general requirement in Germany and Austria in the 13–15th centuries; and also the other types of penances, at least in the 15th century. There are three detailed schedules of penance which were imposed on the basis of HTR.⁶³⁶

II.C. Forms of Penance

⁶³¹ Isserlein PuK 198.

⁶³² Avigdor b. Eliyyah PuP 454.

⁶³³ Ms. Ox 784 28a. See edition and translation in Appendix.

⁶³⁴ LeqYosh II.49. For translation, see Appendix.

⁶³⁵ Ms. Ox. 784 25b–26a, undersigned by “Zahav ben Shoham” (probably, the anagram of R. David b. Moses). See edition and translation in Appendix.

⁶³⁶ On the status of the returning (= penitent) apostates see II.E.1.

Haside Ashkenaz developed a doctrine of atonement based on Talmudic principles of atonement, but they went far beyond these principles in stringency.⁶³⁷

(1) Principles Concerning Atonement in the Teaching of *Haside Ashkenaz*

(1.1) Only Suffering Atones

In the RJH there is a question addressed to R. Judah Ḥasid about merits and sins: whether the performance of a *mizvah* can atone for or redeem a sin or transgression of a commandment. The answer is that basically sins and transgressions are atoned for only through penance – that is pain equivalent to the pleasures or delights enjoyed.⁶³⁸

The definition of atonement in the penitential system of *haside Ashkenaz* is given through an interpretation which enhances the “subjectivity” of the more conventional rabbinic terms of atonement. “Subjectivity” means that the notions of both the sin and atonement are relative: their measure depends on the person of the sinner and on circumstances of the transgression.

In the terms of the four ways of atonement in their system – of which two are penances with the purpose of avoidance of sinning in the future and two of them are atonements for the past⁶³⁹ – the sense of the *teshuvah* is the fighting of the (‘subjective’) *yezer* (for the future) and the atonement by (‘subjective’) suffering (for the past).

Therefore, both in the case of the penances for “fence, for the future” (*teshuvah ha-ba’ah*, *teshuvat ha-gader*) and in the case of the penances for the “atonement, expiation of the past sin” (*teshuvat ha-katuv*, *teshuvat ha-mishqal*) the penance is imposed according to subjective categories.

The answer of the RJH therefore can be explained by this doctrine which has as its central value the suffering: not committing the sin in the future in itself does not mean penance; doing a *mizvah* in itself does not expiate the sin committed. Only the “subjective interpretation” of the atonement related to the sin can give the performance of the commandment or the avoidance of the sin the meaning of being true atonement and penance. Both returning from the bad way (‘*teshuvah*’) “for the future” and expiation or counterbalancing of the sin committed in the past (‘*kapparah*’) can only be explained in the subjective dimension of the personality of the sinner within the system and doctrine of

⁶³⁷ Büchler: *Studies in Sin and Atonement*, Id.: “Ben Sira’s Conception of Sin and Atonement”. Schechter: *Aspects of Rabbinic Theology*. Id.: “Jewish Saints in Medieval Germany.”

⁶³⁸ About the centrality of suffering as value in SHP: Soloveitchik, “Three Themes”; “The Midrash”.

⁶³⁹ See Introduction 3.2.

penance of *ḥaside Ashkenaz*.⁶⁴⁰ Only suffering atones, and only fighting the *yezer* is true repentance.

(1.2) Proportionality in Atonement

In SHP 19 there is a principle that the atonement must be proportional not only to the sin committed, but also to the consequences. This is stated first of all in connection with transgressions called “crooked which can not be made straight”, like begetting a bastard.⁶⁴¹

The main idea in the imposition of the penance for the purpose of atonement in HTR is the “measure for measure”. This is the principle for both the *katuv* and the *mishqal* penances, the two modes for measuring penance, which – explicitly or implicitly – are the basis for the imposition of the penances for the sake of atonement in the penitentials of *ḥaside Ashkenaz*.

For example, for transgression of a negative commandment and of those punishable by extinction, sins for which flogging (*malqut ’arba’im*) or disciplinary flogging (*makkat mardut*) was prescribed according to the Law⁶⁴², HTR prescribes as *katuv* penance at least 40 days of fasting and flogging on each day.⁶⁴³

Implicitly, this implies that the principle of the *katuv* penance is “measure for measure”, because the 40 days of flogging correspond to the 40 lashes of the *malqut* punishment. The “measure for measure” principle for the *mishqal* penance was explicitly stated in SHP 37:

“The following idea has been formulated about penance: penance must be proportional to the pleasure enjoyed by the sinner [...]”

This principle has been explained in an interpolation in one of the manuscripts of MH⁶⁴⁴:

“[...] that is, he must suffer [pain] commensurate with [the pleasure] he has enjoyed”.

(1.3) Purity Achieved through Atonement

⁶⁴⁰ The subjective dimension of the personality of the sinner has a metaphysical plane which is hidden from the eyes of those who see only this world. See App. II.C. on divine justice in the sources.

⁶⁴¹ SHP 18. See App. II.C for translation.

⁶⁴² See bMak. 13a.

⁶⁴³ HTR 28. See App. II.C for translation.

⁶⁴⁴ Ms. Mos. 103 fol. 125b, 15th c.

The great-grandson of Judah Ḥasid, R. Moshe b. Eliezer connects atonement to the notion of purification and to the way which leads to saintliness. According to the explanation of CShQ, the meaning of the atonement is that it purifies from sin. The “standard” period and way of atonement for grave sins – like fornication with a married woman or with a *niddah* or a Gentile woman – is fasting for forty days and additionally for three days continuously, similar to the atonements prescribed by Judah Ḥasid in SHP and RJH for these sins.⁶⁴⁵ Further, atonement leads to saintliness. This is also highlighted in the need of ritual immersion which is prescribed for each fast in this commentary, its aim being ritual purity and holiness.⁶⁴⁶

The connection between ritual purity and innocence which together lead to saintliness can be demonstrated from the role of the atonement in the initiation rituals in which atonement as well as ritual purity are requirements for the study of mystical texts, for mystical ascent on the “mystic’s ladder” or for magical incantation for achievement of perfect knowledge and success in Torah learning.⁶⁴⁷

A further proof for this connection is the chapter *Hilkhot Ḥasidut* of R. Eleazar of Worms, which contains twelve chapters, called principles (roots, *shorashim*), as follows: (1) love of God; (2) fear of God; (3) humbleness; (4) prayer; (5) the difficulty of the beginning of the *ḥasidut*; (6) Torah learning; (7) obedience to the words of the sages; (8) abstinence (9) purity from sin (10) shyness (11) being prudent in the fear of God (12) saintliness (fulfilling the commandments of “For thou art a holy people” and “They must be holy to their God’, Deut. 14,21, Lev. 21,5). In the fourth chapter (‘humbleness’), in which the benefits of the humbleness and the detriments of pride are presented, R. Eleazar mentions that on this level on the “ladder of *ḥasidut*” atonement for sins punishable by flogging, *karet* and death by the *Bet din* is required.

The twelve principles of the *Hilkhot Ḥasidut* resemble the saying of R. Pinḥas b. Yair in the AZ 20b, which is called by Adolph Büchler “The Saint’s Progress’.⁶⁴⁸

⁶⁴⁵ See II.A.4.1, “Atonement etc.”.

⁶⁴⁶ See II.A.4.1: “In faith and purity etc”.

⁶⁴⁷ See discussion in II.A.4.

⁶⁴⁸ Parallel passages in mSheq. 4.6 and mSota 9.9 where the sequence of virtues differs a little from this version. See App. II.C for translation. See Büchler, *Types*, 42–67.

(2) The Relation of the Forms of Penance to Punishments in the *Responsa* of the 12 –15th Centuries

Except some typical penances (fasting, prayer and confession, exile and pilgrimage, public humiliation), penances can also be punishments if they are not applied within the frame of a penitential process. What distinguishes a form of penance from punishment? The answer to this question is partly given in II.D below (which deals with the process of penance), and it will be argued that it is the “process” which the “reparation” (*tiqqun*) is part of, that makes the “reparation” a penance or a punishment. In many cases, the first *viddui* of the offender (that is to say, confession either to a sage, rabbi, *bet-din*, or public confession) qualifies the process to be regarded as penance.

This is true, above all, to penances borrowed from punishments. Penitential processes include elements, typically known and used as punishments, in a somewhat modified form (e.g. flogging, which is used in the penitential process in a variety of forms; excommunication, which is decisive in the whole penitential process as a coercive tool, as means of punishment, as a para-judicial device for public shaming, if bound together with public rituals etc.).

The private aspects of a penitential schedule have less resemblance or connection to punishments (e.g. fasting, private prayer, and confession). But private flogging and forms of self-mortifications were borrowed from punishments and transformed into penances.

All forms of penances discussed below (even if they are closer to punishments than to penances) are applied within the frame of a penitential process or schedule, or in processes which can be defined both as penances and punishments. References to the relation of certain forms of penances to the respective punishments will be made throughout the discussion on the modes of penances.

(Corporal Penance)

II.C.1. Suicide for Sins and the Death Penalty

II.C.1.1. SHP on Suicide for Sins

The question of suicide for grave sins was discussed by *haside Ashkenaz* and two contradictory answers were given to it. In the background of the discussion there are at least three doctrines adopted or formulated by *haside Ashkenaz* related to the problem: (1) hard penances atone even for sins punishable by death; (2) the prohibition of suicide; (3) the

imperative of *qiddush ha-Shem* in a situation of “relative coercion”, that is, if one has the possibility to choose between apostasy or death.

(1) *Ḥaside Ashkenaz*, and especially SHP and the writings in the name R. Judah Ḥasid have a special, and in some respects extreme view on the death penalty, liability to the death penalty, suicide for sins, which can be considered the ideological background to their view on penitence, atonement, corporal punishment, and self-mortification for penance.

One example for these extreme views is in SHP 1451, an *exemplum* tells that a man says before the sage that if he were a king he would kill all the wicked men⁶⁴⁹ and abolish punishment after death in the *Gehinnom*, because in that way only good people would be in this world. The sage says to him that God punishes the wicked after death and the purpose for being good in this world is to avoid punishment after death. The explanation of the sage for divine justice would be common place were it not brought as an *exemplum* for the justification of the views of *ḥaside Ashkenaz* about the role of suffering in penance. The aim of *ḥasidut* is not to mete out justice instead of divine justice on the Earth, but to atone for personal sins by suffering in this world in order to earn the world to come.

Another example for the special stringency in matters of honoring the master or the parents, and in matters of ethical things in general, is to be found in SHP 217, which contrasts two *halakhot* regarding the liability of a child in connection with two transgressions: a child who desecrates the Sabbath is not liable to the death penalty, but a student teaching in the place where his master is present, is liable. This second law is discussed in bEruv. 62b–63a and bBer. 31b. In the latter, Samuel the prophet is condemned as child teaching in the presence of Eli, however, not willingly. SHP discusses these *halakhot* with the purpose to enhance that a child must be educated to keep the Sabbath. The simple fact that such a question, the liability of a child to death penalty can be considered an extreme view about ethical things.

(2)–(3) In the Middle Ages, one who committed suicide in the Christian society was buried without ceremony. According to the tractate *Semaḥot* a Jew who committed suicide was to be buried without ceremony.⁶⁵⁰ The contradiction between the prohibition of suicide

⁶⁴⁹ According to Maimonides Hil. Melakhim 3,8–9, the king has the extrajudicial authority to inflict punishments for crimes, e.g. to execute persons who disobey or slander him, murderers acquitted for lack of evidence or for other formal grounds if he considers necessary to protect the public good. Probably the author of SHP had in mind the Talmudic prerogatives of the king of Israel (mSanh. 9,6). However, the main problem in this paragraph of SHP is divine punishment and justice, a central topic of SHP.

⁶⁵⁰ In the Talmud BQ 91b there is a discussion on the prohibition of injuring oneself, but not on the prohibition of suicide specifically. However, in the tractate *Semaḥot* there is a prohibition from providing a funeral ceremony for one who has committed suicide (Sem. 2,1–5). In medieval times, both in Christian and Jewish society there was a “cultural aversion” from suicide (Alexander Murray, *Suicide in the Middle Ages*, vol. 2, “The Curse of Self-Murder” (Oxford, 2000) cited in H. Soloveitchik, “Halakhah, Hermeneutics”).

and the imperative of *qiddush ha-Shem*, was discussed by the Tosafists, and decided that if a Jew is given the choice of death or apostasy, he has to sanctify God's Name, that is to chose death instead of apostasy.⁶⁵¹

Against the background of these three doctrines, the question was to be answered, whether suicide atones for grave sins after repenting. The answer was not simple, a fact which can be illustrated with an example.

There is a story in the *Hilkhot Semaḥot of R. Meir of Rothenburg*, about R. Yom Tov, the son of R. Moses Ḥasid of London⁶⁵². Before the feast of *Shavu'ot*⁶⁵³ he committed suicide by hanging himself with his belt. His father did not mourn for him. In the source there is no allusion to the reason: was it because his son had committed apostasy or because he had committed suicide. They brought the dead boy to the Jewish cemetery in London, and returned home. In the night, he appeared to several members of the community, among them to his father and to R. Meir mi-Anglotera. This latter told the story in first person as an eye-witness, and his composition has been the source for R. Meir of Rothenburg's halakhic work *Hilkhot Semaḥot*. The son said in the dream to R. Meir mi-Anglotera that an evil spirit (*shed*) compelled him to commit idolatry (apostasy), but he said him also that he arrived to the world to come. After the festival, the father, R. Moses, and the whole *yeshivah* went to London and have mourned him. The message of the story is in this way that his suicide atoned for his sin committed. The author adds to the story that the young *talmid* has been an extremely pious and God-fearer man, nothing bad has been found in him, and that he judged himself with stringency (*dan 'et azmo le- ḥumra*). Two Talmudic examples are brought by the author for demonstration of the idea that suicide atones for grave transgressions. The first is the legend about the suicide of Alcimus (Yaḳim 'ish Zērorot), the high priest who about 160 B.C.E. betrayed the Jews for Bacchides, the Hellenistic general, who executed 60 sages, among them the uncle of Alcimus, R. Yose b. Yoezer. When this latter was conducted to be executed, met

⁶⁵¹ See Soloveitchik, "Halakhah" n. 8: Tos. ha-Rashba Pes. 25b, s.v. *mah*; Tos. Rash mi-Shanz Ket. 3b, s.v. *ve-li-drosh*; Tos. Yeshanim Yoma 82a s.v. *ḥuz*; Tos. Sanh. 74b s.v. *ve-ha*. Haym Soloveitchik on the *Tosafists*" discussion whether suicide is allowed when facing torture and apostasy, states that all the great *Tosafists* (R. Tam, R. Isaac of Dampierre (Ri), R. Samson of Sens and R. Meir of Rothenburg) who argued that suicide was allowed in certain circumstances not only had no explicit legal basis for it in the Talmud, but also reasoned in an atypical manner, so one must suppose that extralegal circumstances – that is the martyrdom of the Jewish communities – "deflected" their argumentation in this direction ("Halakhah, Hermeneutics" p. 89 n. 23). The atypical reasoning alludes also to the assumption that if not confronted with these options (torture and apostasy), suicide is strictly forbidden.

⁶⁵² The composition is to be found in the Manuscript Paris 1408. The *Hilkhot Semaḥot* of R. Meir b. Baruch of Rothenburg has been published by Moshe Landau, Jerusalem, 1976 (הלכות שמחות השלם). See on the father of the boy, R. Moshe and his family: Kupfer, "A Note to the History" (Hebrew) *Tarbiz* 40 (1971): 384–7. Shoham-Steiner, *Ha-yahas ha- ḥevrati...*; Id.: "Shigga'on, 'avdanut" (2008), 20–29.

⁶⁵³ Which, according to E. Shoham-Steiner was also the feast of the Pentecost of the Christians. See "Shigga'on, 'ovdanut" (2008), 20–29.

his nefew and this became so ashamed that applied on himself the four death penalties of the *Bet din*, by which he earned the world to come.⁶⁵⁴ The second example is that of R. Eleazar b. Durdiah who was adhered to fornication and died because he could not leave this sin, but earned by this the world to come.⁶⁵⁵

However, despite these Talmudic examples and the end of the story, the author concludes that it is better to suffer self-mortification in this world and to beget children than suicide.

Haside Ashkenaz discussed the question whether it was allowed, or even good and advisable, or whether it had atoning power if somebody killed himself for having committed a grave sin (especially one of the three cardinal sins: idolatry, murder and fornication, with reference to which it was commanded that one had let himself be killed instead of transgressing). Especially idolatry/apostasy and fornication were central in the discussion of *haside Ashkenaz* related with the topic of suicide for sins.

There are two contradictory opinions in the writings of *haside Ashkenaz* on the question whether it is good for a sinner to kill himself because of his sins. In the ST, at the beginning of SHP, it is stated that the sage can not say to a fornicator that he must kill himself, but instead he shall advise him to do penance “as hard as *malqut* or *karet*’.⁶⁵⁶

In the RJH a contradictory advice and opinion is given about the benefit of suicide for sins. This states unambiguously that it is good for a sinner to kill himself for his sins, especially for grave sins, like idolatry and blasphemy. This statement is illustrated by two Talmudic examples, and a contemporary one about an apostate who has drowned himself, saying that after having sinned by water, he must be punished by water.⁶⁵⁷

II.C.1.2. Responsa. Liability to the Death Penalty Atoned by Penance

According to Talmudic law in the time when the Sanctuary stood, murder, fornication, idolatry, denunciation are sins for which the offender is liable to the death penalty.⁶⁵⁸

According to a *responsum* of Maharam’s, the denouncer is allowed to be killed at the time when the denunciation is made, and if he is not killed, he must do penance as the Roqeah has written.⁶⁵⁹ In another *responsum* of Maharam’s (TMN 14), one finds that an informer has

⁶⁵⁴ *Bereshit Rabbah* 65.22.

⁶⁵⁵ bAZ 17b.

⁶⁵⁶ SHP 19.

⁶⁵⁷ RJH. See App. II.C.1. for translation.

⁶⁵⁸ About sins liable to death penalty see Blidstein, G.: “Capital Punishment”; Steinmetz: “Crimes and Punishments I.–II.”

⁶⁵⁹ Maharam Prague 485. See II.B.16.3.

caused the death of his fellow man by betraying him to the Gentile court, consequently R. Meir decides that he must be considered a murderer who has killed willingly and directly, and must do penance as a perfect murderer.⁶⁶⁰ According to a decision of NMM, too, the informer is considered to be a pursuer, and he is allowed to be killed at the time the denunciation is made. In another *pesaq* of NMM, we find the decision that he who accuses or threatens another Jew with accusation of arson before the court of the Gentiles in times of fire, is considered an informer and pursuer and can be killed. This is a decision of *hora'at sha'ah*, since the Jews live among the Gentiles and are exposed to the danger of being falsely accused, which may jeopardize the whole community.⁶⁶¹

Actually it did happen in 1370 in Strassburg that an informer was executed because he was dangerous for the whole community.⁶⁶²

In a case of murder committed by two Jews in a battery during a quarrel in a guesthouse against a third one, R. Bruna decides that since the two men have committed the murder together and neither of them has hit the victim hard enough to kill him, they both can be exempted according to the law of men, but they are liable to the death penalty according to the law of Heaven. Considering that they are liable according to the law of Heaven, they must do penance, but this can be carried out only with their consent. One of them was willing to do penance, and he receives the order for penance from the respondent, the other is not, and therefore he must be excommunicated from the community, and it must be proclaimed, that he is separated until he returns and receives what has been decided about him.⁶⁶³

However, even killing a child willingly, which would be an act subject to the death penalty, is pardoned in a special situation, when there is a fear that the mother who has killed her child begotten from a Gentile, would convert, and in this way her act receives another meaning, it is explained as an act of “fighting the idolatry”.⁶⁶⁴

The meaning of penance in an extreme situation is that even sins liable to the death penalty can be atoned for through penance, as the example from DT shows in which the penance for the seducer of an unengaged virgin is introduced by this words:

“[...] He who seduces an unengaged virgin, or a minor is liable to the death penalty.[...] And this is his penance: he is to be flogged three times every day, and he must fast a whole year, and must lie on the ground, and a whole year shall wear sackcloth on his body, and he must let grown his beard and must confess every day the evil done by him.”

⁶⁶⁰ See II.B.16.3.

⁶⁶¹ See II.B.16.3 and II.B.7.

⁶⁶² MGWJ 24, 408. See above II.B.16.

⁶⁶³ Bruna 265. See II.B.1.3.5.

⁶⁶⁴ NMM. See II.B.1.3.1.

II.C.1.3. *Qiddush ha-Shem* in Ashkenaz and Its Relation to Penance

Haside Ashkenaz state explicitly that the sanctification of God's Name is one of the highest requirements of the life of a *hasid*.⁶⁶⁵ There are many paragraphs in SHP which deal with the *qiddush ha-Shem*, emphasizing that one must choose death instead of transgressing a commandment, in times of persecution or publicly at any time.⁶⁶⁶ It is also well known that in the teachings on *teshuvah* the doctrine of the sanctification of God's Name played an important role, as both in SHP and in HTR there is a statement that the norm concerning the penitent is that he must always think of the hour of persecution in which he is due to sanctify God's Name by sacrificing his life for Him, and in this way he will be saved whenever he is tempted to transgress.⁶⁶⁷

The requirement of self-sacrifice in times of persecution was not only the teaching of *haside Ashkenaz*, but a general characteristic of the thinking and *halakhic* practice of the medieval Ashkenazi sages, in opposition to the attitude of the Jewish decisors of the lands of Islam.⁶⁶⁸ At the end of the Middle Ages, in the 15th century the answer to the contradiction between the preservation of life and the sanctification of God's Name in the Ashkenazi *halakhic* practice was still the same as in the time of the crusades. Discussing and answering questions related to *qiddush ha-Shem*, two decisors of the 15th century maintained that the

⁶⁶⁵ See: Dan, "בעיית קידוש השם",

⁶⁶⁶ H. Soloveitchik in his study mentioned above ('Halakhah', p. 89 n. 23.) argued that the deflecting "something" in the decision of the Tosafists in favor of *qiddush ha-Shem* was the mentality of their community during the persecutions in the Crusades, which became culturally normative and axiomatic for the entire Ashkenazic population in the Middle Ages. They did not think a moment that the tragic sacrifices of their people were not all sanctified. This conclusion is the main idea and the starting point of the study of Goldin, "The Socialization for *Qiddush ha-Shem*". In this study, Goldin formulates and demonstrates the hypothesis that this axiom indeed became a norm in the life of the medieval Ashkenazi Jewish communities: the members of these communities educated their children to consciously assume the self-sacrifice, "thereby building a system which prepared the members of the communities for the day when they would undergo the supreme test of their faith". Simcha Goldin analyzes the process of socialization towards *qiddush ha-Shem*, the development and synthesis of this norm in the Jewish communities of northern France and Germany between the years 1100 and 1350, how *qiddush ha-Shem* became part of the Jewish self-image, and "how it came to be perceived as a part of the self rather than law".

⁶⁶⁷ HTR 29. See App. II.C.1. for translation.

⁶⁶⁸ The reasons for this difference are discussed by A. Grossman in an article on *qiddush ha-Shem*, in which he enumerates and analyzes seven of the possible causes. (See the reasons of Grossman, "קידוש השם במאות הי"א", "הי"ב" in App. II.C.1. See also: Grossman, "The cultural"; Id., "Social structure"; Ta-Shma, "Rabbinic literature"; Id., *Creativity and tradition*; Hollender, Elisabeth: „Reaktionen“). A. Grossman's statements are important for the understanding of the problem of the different attitudes of the rabbis in the Islamic and Christian lands to *qiddush ha-Shem*. This difference, A. Grossman highlights, must be due to the martyrdom of individual Jews and communities during the Middle Ages in Europe. A. Grossman's opinion is that the attitude to *qiddush ha-Shem* depends on the culture in which the Jews lived. In his article on the notion of "family" in the Jewish Middle Ages (Goldin, "משפחה" במושג , 54). Simcha Goldin makes an important statement in connection with *qiddush ha-Shem* in the medieval Ashkenazi Jewish communities in times of persecution. Referring to the chroniclers of the 12th century, he calls attention to the fact that the chroniclers highlighted the "family" – and not only collective – character of the sacrifice. (See for example Habermann, ספר גזירות, p. 31) Goldin's important idea is that *qiddush ha-Shem* became an ideology and a serious cultural factor in education and religious life of the medieval Ashkenazi communities.

sanctification of God's Name was a greater commandment than the responsibility for one's own life (viz. the demand of killing oneself), and that the Torah did not care for the loss of a soul from Israel in the case of the sanctification of God's Name. This is R. Isserlein's explanation in connection with a question related to Rambam's difficult statement that if one delivers himself to be killed for *qiddush ha-Shem* in a situation in which the law "he must transgress and not let himself kill" is applicable, he is liable. R. Isserlein maintains that in such a situation the commandment of *qiddush ha-Shem* overrules the commandment concerning the responsibility for one's own life. The second decisor, R. Colon answers to a question in connection with an apparent contradiction in the *Semag*, namely that one must let himself be killed in a time of forcible conversion, but not in other times, except the three commandments – the prohibition of murder, fornication and idolatry – in the case of which one always is commanded to sanctify God's Name.⁶⁶⁹ These two stringent explanations about the sanctification of God's Name, different from that of Rambam's, are significant. Still, at the end of the 15th century, after all the forcible conversions, persecutions and killings committed against the Jewish people in Europe, the decisions of the Ashkenazi sages concerning martyrdom or apostasy were in force.

On the basis of the imperative of *qiddush ha-Shem* in case of the alternative of death or apostasy in medieval Ashkenaz, one can understand the other alternative offered for sinners: excommunication or penance. One is readmitted into the community only with the condition to accept the penance required.

II.C.1.4. Suicide Committed because of Apostasy

So far we have seen⁶⁷⁰ two cases of suicide in case of apostasy, both at the end of the twelfth and the beginning of the thirteenth century. The first was the case of the son of R. Yom Tov of London: the son hung himself before *Shavuot*. The second one was that of the apostate in the RJH: he drowned himself. Beside these examples, the RJH maintains that sins can be atoned through suicide. Another example of "suicide" committed because of apostasy

⁶⁶⁹ Isserlein ThD 199, Colon 174. R. Colon explains that one must sanctify God's Name publicly, for all the commandments, and only secretly and not in times of persecution is one allowed to transgress the other commandments in order to save his life, except the three grave sins. For the support of this strict explanation, the view of R. Judah Ḥasid is also quoted by R. Colon. The decision regarding *qiddush ha-Shem* (self-sacrifice) in the case of every commandment in two situations – persecution and publicity –, based in the answer of R. Colon on the explanation of R. Isaac the Elder, has a special background, if one considers that, on the one hand, the Jewish people in Medieval Europe – for four centuries, at least, in the period between the 12th–15th centuries – was almost always put in the situation of a persecuted community, and, on the other hand, at this very time, the publicity inside the community was the basis of community life.

⁶⁷⁰ See II.C.1.1.

is mentioned by Carmoly⁶⁷¹: in the year 1389, in Konstanz an apostate Jew asked to be burnt at the stake for his sin, and his request was fulfilled.

II.C.2. Mutilation, Maiming; Tormenting, Self-Affliction as Penance

II.C.2.1. *Ḥaside Ashkenaz*

The main and most original conception found at the basis of the ideas and ideals of penance in the teaching of *ḥaside Ashkenaz* is the premise that because sin always contains in itself pleasure, and it is bound together with it, it must be atoned by torture and pain.⁶⁷² In their teaching about atonement, this meant above all physical pain contra-balancing physical pleasure enjoyed in sin.

In the *Sefer ha-Teshuvah* of R. Samuel Ḥasid at the beginning of SHP, in the paragraph SHP 19, it is explained that through torture received of one's own accord, even the greatest sin can be atoned for. Except the first sentence, the whole paragraph is about physical torture with the purpose of atoning for the sins of fornication and adultery, but the wording is so general that at the first glance it is about penance in general for a sin of any kind. Although the paragraph is built on Talmudic sources about physical torture, as a whole, it reflects an original idea of R. Samuel Ḥasid about pain and bodily torture, that had never been so central as in the ideology of penance of *ḥaside Ashkenaz*.

In connection to physical torture the following issues are to be highlighted – these being principles both to the penitent and to the advisor, teacher or sage (*moreh, yo'etz*):

(1) There is no sin which can not be atoned by physical torture; physical tortures are to be increased proportional to the greatness or frequency of sin; neither the advisor nor the penitent is allowed to say that a sin has no remedy by physical torture.

⁶⁷¹ Ben Chananja 2 [1859], 177. He gives no source.

⁶⁷² About ascetism in ancient Judaism: Urbach: "Asceticism and Suffering"; Fraade, "Ascetical Aspects"; Halivni, D.: „On the Supposed“; Diamond: "The Tension between Ascetism and Family Responsibility"; Id.: *Holy Men and Hunger Artist*; Boyarin: *Carnal Israel*; in Medieval Judaism: Vajda, G.: *La théologie*; Lazaroff, A.: "Bahya's Ascetism; Goitein," Abraham Maimonides"; Morlok–Musall: „Mystik und Askese“. Scholem: "Reste Neuplatonischer Spekulationen"; Id.: „Die Frommen“; Id.: „*Ḥasidism in Medieval Germany*“ Id.: „On sin and punishment“; Id.: *On Kabbalah*; Id.: *Ursprung und Anfänge*; Id.: *Das Buch Bahir*; Id.: "Three Types of Jewish Piety."; Schäfer: "The ideal of piety"; Wolfson: "Martyrdom, eroticism and asceticism"; Ben-Arzi, . "הפרישות בספר חסידים".

(2) The advisor must be careful with the person of the penitent; if he sees that the penitent can not bear heavy tortures, he must decrease the severity of the penances proportionally⁶⁷³.

(3) The physical tortures are to be received by the penitent of his own accord, and performed without compulsion; one can not ask another man to kill him in order to make atonement for his sins, but one can ask another man to flog him publicly for the sake of atonement, but not so much as to die because of flogging.

(4) There are prohibitions related to the torture: a. self-castration is prohibited; b. self-torture is prohibited on the Sabbath; c. one is not allowed to flog his father for the sake of atonement, even if the father ask the son to flog him.

The principle of the atoning power of physical torture was moved to the metaphorical plane of the discussion, and explained in a metaphorical manner, that sin can also be defined as “pleasure” of the soul (as complacency or self-complacency, pride etc.), or pleasure in a monetary or material sense, and atonement must also be explained secondly as metaphorical pain or self-torture, as well as material-monetary “pain”, loss or sacrifice. The meaning of pain is to be found in the definitions of all the four ways of penance – whether in its concrete or abstract sense – but the way of penance in their teaching which most characteristically reflects this idea is the *teshuvat ha-mishkqal*.⁶⁷⁴

As for cases found in SHP on self-tormenting, a story is told in SHP 630 about a man who has desecrated the Sabbath, and as penance the sage tells him to put his hand under a wheel in order to atone for his sin through torture.

In SHP, breaking the arm as a self-imposed penance is carried out by a Jew called Mordehai who has hit his fellow.⁶⁷⁵ The cutting off the hand is decided by R. Tam in some glosses to penitentials. Both are to be found in a gloss to MH.⁶⁷⁶ In HTR 17, reference is made to the Talmudic source of this decision.⁶⁷⁷

⁶⁷³ Therefore, in the Talmud AZ 17a, R. Eliezer does not say penance for the woman, since she would die because of the severity of the penances.

⁶⁷⁴ SHP 37. There were instances already in Talmudic law that courts empowered on the basis of the principle of “*hor’at sha’ah*” – emergency enactment – administered “illegal” punishments (inflicted corporal or capital punishment on offenders who were not liable according to the law): cutting off the hand of a recidivist offender (Sanh. 58b); burning an adulteress alive (Sanh. 52b); piercing the eyes of a murderer (Sanh. 27b). See on this Farber, “Extra-legal Punishments”. As punishment, mutilation, maiming, blinding, brand-marking were applied (as well as many forms of the capital punishment, such as hanging, burning, killing by sword, decapitation etc.) by the secular courts of the Gentiles (Christians) in the German lands. As punishment, in the Jewish courts it was seldom applied, but there were instances (see below). Here, in SHP it is an extreme form of penance.

⁶⁷⁵ See II.B.3.

⁶⁷⁶ Gloss in MH Ms. Mos. 103 fol. 127a. For translation, see App. II.C.2.

⁶⁷⁷ HTR 17. On Rav Huna’s decision, its two references in the Talmud, bNid. 13b and bSanh. 58b, and Rashi’s commentary on Sanh. 58b, see Farber, “Extra-Legal punishments”, pp. 212–213. For translation, see App. II.C.2.

In SHP 630 a story is told about a murderer who comes before R. Hai and Abyatar on the Mount of Olives at the time of *Sukkoth*, and as an atonement, he is buried alive, flogged and tortured until he is near to death. They have done this with him three times, and then they have known that he has atoned for his sins.⁶⁷⁸

In the *Sefer ha-Teshuvah* of R. Samuel Ḥasid, in the RJH and in connection with the *katuv*-penance for fornication with a married woman in HTR⁶⁷⁹, one can find the characteristic self-mortification of *ḥaside Ashkenaz*: in the summer sitting among ants or bees, in winter sitting in icy water for half an hour, for an hour or more, several times, so that the sin shall be atoned for.

In HTR, for the apostate, murderer, fornicator it is ordered to mortify himself always during his penance in lying on the hard ground or on a board without a pillow or quilt. In MH in the section on *teshuvat ha-mishqal* for fornication with a married or engaged woman, in Ms. Parma (de Rossi) 2410, there is a gloss in this paragraph: “he shall wear sack under his cloth on his body, and he shall tie ropes full with knots on it.”⁶⁸⁰ So for the murderer in DT: “and he must tie around his waist iron rings”; for the apostate in DT: “he must wear sackcloth near to his flesh, and must wear black, and he must wrap himself in black and fast all his days MT, and he should wear only shoes of [leather of] cow which are tied with a strip [...]” (DT apostate) For fornication with a married woman, for seducing a young girl, or for fornication with a widow in DT there is a gloss: “and he shall fast all his days and wear sackcloth near to his flesh” (married woman); “and he shall wear sackcloth near to his flesh” (unmarried: girl and widow).

In MH Ms. Parma (de Rossi) 2410 fol. 15a there is a further gloss in the paragraph *teshuvat ha-katuv* for fornication with a married or engaged woman that there are hermits in the forest among wild animals who flog themselves and search for the danger of death living near the wild animals, this being for them atonement for their sins.⁶⁸¹ In the same Ms. of MH, there is a gloss for the penance regarding the apostate who has converted deliberately to Christianity which orders that the repentant apostate has to mortify himself with thorns and thistles of the wilderness⁶⁸².

⁶⁷⁸ See II.B.1.1.1. and II.C.8.

⁶⁷⁹ HTR 11,14.

⁶⁸⁰ An Ashkenazi manuscript from the 15th or 16th century, fol. 15a.

⁶⁸¹ It cannot be known for sure whether the reference is made to Jewish or Christian hermits, and whether it has been indeed the experience of the scribe or something learned by him from books or hearsay (See quotation in II.A.4).

⁶⁸² MH Parma 2410 15b. See II.A.4 and Appendix II.B.17 (apostasy).

In SHP, there are some other rulings related to self-mortification. In the *Sefer Teshuvah* of R. Samuel Ḥasid at the beginning of SHP⁶⁸³ it is stated that it is prohibited to torture oneself on the Sabbath, and that self-mutilation or castration is definitely prohibited. The mortification and pain of the *zaddik* and the *ḥasid* expiates the sins of others.⁶⁸⁴ The sufferings of the righteous expiate the sins of others⁶⁸⁵. Suffering during childbirth or illness is a tribulation sent by God for the sake of atonement⁶⁸⁶. In SHP we find a paragraph which clearly states that death-agony expiates sin.⁶⁸⁷

Sefer Minhag Tov is an especially rich collection of customs of self-torture, –affliction and mortifications of all kinds for the sake of atonement, with commanding and ordering certain types of clothes which are hard to wear, going barefoot, and lying on the ground, sitting in cold on the Sabbath etc.⁶⁸⁸

II.C.2.2. *Responsa*

In *responsa* one can find physical torture or even mutilation⁶⁸⁹, but less than in the literature of *ḥaside Ashkenaz*, and most of them are ordered on the basis of the sources of *ḥaside Ashkenaz*. From these writings the ideological basis for the suffering and self-mortification of *ḥaside Ashkenaz* is absent; but reference is made to Talmudic sources, and to the practical *halakhic* sources of *ḥaside Ashkenaz* containing penances.

For beating the wife, R. Meir of Rothenburg in one of his *responsa* orders that the hand of the offender, if he is accustomed to do so, must even be cut off, on the basis of the Talmudic decision of R. Huna.⁶⁹⁰ Among the decisions of R. Menahem of Merseburg there is a case about one who killed his family members during persecution for fear that they might be captured and converted to Christianity. He took it upon himself to blind himself. The respondent thinks that this punishment is enough for him, all the more so since his act can be explained as *qiddush ha-Shem*.⁶⁹¹ About a man in Braunschweig, who desecrated the Sabbath and Yom Kippur, R. Shalom of Halle asks from R. Weil whether it is allowed to blind his eyes for this great transgression, and the answer was positive.⁶⁹² R. Isaac b. Moses decided

⁶⁸³ SHP 18.

⁶⁸⁴ SHP 1556.

⁶⁸⁵ SHP 361, 1133. About the suffering of the righteous in rabbinic Judaism: Elman, “The Suffering”.

⁶⁸⁶ SHP 1446.

⁶⁸⁷ SHP 273.

⁶⁸⁸ See App. II.C.2. for translation.

⁶⁸⁹ About physical punishment see Kirschenbaum, “עונשי גוף”, Farber. “Extra-legal Punishments”

⁶⁹⁰ Maharam Prague 81. See II.B.3.4.1.

⁶⁹¹ NMM. II.B.1.3.2.

⁶⁹² Weil 58.

about a man who circumcised a child that died shortly after and who took it upon himself to mortify himself in exile that he perfectly atoned for his sin.⁶⁹³ For adultery R. Seligman Kaz in Twerk commanded for a married woman to sit in cold water⁶⁹⁴. R. Weil ordered for a young woman, who committed adultery repeatedly in several places (Ulm, Pappenheim and Regensburg), and who had also given birth to a bastard child, to sit among bees in summer and in icy water in winter.⁶⁹⁵ Self-mortification by lying on the ground or on a board was ordered by R. Weil and R. Bruna for adultery and for murder.⁶⁹⁶ For a man who confessed his false testimony and cursing committed in his childhood R. Isserlein imposed a kind of *mishqal*-atonement on the advise of his own rabbi. This has been his advise also for an offender for gambling.⁶⁹⁷

II.C.3. Flogging

Flogging is above all punishment within the system of sanctions of Jewish law.⁶⁹⁸ In this chapter it is discussed as penance, both in its public and private form. Both forms in the concept of *teshuvah* of *ḥaside Ashkenaz*, but not without precedents in the Ashkenazi custom of flogging, at least for its public form.⁶⁹⁹

II.C.3.1. *Ḥaside Ashkenaz*

II.C.3.1.1. Private Flogging in the Teaching of *Ḥaside Ashkenaz*

The atoning power of secret flogging as penance is explained in SHP, within the frame of the description of the private confession and penance of the *ba'al teshuvah* :

‘On the days of his fast he must receive severe floggings secretly, because all the [bodily] pains that he takes upon himself of his own accord are like afflictions which have atoning power.⁷⁰⁰

In the *Commentary on Shi'ur Qomah* by R. Moshe b. Eleazar the meaning of the secrecy of flogging and confession is explained as follows:

‘He must flog himself three times a day, and every time when he flogs himself, he must confess and must mention the following Divine Names: [...] And he must do all this alone and secretly so that nobody

⁶⁹³ OZI.112. See II.B.1.3.1.

⁶⁹⁴ Bruna 226. See

⁶⁹⁵ Weil 12. See II.B.2.

⁶⁹⁶ Weil 12, Bruna 266. See II.B.2.

⁶⁹⁷ Isserlein PuK 62. See II.B.9.

⁶⁹⁸ About the development of flogging as punishment, see Turán, *Elu hen ha-loqin*.

⁶⁹⁹ See II.C.3.1.2.

⁷⁰⁰ SHP 43.

shall know it, because in all that is known to the world there is no success. And there is proof for this from the Tablets, because the first ones which were given through thunders were broken. [...].’

For fornication and adultery, HTR decrees secret flogging: for fornication with an unmarried woman *teshuvat ha-katuv* (HTR par. 7, flogging for 40 days every day); with an engaged woman *teshuvat ha-mishqal* (HTR par. 10, flogging for 1 year every day) and *teshuvat ha-mishqal* (HTR par. 11, flogging for 40 days every day); with a Christian woman (HTR par. 12, flogging for 40 days every day), with a *niddah* wife (HTR par. 12, flogging for 40 days every day); for intercourse with a Christian woman, in DT flogging is decreed as penance for unspecified time.

In a manuscript of MH Ms. Parma 2999 fol. 58a, secret flogging is prescribed for each day for the desecration of the Sabbath (he shall flog himself secretly every day).

In the manuscript of MH Ms. Parma (de Rossi) 2410 fol. 15a, in the paragraph *teshuvat ha-katuv* for fornication with a married or engaged woman, there is a further gloss about hermits who go into the forest among wild animals and endanger their lives for the sake of atonement, and they also flog themselves with thorns:

“[...] during the night they walk naked in the forest, shout and cry, their hands are full of whips, and they flog themselves until blood gushes forth.”

The possibility that on secret flogging, and especially on this latter kind of self-affliction, the Christian custom had an impact is not excluded. However, as we saw at the beginning of this chapter, the argumentation about the atoning power of secret flogging based on secrecy is original, and like the whole sage-penance and -confession, has its roots in the sectarian ideals of *ḥaside Ashkenaz*.⁷⁰¹

II.C.3.1.2. Public Flogging in the Teaching of *Ḥaside Ashkenaz*

Flogging was a punishment according to the Torah for transgressing a negative commandment, and according to the Mishna the sins of those who were liable to *karet* and received flogging, were atoned for.⁷⁰² In the Geonic period both the *malqut ’arba ’im*⁷⁰³ and the *makkat mardut*⁷⁰⁴ were in use for these two types of transgressions. For transgressors

⁷⁰¹ See more about influences in III.C.3.

⁷⁰² Offenses carrying the punishment of flogging are, firstly, all those for which the divine punishment of *karet* (extinction) is prescribed, secondly, all violations by overt act of negative biblical injunctions (Maim. Sanh. 18,1). Disciplinary flogging (*makkat mardut*) was an innovation of the Talmudic jurists.

⁷⁰³ Flogging according to the Torah, the number of the lashes being forty less one.

⁷⁰⁴ Flogging for disobedience, which could be applied on the offender “until his soul departs’.

liable to the death penalty, the excommunication and, according to the decision of R. Natronai Gaon, *makkat mardut* was applied.⁷⁰⁵

In the first centuries of the history of the Ashkenazi Jewish communities, the punishment of flogging was in use. Moreover, it was not only a punishment of the bet din, but a public humiliating procedure in the synagogue, for which there is an early source in the Siddur of R. Shlomo b. Shimshon of Worms as flogging of 39 lashes for offenders, in the evening, at the time of the Ma'ariv prayer.⁷⁰⁶ The source is from the beginning of the eleventh century, but the public procedure described in this *siddur* remained the custom in the Ashkenazi communities during the Middle Ages.

The punishment of flogging was, however, not always public. Sometimes it can not be known what type of flogging the offenders received. In SHP 964, there is a story about a pious son who receives beating instead of his father. There are allusions that *makkat mardut* and *malqut arbayim* were distinguished by SHP. For robbing the fellow man, for transgressing a negative commandment, *makkat mardut* is imposed.⁷⁰⁷

As public flogging within the framework of penance for murderers, HTR 28 orders public flogging in the synagogue in the evening at each place where goes in the three years of the exile. According to another gloss he must receive flogging only in the first year.

“But if he killed, R. Tam decided that he had to receive flogging each day in the morning and in the evening until Yom Kippur, or twelve months from the death of the killed person, until the “light” [i.e. memory] of the dead was forgotten in the heart. [...]”⁷⁰⁸

So are also public ritual floggings ordered for beating, stealing, cursing, harming in words, slander, vain oath (HTR 15, HTR 16), transgressing an oath (HTR 25), leading others to sin (HTR 28), and informer (HTR 27).

According to the IT Ms. Vat. 183 fol. 177a–178a, one who transgresses the negative commandment of *yayin nesekh* willingly, must receive flogging. On fol. 174a of the same manuscript, for the willful desecration of the Sabbath by commanding a Gentile to make fire, flogging on Mondays and Thursdays for half a year is decreed as penance. For the ritual slaughterer who errs in the examination of the slaughtered animal as admonition HTR 28 prescribes public flogging, and if he errs again, he must be flogged again publicly and dismissed from his service. In MH Ms. Parma 2999 fol. 58a, public flogging is imposed on

⁷⁰⁵ See IB1.1 and IB1.2.

⁷⁰⁶ Jerusalem 1972, pp. 130–131. Parallels are in the *Mahzor Vitry* and in *Sifrut de-be Rashi*. For translation, see Appendix.

⁷⁰⁷ HTR 28.

⁷⁰⁸ HTRB Ms. Jer. 621 fol. 22a gloss.

the ritual slaughterer who sells non-kosher food; for eating carcass and swine meat in the house of the Gentiles in the case of a young boy, flogging is decreed.⁷⁰⁹

In the *Sefer Minhag Tov* it is advised that during the penitential days before Yom Kippur, which lasts for 40 days according to this custom book, daily public flogging should be performed.⁷¹⁰

II.C.3.2. *Responsa*

II.C.3.2.1. Secret Flogging

In the *responsa* literature secret flogging was ordered especially for grave transgressions in the longer order of penance, for example for denunciation or apostasy. Beyond that, for slander and for transgressing a vow, secret flogging was applied. There are *responsa* in which the penance by flogging is explicitly mentioned. Sometimes only a kind of torture is imposed as private penance, and it is not clear what kind of self-mortification it is. According to one of his *responsa* (Resp. no. 75), R. M. Minz imposes on some Jews who have spread false accusations of perjury against a prominent woman, the wife of a rabbi, fasting and flogging.⁷¹¹

Atoning “by great penance” is imposed on one who has spread false accusation about a prayer leader – namely that he had fornicated – which could also be flogging.⁷¹² For a Jew who confessed his false testimony committed in his childhood, R. Isserlein advises the imposition of *mishqal* penance.⁷¹³ For the transgression of a vow concerning abstinence from gambling, in the same *responsum* R. Isserlein advises *mishqal*-penance as well, which can be flogging.⁷¹⁴ In one of his *responsa*, R. M. Minz mentions that he does not release any vow without imposing on the offender a kind of penance, which is charity giving and some kind of mortification (fasting or flogging).⁷¹⁵ R. Meir of Rothenurg imposes private flogging as penance for an informer on the basis of HTR of Roqeah.⁷¹⁶ This is the decision of R. Meir’s for another informer as well⁷¹⁷. In NMM, penance by flogging is ordered for informers. About the question whether the repentant apostate must receive additional self-mortification, R. Isserlein’s opinion is that he is not due to receive additional sufferings, because the fact that

⁷⁰⁹ See II.B11.2.

⁷¹⁰ For translation, see Appendix.

⁷¹¹ Minz 75. See II.B.6.3.

⁷¹² ThD 307. See II.B.6.3.

⁷¹³ PuK 62. See II.B.9.

⁷¹⁴ PuK 62. See II.B.9.

⁷¹⁵ Minz 79. See II.B.10.

⁷¹⁶ Maharam Prague 485. See II.B.16

⁷¹⁷ TM Neziqim 14. See II.B.16.

he lives deprived of all the good things which the Christians take delight in is enough atonement for him.⁷¹⁸ According to a *responsum* of Isaac of Tyrnau's in MS. Ox. 784 fol. 28a, for a repentant apostate secret flogging is ordered thrice a day.⁷¹⁹

II.C.3.2.2. Public Flogging

II.C.3.2.2.1. Public Flogging as Punishment of the *Bet Din*, also within the Framework of Penance

In the medieval Ashkenazi Jewish communities, for almost every sin discussed so far, flogging could be administered both in the *bet din* as simple punishment and publicly in the synagogue between the *minḥa* and *ma'ariv* prayers, with public confession and apologizing.⁷²⁰ Flogging was especially applied for beating, cursing, slander, perjury, information, and desecration of the Sabbath.

A Jew who had hit his pregnant wife so hard that she had died on that day, had to be flogged “without mercy” according to the decision of NMM.⁷²¹ If there was valid testimony for the *yihud*⁷²², the court had the right to flog the adulteress and the adulterer; if there were no proper witnesses, it did not have this right, according to the decree and explanation of R. Bruna⁷²³. Maharam in one of his *responsa* decrees flogging for beating the wife.⁷²⁴ For beating and for threatening with death, R. Hayyim b. Yehiel Hafez Zahav imposed flogging in a *responsum*.⁷²⁵ The offender could be expelled from the synagogue and flogged on the basis of insufficient evidence⁷²⁶, on the basis of the principle of “building a fence” against wrong-doers.⁷²⁷ In the answer of R. Isserlein, flogging and chastisement were decreed on one who had hit his fellow.⁷²⁸

According to a decision of Maharam,⁷²⁹ one who has called his fellow Jew “bastard” must receive the forty lashes too (on the basis of the Kid. 40a). In one of the decisions of NMM, for any kind of curses, instead of fines flogging is to be imposed, since fines are no longer applicable outside the land of Israel, according to *halakhah*. In a *responsum* of R.

⁷¹⁸ PuK 198. See II.B.17.2.2.

⁷¹⁹ See II.B.17.2.2.

⁷²⁰ The *bet din* could impose also private flogging within the frame of an order of penance.

⁷²¹ See II.B.1.

⁷²² That the couple suspect of adultery or fornication has been testified being together alone for a certain time.

⁷²³ Bruna 8.

⁷²⁴ Maharam ed. Prague *responsum* 81. See II.B.3.

⁷²⁵ Maharam Prague 383. See II.B.3.

⁷²⁶ That is, on the basis of one male Jewish witness or on the basis of the testimony of two or more women.

⁷²⁷ NMM. See II.B.3.

⁷²⁸ Isserlein PuK 208. See II.B.3.

⁷²⁹ Maharam Prague 132. See II.B.5.

Avigdor b. Menahem's, flogging is imposed on an offender for calling the fellow Jew a "bastard", because of the transgression of a negative commandment.⁷³⁰

According to a decision of Ra'avan one must receive flogging for calling the fellow bastard (it seems that this is the punishment of the court, but it can be performed publicly in the synagogue).⁷³¹ Calling somebody an "informer" is also punishable by lashes, which decision is transmitted in the name of R. Isaac the Elder in NMM. For cursing, the flogging of forty lashes must be imposed, and also for the cursing of the dead. For accusing one's own wife that she has not fulfilled the laws of *niddah*, which is proved to be a false allegation, the husband and all who have spread slander about the woman must clarify that it was a false accusation, and must receive flogging for slander. According to another decision of NMM, punishment or excommunication is imposed on the slanderer; the punishment can be flogging, as generally in cases of slander. For a woman, the punishment for slander is flogging; however, for her the flogging can be commuted by "lesser" excommunication – *niddui* –: sitting outside of the synagogue for eight days. In Ms. Hamb. 45, the respondent of the paragraph 168 imposes on an offender who has accused a fellow Jew with arson in a time of fire before the Gentile court that he must receive flogging.⁷³²

According to the decision of R. Weil, a man who has sworn in vain that he will divorce his wife must receive flogging for disobedience.⁷³³ In a *responsum* in the DvH, R. Weil decides that an apostate can not divorce his wife through messenger, since he must swear that he will not abolish the *get*, and he is not trustworthy in taking an oath; but nevertheless a Jew can divorce his wife by a messenger, because if he transgresses the vow, he will receive flogging.⁷³⁴ According to the decision of R. M. Minz 111, if a woman vows to be a *nazir*, without her husband hearing it, and she breaks her vow, she shall be flogged. In the *Or Zarua* II. 150b, the author, R. Isaac b. Moses relates that once he has seen his master, the Ra'avyah flogging men who have eaten the bread of the Gentiles.

The *OZ* II. *Sanh.* No. 23–24 relates that certain rabbis command the community to extinguish the fire on Sabbath in times of fire, and then decree penance by fasting, flogging, excommunication and paying charity for desecrating the Sabbath or the festivals. R. Isaac b. Moses disagrees with the decrees concerning penance in fire cases, and with the punishment

⁷³⁰ Maharam Lvov 491. See II.B.5.

⁷³¹ Maharam Lvov 492. See II.B.5.

⁷³² See II.B.7.

⁷³³ Weil 172. See II.B.9.

⁷³⁴ R. Weil DvH 17.

of flogging.⁷³⁵ In the case of one who has betrayed his fellow Jew to the Gentiles owing to which the betrayed one has been killed, Maharam decides that the offender must do penance just as a murderer, according to the prescription of HTR, also through flogging.⁷³⁶ In the case concerning one, R. Ephraim, who has brought his fellow, R. Yoel, to the court of the Gentiles in order to compel him to litigate before Jewish judges, R. Meir of Rothernburg decides that he must be punished just as an informer: with flogging. But according to the decision of Maharam, the flogging can be redeemed by money.⁷³⁷

In a *responsum* to his brother, R. Samson of Shanz rebukes his brother, R. Isaac b. Abraham, for leniency in accepting the repentance of an apostate who has said that he has immersed alone without evidence, and quotes Rav Zemaḥ Gaon who has written that although the apostate has received flogging he must confess his sins publicly.⁷³⁸ It is not known whether at the time of the respondent, flogging was in use for repentant apostates as punishment or penance for the transgressions.

II.C.3.2.2.2. Public Flogging in the Synagogue in the Evening and Public Confession

There are *responsa* in which public flogging is explicitly ordered within the frame of a ritual in the synagogue, along with public confession, and sometimes begging pardon.

On the murderer who, together with another, has killed a man during a fight and has been willing to receive penance R. Bruna imposes public flogging and begging pardon along with public confession in the synagogue in the evening.⁷³⁹ Public flogging during the evening in the synagogue is decreed on one who has hit his fellow Jew so hard that he has died,⁷⁴⁰ and for beating, together with public confession, by R. Weil.⁷⁴¹

For false oath and beating flogging for disobedience [*makkat mardut*] is decreed by M. Minz⁷⁴². R. Weil decrees on R. Simelin of Ulm.⁷⁴³ for contempt of court and denunciation, public flogging in the synagogue in the evening along with public confession, or its compensation by charity money. Public flogging is decreed as penance on a rich man from München for swearing falsely on his property during tax-collection to the collectors. The

⁷³⁵ See II.B.7 and II.B.15.

⁷³⁶ Maharam TshM Neziqim 14. See II.B.16.

⁷³⁷ See II.B.16.

⁷³⁸ Ms. Ox. 844 p. 206. See II.B.16 and II.E.1.

⁷³⁹ Bruna 266. See II.B.1.

⁷⁴⁰ Weil 87. See II.B.1.

⁷⁴¹ Weil 28. See II.B.3.

⁷⁴² Minz 93. See II.B.3, II.B.9 and II.B.15.

⁷⁴³ Weil 147, 178. See II.B.8.

flogging is to be received three times, this is on Monday, Thursday and Monday in the synagogue, in the evening, as usual.⁷⁴⁴

According to the decision of the *OZ* I.448, the ritual slaughterer who errs and a piece of fat the size of an olive is found after him, must be flogged publicly. R. M. Minz (in the *responsum* no. 25) decrees the ritual slaughterer who erred should not be flogged, only removed for a while, basing his decision on the *Aguddah*. This is also the decision cited by the questioner, R. M. Bacharach, in the name of R. Salomon Shapiro.⁷⁴⁵

II.C.3.3. Conclusions

In the above discussed examples, one encounters three kinds of floggings: (1) punishment of the court which in the framework of the penance could be part of the process of penance; (2) public flogging in the synagogue at the time of the evening prayer together with public confession and public begging pardon; (3) secret flogging as part of the private penance, which could be performed either by the repentant, in most cases, or by somebody else at the request of the penitent and with his explicit statement that it was for the sake of repentance. The first was used in cases of murder ('flogging without mercy'), of adultery (flogging for *yihud*), beating, cursing, slander, false accusation of arson, false oath, transgression of a vow, eating the bread of the Gentiles, desecration of the Sabbath, and denunciation. The second was used for murderers, offenders and injurers, for contempt of court, false oath, and also for ritual slaughterers who erred. The third was used for cursing, slander, desecration of the Sabbath, informer, and for returning apostates.

II.C.4. Fasting

Fasting for different purposes⁷⁴⁶ was frequent in the medieval Ashkenazi Jewish communities, and it was one of the most common modes of penance. Moreover, the period of penance was measured in fasting days, and in this way it constituted the basis of the orders of penance developed for different sins in these communities in the Middle Ages.

⁷⁴⁴ Weil 123. See II.B.9.

⁷⁴⁵ See II.B.11 and II.C.6a.

⁷⁴⁶ In his article about the integral character of the synagogue in the Middle Ages, S. Goldin states that the community was involved in prayer on fast days (Goldin, S.: *The Synagogue* p. 19. The sources cited by him: *Maḥzor Vitry* 71; *SHP* 414) Involving the children in the fasts is discussed in another article by S. Goldin (פ"ן "יבואו הערלים", 114 The source cited: *Kol Bo* 32b). S. Goldin maintains that children were accustomed to the fast at the age of nine (before they reached the age of thirteen). See also: גרטנר, "תענית בראש השנה", "תענית בראש השנה בתקופת הגאונים", "תענית בשבת" Lowy, "The Motivation of Fasting".

The standard period of fasting as penance was 40 days. It was connected with the 40 days in which Moses was fasting when he received the Torah for the second time. 40 days of fasting was usually ordered for the transgression of a negative commandment or for grave sins, as murder, apostasy etc. that were atoned by extended periods of penance, during which several periods of 40 days of fasting were practiced. For the 40 days of fasting it was sometimes specified whether they were to be observed continuously or only on Mondays and Thursdays (for example, from the 10th of Iyyar to *Rosh ha-Shanah*). The continuous fasting was more severe and was ordered for graver sins. Sometimes the 40 days of fasting could be redeemed by 3 days and nights of continuous fasting, which was difficult. That was called “Esther’s fast”, on the basis of the scroll of Esther (4,16)⁷⁴⁷. At some places there is reference that this was a practice of Judah Ḥasid. The fasts lasted until evening, and on the fasting days it was also prohibited to eat meat and drink wine.⁷⁴⁸

II.C.4.1. *Ḥaside Ashkenaz*

II.C.4.1.1. Rules of Fasting in SHP

In SHP, there are a number of paragraphs dealing with the rules of fasting, with or without the intention of penance. It is obvious from all these regulations that fasting (for penitential purposes) was a frequent phenomenon. In SHP there is a ruling in the spirit of the laws of *hasidut* as required by Judah Ḥasid concerning the frequency of fasting: the sage ordered his son not to let pass 40 days without fasting.⁷⁴⁹

The models for fasting are the sages of the Talmud in SHP, because of their exceptional stringency in fasting: they fasted “on bread and water”, others “until their teeth became black”⁷⁵⁰; they “fasted for three hundred days; and did not observe the *Megillat ta’anit*”⁷⁵¹, etc. And “if one wants to fast these days, he does not need to respect the *Megillat ta’anit* because it has been abolished”.⁷⁵²

Communal fasting is severe and binding for every member of the community. It is compulsory for every Jew in the community even if a person is not allowed to fast

⁷⁴⁷ See C4.1.2.

⁷⁴⁸ About the frequent fasting of R. Judah Ḥasid – even on the Sabbath –, see HM Hil. Taanit 1:2[6]. See also Kanarfogel, *Peering*, p. 36 and n. 4.

⁷⁴⁹ SHP 280.

⁷⁵⁰ Yer. Shabbat 5,4.

⁷⁵¹ Yer. Taan. 2,12.

⁷⁵² SHP 67. The *Megillat ta’anit* is a tannaitic source that lists the days on which fasting is prohibited.

individually, and it can not be pushed to another day. He who transgressed the communal fast that had been decreed, had to receive the flogging for disobedience.⁷⁵³

Fasting on the day of the death of the parents was a general custom. There is even a paragraph which deals with the special case if death occurred in a leap year in the first Adar, and one fasted in Shevat in the ordinary years.⁷⁵⁴ In another paragraph, it is recounted that a certain man, after his wife had died, fasted for the rest of his life, and did not take another wife. According to SHP, this thing was regarded as a sin (by the author of SHP and by the community), and the Jew also recognized that it was a sin; then he was convinced that his son and daughter died because of his fault.⁷⁵⁵ It was prohibited to rejoice when the righteous died or were to be executed. It was prohibited to drink wine on such days.⁷⁵⁶

Vowing to fast with different purposes can be found in many paragraphs of SHP, e.g. fasting so that others may repent⁷⁵⁷; fasting so that someone's children may receive good wives or husbands, or ordering the children to fast for the purpose of having a happy marriage⁷⁵⁸; fasting for others to receive a good wives⁷⁵⁹; fasting for the lives of others⁷⁶⁰; fasting for one's own child when he or she goes to unsafe place⁷⁶¹; fasting for the body and the soul of one's own child.⁷⁶² For children it is prohibited to fast if their parents become sad because of the children's fasting.⁷⁶³

Fasting for dreams and fasting for the souls of dead persons are special themes in SHP.⁷⁶⁴ Fasting for dreams is allowed only if it is connected with repentance and penance (*teshuvah*).⁷⁶⁵ Dreams admonish one to repent.⁷⁶⁶ Also the spirits of the dead admonish one to do penance,⁷⁶⁷ because after death there is no repentance.⁷⁶⁸

⁷⁵³ SHP 1290.

⁷⁵⁴ SHP 1554.

⁷⁵⁵ SHP 943.

⁷⁵⁶ SHP 298.

⁷⁵⁷ SHP 1553.

⁷⁵⁸ SHP 1129, 1882.

⁷⁵⁹ SHP 1905.

⁷⁶⁰ SHP 1006.

⁷⁶¹ SHP 1722.

⁷⁶² SHP 960=301 See Goldin, "ילדים יהודים", p. 205, n. 20.

⁷⁶³ SHP 942.

⁷⁶⁴ SHP 286.

⁷⁶⁵ SHP 281, 282, 283.

⁷⁶⁶ SHP 1522.

⁷⁶⁷ SHP 1550=329.

⁷⁶⁸ SHP 307.Harris, "The Concept"; "Dreams".

There are diverse rulings concerning the different ways of fasting⁷⁶⁹, like in SHP 653, which allows licking the ink from the book on the fast day.⁷⁷⁰ This indicated the frequency of fasting, and the regularity of Torah study and of scribal preoccupations (e.g. copying) on the fasting days – at least in the environment of SHP.

In SHP, there are restrictions regarding the fasting: men whose activities are important to the community are not allowed to fast and afflict themselves, and the individual is also not allowed to afflict himself if it brings about a situation in which he has to rely on others.⁷⁷¹

Another ruling regards the prohibition of fasting in the case when others need the strength or work of the person who intends to take it upon himself to fast.⁷⁷² Also in case of trouble, of siege, redemption of captives (undertaking a duty journey) or serving the sick or old parents, one has to refrain from fasting. In these cases only the community fasts can (or must) be held, and fasting on the anniversaries (*yahrzeit*) of the day on which a parent has died.⁷⁷³

II.C.4.1.2. Fasting as Penance in the Teaching of *Ḥaside Ashkenaz*

The pleasure (both in a corporal and material sense) involved in the act(s) for which the fast is meant as a penance must be commensurate to the pain and suffering which the penance entails. For stealing, one or two months of fasting were ordered as penance.⁷⁷⁴ This is, as mentioned⁷⁷⁵, a “returning” of the principle of the “*talio*” punishment in the concept of penance of *ḥaside Ashkenaz*.

Fasting is decreed as penance in HTR, MH, ST, DT and RJH for slander, murder, fornication and adultery, beating, stealing, hurting by words, slander, leading others to sin, false oath, transgressing a vow, denunciation, apostasy, desecrating the Sabbath, drinking *yayin nesekh*, selling un-kosher food, the transgression of the laws of *kashrut* by a ritual slaughterer; for graver transgressions – for example, voluntary sins – the usual period of

⁷⁶⁹ Generally, the rulings of fasting, that is to say what may be and may not be done on the fasting days, have been derived from the 8th chapter of the Yoma, in which regulations for the Day of Atonement concerning fasting are given.

⁷⁷⁰ The paragraph enhances firstly the high esteem for books and the allowance is to be explained with the care for holy things. But it expresses also the view that fasts are ordered with the purpose of depriving of enjoyment, and the licking of the ink does not have the purpose of enjoyment, therefore it is allowed.

⁷⁷¹ SHP 66. yDemai 7.3. SHB 52 and 617.

⁷⁷² SHP 68.

⁷⁷³ SHP 1555=68.

⁷⁷⁴ SHP 632. BQ 83b. According to the teaching of the *ḥaside Ashkenaz*, both the corporal atonement and the “material atonement” shall be according to the rule of “measure for measure”, that is, they must equal the physical pleasure and the “material pleasure” enjoyed during the act of stealing.

⁷⁷⁵ II.C.2.1.

fasting was that of 40 days, once or more times; for lesser transgressions five, three days of fasting were ordered.

In their teaching, fasting could mean several days of continuous fasting, or discontinuous, e.g. every second day or on every Monday and Thursday. There was a special type of fasting, called “Esther’s fast”.⁷⁷⁶

In Ms. IT Vat. 183 fol. 174a, fasting is decreed for a number of transgressions: (1) those who transgress unintentionally the prohibitions concerning work on the Sabbath (e.g. touching the candlelight and extinguishing it, or kindling it) shall fast at least two days, on Monday and on Thursday; (2) those who say to Gentiles or to their maidservants on the Sabbath to heat up the “winter house”⁷⁷⁷ for them on Sabbath shall fast half a year on Mondays and Thursdays; (3) those who drink *yain nesekh* and eat the bread of Gentiles inadvertently shall fast for five days; (4) those who drink *yayin nesekh* and eat the bread of Gentiles willingly and those who hire and buy willingly *yayin nesekh* and sell or give it as though it were *kasher*, for gain, shall fast for 40 days.

In MH Ms. Parma (de Rossi) 2410 fol. 15a, with regard to the stringency in fasting, there is an exact description in a gloss to the paragraph on the *teshuvat ha-mishqal* for fornication with an engaged woman:

“He shall not eat anything else but stale bread, and if he can live only on bread of barley, it is good. And he shall not eat anything delicious, except bread with salt or vinegar.”

Especially in the penitential order of the mystical adaptation of penances, fasting is connected with ritual immersion, consequently with the idea of ritual purification. In CShQ and SPY (fol. 88b) fasting with ritual immersion is required.⁷⁷⁸ Purity also means that each fast needs ritual immersion: “each fast needs ritual immersion, and through ritual immersion will one become holy (CShQ)”. Ritual immersion is required at least in the first three days of the fast, three times a day, after that for the remaining days of the fast, for forty days once a day. After purification one must begin to fast:

⁷⁷⁶ See the discussion at the end of this chapter. For fasting customs and decisions on fasting of prominent rabbis regarding Yom Kippur and Rosh ha-Shanah, as well as the Sabbath, it is worthy to mention that R. Judah Ḥasid used to fast two days on Yom Kippur, which was a practice in the Ashkenazi communities, derived from the law that in the *diaspora* on holidays two days were to be observed because of the uncertainty of the beginning of the New Moon. Ra’avyah also used to fast two days. But Ra’avyah, like R. Eleazar of Worms, did not support fasting on Rosh ha-Shanah and on the Sabbath, while R. Judah Ḥasid always fasted on these days. See Kanarfogel, *Peering*, pp. 39 and 48 and ns. 17 and 37. According to the fourteenth century work, *Pisqe Reqanati*, R. Isaac b. Asher ha-Levi of Speyer, died on Yom Kippur (in the year 1133), because he fasted at that time and was sick before. See Kanarfogel, *Peering*, p. 44.

⁷⁷⁷ בית החורף = the house in which the family lived during winter in the medieval Ashkenazi Jewish communities in which there was a stove.

⁷⁷⁸ See App. for translations.

“[...] This is the rule: One must always do complete penance, but first he must purify himself, and as soon as he thinks that he is clean, he shall fast as I have written above [...]”

In these examples continuous fasting for three days and nights (Esther’s fast) is mentioned. For this type of fasting there are further examples in the manuscripts of the penitentials. In MH Ms. Hamburg 80 fol. 23c, the continuous fasting for three days and nights is ordered four times a year, as a “*ḥasidic*” tradition⁷⁷⁹:

“Tradition from the *ḥasidim*: ‘If one fasts four times a year, for three days and nights continuously, all his sins will be pardoned. And these are the days on which one has to fast: on the tenth of Tevet, before the 17th of Tammuz, before Rosh ha-Shanah, and during the ten days of the *teshuvah*.’”

In MH Ms. Parma 2999 the continuous fasting for three days and nights is decreed for the intentional desecration of the Sabbath.⁷⁸⁰

II.C.4.2. *Responsa*

The *responsa* of the 13–15th centuries, and especially those of the 15th century deal much with fasting, but there is not always a connection with the *teshuvah* or *teshuvah*-schedule. Not only the rules regarding fasting for the sake of penance, but also the other regulations and *responsa* connected to fasting show the influence of *ḥaside Ashkenaz*. For example, there are questions in the *responsa* which have their parallel in the paragraphs of SHP discussed above. However, the question of the customs of fasting in medieval Ashkenazi communities is beyond the scope of this study.⁷⁸¹ With respect to fasting for penance, the period of penance was measured in the number of of the days of fasting.

II.C.4.2.1. Periods of One or More Years of Fasting for Grave Sins

Periods of one or more years of fasting were decreed in cases of grave sins, such as the voluntary murder or assault and battery resulting in murder, for adultery, for false oath of a rich man regarding his property, for denunciation that caused great harm to the community or brought about the death of the denounced man, and also for apostasy.

⁷⁷⁹ = Ms. Vat. 247; = Mos. 103 fol. 125a, but there “Tradition from the Ḥasid” which probably refers to Judah Hasid.

⁷⁸⁰ See Appendix for translation. In the same Ms.: “He who transgresses against honoring his father and mother [...] shall fast for the great sin three days a year for the rest of his life.” In the same Ms. for eating un-kosher food, see II.B11.2.

⁷⁸¹ See examples for the influence of the *ḥaside Ashkenaz* on the customs of fasting in the three subsequent centuries in App. II.C.4.

For a murderer who was ready to receive penance, R. Bruna decided that he had to fast daily for a year, except on the Sabbaths and on festival days, and for an additional year on Mondays and Thursdays.⁷⁸² For a young woman who committed adultery and also gave birth to an illegitimate child, it was decreed to fast daily for a year, except on the Sabbath and on festival days, and after that on Mondays and Thursdays for two or three years.⁷⁸³ For one who took a false oath R. Weil decreed to fast continuously for 40 days, and on each Monday and Thursday for an additional year.⁷⁸⁴ For one who informed against another, R. Meir . Baruch of Rothenburg decreed to fast as prescribed in HTR.⁷⁸⁵ In NMM, fasting is decreed also for the informer who is ready to repent. For one (R. Simelin of Ulm) who committed contempt of court and informed against another, R. Weil ordered one year of fasting.⁷⁸⁶

In the 15th century *responsa* there can be found three detailed penitential schedules (*sefer teshuvah*) for apostasy:

(1) For a married couple (called in *responsum* “R. Kalonymus and his wife’) who had committed apostasy, repented and intended to do penance, the following penances were ordered by R. Isaac Tyrnau:⁷⁸⁷

I. For the husband (R. Kalonymus):

(I.1a) In the first year, fasting for three days and three nights continuously immediately after the ritual immersion. After that, on the remaining days of the first year, every week Monday and Thursday. After Yom Kippur fasting for 40 days continuously, and also abstaining from eating meat and drinking wine at all during the 40 days (in the night). And in addition, fasting for three more days and nights continuously.

(I.1b) In the second year, fasting once a week.

(I.1c) In the third and fourth years, and for a few more years, fasting once a month.

II. For the the wife of R. Kalonymus:

(II.1a) In the first half of the first year, fasting for three days and nights continuously, immediately after ritual immersion, in the same way like her husband; after that, on the remaining days of the first half of the year, every week on Monday and Thursday; after Yom Kippur fasting for 40 days continuously, and abstaining from eating meat and drinking wine during the 40 days (at night), in the same way as her husband; or the 40 days of

⁷⁸² Bruna 265–6. See II.B.1.

⁷⁸³ Weil 12. See II.B.2.

⁷⁸⁴ Weil 123. See II.B.9.

⁷⁸⁵ Maharam 485, TshM Neziqim 14. See II.B.16.

⁷⁸⁶ Weil 147, 178. See II.B.8.

⁷⁸⁷ Ms. Ox 784 28a. See II.B.17.

continuous fasting on days could be commuted by three days and nights of continuous fasting. She was exempted from fasting for three days and nights continuously for a second time.

(II.1b) In the second half of the first year and in the second year, fasting in the same way as her husband in the second year (namely, once a week).

(II.1c) In the third and fourth years, and for a few more years, fasting in the same way as her husband (namely, once a month).

(2) In the *Leqet Yosher* (a *halakhic* compendium of R. Israel Isserlein's disciple, namely R. Joseph b. Moses) the following penances are prescribed for the repentant apostate:⁷⁸⁸

(2a) In the first year, fasting on Mondays and on Thursdays until evening, and refraining from meat and wine.

(2b) In the second year, fasting on Mondays and Thursdays, and it is allowed to eat meat and drink wine;

(2c) For the rest of his life, every year fasting once a month.

(3) For a man (called in the source R. Isaac b. Samuel, nicknamed Zanvil) who had been forcibly converted to Christianity and after three weeks returned, repented and wanted to do penance, the following penances were prescribed by R. David b. Moses (called by the anagram "*Zahav ben Shoham*"): ⁷⁸⁹

(3a) In the first month, fasting for three days and nights continuously every week, or, for two days and nights continuously, and after that, in the same week, for one more day and night.

(3b) In the second month, fasting every day, or in the same way as in the first month.

(3c) In the remaining ten months of the first year, fasting once a week, and after that it is allowed to eat one day and to fast one day – that is, fasting on every second day.

(3d) Every year, fasting on each Monday and Thursday.

II.C.4.2.2. Periods of Forty Days of Fasting

In medieval Ashkenazi Jewish communities, for grave sins committed unintentionally, the fasting for forty days was ordered as a rule.

⁷⁸⁸ LeqYosh II.49. See II.B.17.

⁷⁸⁹ Ms. Oxford 784 25b–26a. See II.B.17.

In the Or Zarua I.112, fasting is prescribed as penance for the death of a child caused unintentionally by a circumciser.⁷⁹⁰ According to the answer of R. Hayyim Paltiel, for a mother, for murdering her child unintentionally, the penance would be fasting on every Monday and Thursday for a year or for 40 days continuously; but for a pregnant woman that is impossible, so for her it is prescribed to fast one day a week for two years.⁷⁹¹ R. Yequiel who once sent his messenger to another place and the man was killed on the way was required to do penance through fasting. The reason was that “because of his embassy came the evil on the messenger, R. Ezra, it could be that tribulations would come upon R. Yequiel from Heaven as punishment”. For averting God’s afflictions, fast was recommended as penance.⁷⁹² A man who once beat his fellow and his fellow died was due to atone for his sin by fasts and floggings.⁷⁹³

For a man who transgressed with a *niddah*, the regular *teshuvah* prescribed for this kind of transgression was ordered by R. Moses Minz, which is 40 days of fasting according to HTR.⁷⁹⁴

For perjury, regularly this type of penance, that is the 40 days of fasting was ordered. For false testimony committed in the childhood, R. Isserlein decreed self-mortification as penance, which could also be fasting.⁷⁹⁵ For false oath on property, R. Isserlein decreed fasting as penance.⁷⁹⁶ For an oath made in vain – to divorce one’s wife – R. Isserlein decreed fasting.⁷⁹⁷ Fasting for 40, 6, and 3 days is decreed by R. M. Minz for one called in the *responsum* Simon for false oath, injury, and desecration of the Sabbath in the case of a quarrel between a woman called in the *responsum* Lea and Simon about a pledge, during which the she tried to disqualify him from oath.⁷⁹⁸

Forty days of fasting was decreed for the ritual slaughterer who erred and was dismissed from duty for one month or six weeks.⁷⁹⁹

In one of R. Isserlein’s *responsa* fasting on every Monday and Thursday for forty days is prescribed for desecrating the Sabbath.⁸⁰⁰ In another *responsum* it is stated that these forty

⁷⁹⁰ See II.B.1.

⁷⁹¹ Ms. Oxford 784 27b. See II.B.1.

⁷⁹² Weil 125. See II.B.1.

⁷⁹³ Weil 87. See II.B.1.

⁷⁹⁴ Minz 98a. See II.B.2.

⁷⁹⁵ Isserlein PuK 62. See II.B.9.

⁷⁹⁶ Isserlein PuK 214. See II.B.9.

⁷⁹⁷ Weil 172. See II.B.9.

⁷⁹⁸ Minz 93. See II.B.9.

⁷⁹⁹ Minz 25. See II.B.11.

⁸⁰⁰ Isserlein PuK 55. See II.B.15.

days are equal to fasting for two days and nights continuously.⁸⁰¹ Forty days of fasting are decreed also in the name of R. Isserlein in the *Leqet Yosher* for the desecration of the Sabbath.⁸⁰²

For voluntary but lighter transgressions, also the fasting for forty days is prescribed, in the same way as for willingly drinking *yayin nesekh* according to the ST.

II.C.4.2.3. Periods of a Few Days of Fasting

In *responsa* of the 12–15th centuries for involuntary, lighter offences, as desecrating the Sabbath, drinking *yayin nesekh*, regularly a few days of fasting is ordered as penance. For cursing a woman, fasting on Monday, on Thursday and again on Monday is decreed in the *Mordeḥai*.⁸⁰³ According to the decision of Ra'avan, he who curses his fellow must take it upon himself to fast on Monday, on Thursday and again on Monday.⁸⁰⁴

In one of his *responsa*, Maharam prescribes three days of fasting for desecrating the Sabbath.⁸⁰⁵ In the IT for drinking the wine of the Gentiles involuntarily, five days of fasting is imposed as penance. Likewise, five days of fasting is ordered in one of the *responsa* of Rosh, in the name of Judah Ḥasid⁸⁰⁶, and also in one of R. Mollin's *responsa* in the name of Rosh.

II.C. 4.2.4. Periods of Fasting Undefined in the Sources

In some sources the period of fasting is not specified by the respondent. It is apparently left to the judgment of the local rabbi who administers and controls the process of penance.

For a man, who committed cursing and false testimony in his childhood, self-mortification was prescribed as penance by R. Isserlein, which could also be fasting.⁸⁰⁷ Severe penance – which could mean fasting – was prescribed by R. Isserlein for slandering a prayer leader.⁸⁰⁸ Fasting was imposed as penance by Maharam upon a curser of a nobleman.⁸⁰⁹

According to R. Isaac b. Moses Or Zarua, fasting has been decided by certain courts and rabbis for extinguishing the fire which broke out on the Sabbath or on festival days for people who extinguished the fire in accordance with the decision of the same rabbis. R. Isaac

⁸⁰¹ Isserlein PuK 61. See II.B.15.

⁸⁰² *Leqet Yosher* I. 43. See II.B.15.

⁸⁰³ *Mordeḥai* Kid. 558. See II.B.5.

⁸⁰⁴ Maharam Lvov 492. See II.B.5.

⁸⁰⁵ Maharam Lvov 431. See II.B.15.

⁸⁰⁶ Rosh 19.16. See II.B.12.

⁸⁰⁷ Isserlein PuK 82. See II.B.9.

⁸⁰⁸ Isserlein ThD 307. See II.B.6.

⁸⁰⁹ Maharam Prague 132. See II.B.5.

b. Moses disapproves their custom: opinion: fire must be extinguished on the Sabbath and no penance can be imposed by the rabbis for this.⁸¹⁰

For breaking a vow not to gamble, fasting or other self-mortifications are prescribed by R. Isserlein.⁸¹¹ Fasting or self-mortification is decided by R. Minz for transgressing a vow.⁸¹² Fasting or self-mortification is inflicted on one for breaking the vow of the *nazir*⁸¹³.

II.C.4.2.5. Fasting as Penance for More Offenders or for the Entire Community

In the *responsa* of the 15th century, there are a few examples in which sin is committed by more offenders, for whom fasting is prescribed with the purpose of doing *teshuvah*.

In one of the cases, the whole community is demanded to fast for the desecration of the synagogue, despite the fact that not all community members are to blame for the offence.⁸¹⁴ For slandering a woman of swearing falsely, fasting is imposed as penance on the slanderers.⁸¹⁵ For transgressing the community ban by swearing falsely on the property, fasting is inflicted on the offenders, along with ten or at least three other community members since they are unable to repair the damage caused.⁸¹⁶ For desecrating the sanctity of the synagogue in Regensburg, by drawing crosses on R. Bruna's seat, R. Minz ordered the whole community to fast for the sake of the sanctity of the synagogue.⁸¹⁷

II.C.4.3. Conclusions

In the 12–15th centuries, the period of penance was measured by fasting days, consequently fasting constitutes the basis for the *sidre teshuvah* (penitential schedules). The grave sins were atoned for by one or more years of penance, while lighter or involuntarily committed grave transgressions by 40 days of fasting, and light transgressions by a few days of fasting.

⁸¹⁰ OZ II. *H. Erev Sabbath* 38, OZ Sanh. 23–4. See II.B.15, II.B.7.

⁸¹¹ Isserlein PuK 62. See II.B.10.

⁸¹² Minz 111. See II.B.10.

⁸¹³ Id. See II.B.10.

⁸¹⁴ Minz 76. See II.B.14.

⁸¹⁵ Minz 75. See II.B.6.

⁸¹⁶ Colon 51. See II.B.4.

⁸¹⁷ Minz 76. See II.B.14. See translation in Appendix II.B.14 (desecration of the synagogue).

(Social Penances)

II.C.5. Incarceration

(1) In one of R. Ḥayyim Or Zaru'a's *responsa* contained in Ms. Parma 86 No. 189, one can find an allusion to detaining the delinquent by the Jewish authorities⁸¹⁸. According to this *responsum*, the murderer was to be punished by excommunication and legal disqualification. It seems that the punishment could only be executed by keeping the felon in custody. This is also the case in the *responsum* of R. Shabbatai bar Samuel contained in the same manuscript: obedience could only be enforced by keeping the culprit in detention.⁸¹⁹

From a false accusation of arson brought by a Jew against another one, discussed by an anonymous respondent in Ms. Hamb. 45 par. 68, one can conclude that there were cases when the criminals had no opportunity to escape. In this particular case it is not known whether the Jew who accused his fellow Jew with arson before the Gentile authorities was taken into custody by the authorities of the Jewish community, or was set free.⁸²⁰ But the respondent warns that if there is the fear that the denouncer may flee to the Gentiles, only flogging is to be applied as punishment and not the excommunication. It can be presumed that the punishment of excommunication decreed in the enactment was effective, either in the case when the offender would have been completely unsafe among the Gentiles, so he would in no way have escaped, or in the case when he would have been physically prevented from escaping and taken into custody.

(2) One can also find examples of symbolic fettering of the penitent murderers: according to HTR, a murderer who was ready to do penance was due to tie his hands around his neck and go into exile; and in every community to which he arrived, he had to go into the synagogue and pray with the chains on. This penitential decree of HTR from the beginning of the 13th century is imposed on an informer by R. Meir b. Baruch of Rothenburg at the end of the 13th century as well as on a penitent murderer by R. I. Bruna in the 15th century in one of his *responsa*.⁸²¹

(3) Incarceration by the Gentiles was more frequent. In a *responsum* of Maharam's regarding an informer there is a reference to the fact that in case of denunciation it was to be feared that the denounced one would be detained by the Gentiles; and if the price of

⁸¹⁸ For detention in the Talmud Babli see Pes. 91a, Zoma 11a, Sanh. 81b; for the Middle Ages see Tur HM 20, 93,13. See II.B.1.

⁸¹⁹ Ms. Parma 86 p. 190. See II.B.1.

⁸²⁰ See II.B.7.

⁸²¹ HTR 23, Maharam TshM Neziqim 14, Bruna 265. See II.B.1 and III.C.1 and III.C.7.

redemption was raised so much that he was no longer able to redeem himself, he would be killed in prison.⁸²²

According to a *responsum* of R. J. Colon's, a man called R. Abraham in Ferrara was captured and imprisoned by the Gentiles. Being afraid of the tortures of the Gentiles, he swore falsely in jail, and escaped.⁸²³ In a case when the property of a woman was delivered to the Gentiles by an Italian community, because she had not paid the tax, R. Colon⁸²⁴ makes it clear that such betrayal is inadmissible, yet it is allowed to hand her over to the Gentiles so that they may keep her in custody until she settles her debt. In another case, a man was delivered by his father to the Gentiles, because he was not willing to leave the house that was the object of the quarrel between them, and he was imprisoned by the Gentiles.⁸²⁵ According to one of his *responsa*, R. J. Weil describes⁸²⁶ how the wife and great-grand daughter of a man were captured and imprisoned, threatened with death, and with locking the child in the tower to compel her to commit apostasy; they were redeemed by R. David, to whom the husband of the woman was then due to return the price of the redemption.

According to one of R. I. Isserlein's *responsa* in ThD⁸²⁷, women were captured by Gentiles, and tortured in order to convert to Christianity. According to the *responsum* of "Zahav b. Shoham" (probably David b. Moses) R. Isaac b. Samuel, called Zanvil, was captured, tortured and detained for three weeks by Gentiles. He did not resist torture and converted to Christianity, but as soon as he could, he escaped and returned through ritual immersion and penance.⁸²⁸

In the above mentioned examples it is obvious that by capturing Jews the intention of the Gentiles was either to extort money from them or to try to convert them to Christianity (in the case of women sometimes by means of rape), or both. This was the case in Germany (R. Meir b. Baruch) in the second half of the 13th century, in Austria (R. I. Isserlein, R. David b. Moses), in North Italy (R. J. Colon), and in Germany (R. J. Weil) in the 15th century. With regard to the second half of the 13th century in Germany, in light of the sources it is likely that criminals (murderers, informers) were held in custody by the Jewish authorities. The symbolic fettering of the penitent murderer was a type of public penance in the medieval Ashkenazi Jewish communities from the beginning of the 13th century until the 15th century.

⁸²² Maharam Prague. 485. See II.B.16.

⁸²³ Colon 68. See II.B.9.4.4.

⁸²⁴ Colon 127. See II.B.16.

⁸²⁵ Colon 154. See II.B.16.

⁸²⁶ Weil 148. See II.B.16.

⁸²⁷ ThD 241. See II.B.2 and II.B.16

⁸²⁸ Ms. 784 fol. 25b–26a.

II.C.6. Excommunication (Niddui and Herem)

The *niddui* (lesser excommunication, imposed for 30 or 60 days) and the *herem* (greater excommunication, imposed for indefinite time) were important sanctions in the Ashkenazi Jewish communities in the Middle Ages, both in the enforcement of the community enactments (*taqqanot*) and in the punishment of criminal conduct.

In his study on the purposes of the community enactments and their sanctioning with bans in the medieval Ashkenazi Jewish communities⁸²⁹, S. Goldin defines the two notions – the “enactment” (*taqqanah*) and the “ban” (*herem*), and mentions that there is no consistency in the use of the terms “*taqqanah*” and “*herem*” in the Middle Ages, nor in that of *herem* and *niddui*. In another article on the integral function of the synagogue, S. Goldin describes the ritual of excommunication⁸³⁰ (which is to be understood referring to the *herem*).

In Talmudic terms, the *niddui* was the 30 days of excommunication, and if the culprit did not obey, 30 days more. After that the *niddui* was lifted by the court, but if the culprit did not show any sign of penitence or remorse, the *niddui* was renewed, and finally the *herem* was pronounced for an indefinite time.⁸³¹

The *niddui* and *herem* were especially important with regard to the process of penance, because all types of excommunication in the medieval Ashkenazi communities could be lifted by a kind of penance, either ritualized or not.

In the studied medieval Ashkenazi sources, the following types of excommunication are to be found:

(1) *Niddui*, excommunication applied for seven or thirty days, as actually decreed against individuals.

(2) *Herem* for indefinite time, actually proclaimed against individuals.

(3) Threat of a particular rabbi or court against an individual, containing a condition to be fulfilled (obedience, paying, repentance, acts of penitence, begging pardon etc.), along

⁸²⁹ Goldin, “תפקידי החרם והתקנות”

⁸³⁰ Goldin: “The Synagogue” p. 24. Sources quoted or referred to by him: Maharam Lemberg 78; S. *Mordehai* BB 517; SHP 1291–129, 1641; Sanh. 45b; MK 23b s. v. Mar; Ned. 10b s. v. Olah la-Shem; SHP 1298, Mak. 11b.

⁸³¹ The Talmud forbids coming within six feet of a person who has been excommunicated. During medieval times, the law of excommunication could be extended to the family of the person who was convicted of a crime. The rituals surrounding the excommunication of an individual were described by S. Goldin on the basis of the sources in this way: “The act was first announced by the blowing of the *shofar* in front of an open Ark. The community would lament, holding black candles as if in mourning; finally a public warning was decreed forbidding all to associate with the convict as the community symbolically smothered the candles.” For *niddui* and *herem*: Horbury, “Extirpation”; Libson, 1973, 1975, 1980; Goldin, J., “On the account”; Guttoff, “The necessary outlaw”.

with the alternative of the greater excommunication, that is, the *herem* for indefinite time if the condition is not be fulfilled. This kind of threat employed in particular cases against individual culprits is the most common in the sources. In the process of the latter, also the lesser excommunication for seven or thirty days could be applied at the beginning, the terminology, again, being not always consistent in the description of the process.

(4) *Niddui hakham*, a special type of excommunication, through which the sage makes use (or abuse) of his right from the Talmud to pronounce excommunication against one who has harmed his honor. To this type of excommunication is connected the pronouncement of “*adrabe*”, that is, the disapproval of the *niddui hakham*, and the reversion of the *niddui* on the excommunicator.

II.C.6.1. *Taqqanot* Regarding Excommunication

The enactments (*taqqanot*) of the 12th – 13th centuries declare the right of the Jewish communities to enforce their “enactments” (*taqqanot*) under threat of ban (greater excommunication). They also establish the process of pronouncing and lifting the excommunication and prohibit individuals from acting against community enactments regarding excommunication.

The individual is bound by the *herem* of the *bet din* in every place; one is not allowed to delay appearing in court when summoned more than three days; and is not allowed to disobey the judges.⁸³² The enactments of R. Tam and his fellows declare that the communities in all places are empowered to issue enactments and enforce them under threat of ban, and the members, and only they, who are bound by the oath can release the ban for each other.⁸³³ The enactments of *Shum* decree that all who transgresses the edicts shall be excommunicated, and if they remain more than one month in disobedience, their money shall be given to the Gentile ruler.⁸³⁴ The individual, even the Rav is not allowed to lift or pronounce excommunication. Regarding tax-paying, he who swears falsely on his property shall be legally disqualified; if one was required to pay a certain amount of money and refused it shall pay the money required, and after that litigate with the community as though he had not paid the money.⁸³⁵

The most severe enactments in the medieval Ashkenazi Jewish communities were issued against using the power of the Gentiles against a fellow Jews in order to oppress them or to deliver them or their property to the Gentiles. That was pronounced in the enactments of

⁸³² *Taqqanot* R. Tam 1160, *TSh* 1220.

⁸³³ *Taqqanot* R. Tam 1160.

⁸³⁴ *TSh* p. 158b. See also Auerbach, *Die rheinischen*.

⁸³⁵ *TSh* p. 158b.

R. Tam under threat of excommunication and death penalty. It was also forbidden to threaten somebody with denunciation, as well as to obtain a position in the community by the aid of the Gentiles.⁸³⁶

II.C.6.2. Excommunication and Transgression of the *Herem* in SHP

In SHP, one can find the ruling that the grave of one who dies excommunicated should be separated from the other graves.⁸³⁷

In HTR, in connection with robbery or deceit in monetary matters, with the use of false coins and measures, it is mentioned the regulation that if this sort of law-breaker will not mind the rebukes, he or she must be excommunicated and separated until he or she does penance.⁸³⁸

In HTRB, Ms. Jer. 621 fol. 22a, in the paragraph concerning the penance prescribed for a murderer, there is a gloss, a decision or maybe a variant of the enactment of R. Tam, which forbids under threat of excommunication to mock the murderer after he accepted to do penance.⁸³⁹

II.C.6.3. *Responsa*

The most severe form of excommunication was the *herem*, which meant exclusion from the community for an indefinite period of time. The pronouncement of the sentence of *herem* was strengthened by curse.⁸⁴⁰ The most elaborate form of the text of the *herem* is preserved in the *Sefer Kol Bo*.⁸⁴¹

For the severity of the proclamation of the *herem*, there are metaphorical expressions in the *responsa* discussed below that emphasize the connection with the baneful power the sentence of ban had as an ancient curse: “excommunication [*niddui herem u-shevu’a (!)*] shall fall upon your head”⁸⁴²; “the *naḥash* shall bite him”⁸⁴³; “they shall be put under ban [*herem*],

⁸³⁶ Taqqanot *Shum* 1196 (Maharam Prague 1022 = M. Minz 102), fol. 158b.

⁸³⁷ SHP 268, as ruled in the MK17a. In SHP 1416 there is a story in which excommunication against informers is applied half-jokingly. Once a student and his colleges were guests in a house; the student stole from the wine of the householder, and prohibited his fellows under threat of excommunication from informing against him to the owner. Besides the general teaching against deceit, robbery and stealing, the *exemplum* shows, that the excommunication against informers was probably rather common at that time.

⁸³⁸ HTR 28. As we have seen, this kind of decree is to be found in NMM,. The alternative of penance/punishment is excommunication.

⁸³⁹ According to the enactment of R. Tam it is forbidden to mock the penitents. The prohibition of mocking the penitent murderers is to be found in NMM. See II.B.1.

⁸⁴⁰ For the ritual of the announcement of the sentence see above the introduction to this chapter, in the footnote.

⁸⁴¹ *Kol Bo* 139. See Appendix for translation. *Sefer Kol Bo* is a collection of customs, mostly from the period of the Tosafists from the 12th –13th centuries, written by an anonymous author in Provence probably in the first half of the 14th century. It shows many common features with the *Orhot Hayyim* of R. Aaron ha-Cohen mi-Lunel.

⁸⁴² Weil 149.

and behold, I shall send snakes and *serafs* upon them until they return to righteousness⁸⁴⁴; “a thorn which shall not shed his blood and by the serpent of the rabbis” [excommunication] – „I shall bring *naḥash* and *seraf* upon you”⁸⁴⁵; “And if you do not hearken to all that, God forbid, then R. Seligman and his companions have the power to separate you by the “great partition”⁸⁴⁶ and to compel you until you say, “I want””⁸⁴⁷; “by the power of my decree and the staff of God which is in my hand, by the power of *naḥash* [...] you will be captured in the net of wrongfulness, and the great partition⁸⁴⁸ shall be cast upon you, in which you will not be able to remain”⁸⁴⁹; “shall be caught in the net of the ban”⁸⁵⁰; “*makkat perushim* [the stroke or blow of the Pharisees/hypocrites]”⁸⁵¹; he has stung him and “chastised him with a thorn that causes no blood to flow” [he has put him under ban].⁸⁵²

II.C.6.3.1. Actual Decree of *Niddui* (for Thirty Days or Less)

According to the medieval sources, the duration of the *niddui* (‘lesser excommunication’) was generally seven or thirty days⁸⁵³. It was actually decreed (1) against offenders for transgressions punishable by *niddui* according to the Talmud; (2) against transgressors of – local or general – enactments of the communities issued under threat of excommunication; (3) against wrongdoers (that is, in cases of beating, injury) in order to “build a fence”. Some of the cases can be classified into more than one of these three types. The beating or injuring of the fellow will not be discussed separately; in this respect one can only refer to the general ruling in TRT and NMM, namely that the excommunication could be suspended before performing the penance, in order that the offender should obey. The other cases are: (1) cursing (calling the fellow “slave” or other curses – 3 cases)⁸⁵⁴; (2) slander (and

⁸⁴³ Bruna 283.

⁸⁴⁴ Weil 140.

⁸⁴⁵ Isserlein 174.

⁸⁴⁶ *guda rabbah* = “great partition, wall”, excommunication – BQ 92b.

⁸⁴⁷ Weil 147.

⁸⁴⁸ *guda rabbah*. See above.

⁸⁴⁹ Minz 89. See II.B.8.3.3.

⁸⁵⁰ Colon 154.

⁸⁵¹ Talm. Yer. Ch. 3; R. J. Colon 127.

⁸⁵² Hutner, *Four responsa*; on the basis of Ket. 91a; BB 151b). See also: Weiss: “Shtar ḥerem”; Rustow: “Laity versus leadership”.

⁸⁵³ According to the Talmud. Rarely, the *niddui* of forty or of fifty days was decreed, according to the sources. However, if the disobedient person did not repair his ways, the *niddui* was decreed very frequently a second time, so the punishment amounted to 60 days. The removal of the ritual slaughterer from his service also lasted no more than thirty days, as it will be discussed. See II.C.6a. This offense is in Rambam’s list nos. 19–20. See next footnotes.

⁸⁵⁴ This offense is listed in Rambam’s *Mishneh Torah, Hil. Talmud Torah* 6,14, as the third (3) offense liable to *niddui* from the 24 (“calling an Israelite a “slave”).

curse – 1 case)⁸⁵⁵; (3) disobedience to the community ban in tax-paying and denunciation (1 case)⁸⁵⁶; (4) making/drinking *yayin nesekh* (1 case)⁸⁵⁷; (5) dishonor of the Rav (= Rabbi) and desecration of the synagogue (1 case)⁸⁵⁸; (6) desecration of the Sabbath or the festivals (3 cases)⁸⁵⁹.

(1) In the name of R. Eliezer bar Nathan⁸⁶⁰, it is stated that the prefects of the community (*tove ha-ir*) can excommunicate one who repeatedly calls another one a “bastard”. This is an enactment for “building fence” against wrongdoers.⁸⁶¹

The Talmudic source of the enactment is not mentioned. According to bQid. 28a, one who calls his neighbor a “*mamzer*” is liable to forty lashes. The explanation for the enactment of excommunication is that, on the one hand, it is – as generally held by other sources as well – a graver form of punishment than flogging, on the other hand, that one who is disposed to curse, must be punished more severely on the basis of the principle of “building fence.”

In the name of Avigdor bar Menahem⁸⁶², the punishment of excommunication for calling somebody a “disqualified” and “bastard” is presented as an actual decision and warning in a place where before the named Rabbi there was no custom of punishing cursing in this way. There is also a ruling in the *responsum* declaring that the person excommunicated for seven days must behave during prayer time according to the status of a “separated” person, which probably meant that he had to stay apart from the community, but it seems that not outside the synagogue and definitely not at home. The law concerning the excommunicated person in the Talmud ruled that he or she must stay at home.⁸⁶³

The local enactment of the Rabbi does not explain why excommunication was decided with regard to this particular cursing, although allusion is made to the Kid. 28a.

For his decision, the author of the *psaq* in NMM⁸⁶⁴ brings an explanation on the Qidd. 28a⁸⁶⁵, that the punishment of excommunication is imposed as a “measure for measure”.⁸⁶⁶

⁸⁵⁵ A type of offense No. 3. in Rambam’s list.

⁸⁵⁶ Types of offenses Nos. 4, 6 and 9 in Rambam’s list.

⁸⁵⁷ Types of Nos. 19–20 in Rambam’s list.

⁸⁵⁸ Types of Nos. 1, 14 in Rambam’s list.

⁸⁵⁹ Types of Nos. 11 and 12 in Rambam’s list.

⁸⁶⁰ Ra’avan, 12th century. See II.B.5.

⁸⁶¹ *Maharam Lvov* 492. See App. for translation.

⁸⁶² Second half of the 13th century.

⁸⁶³ *Maharam Lvov* 492. See Appendix for translation. See II.B.5. This is also the ruling in NMM about a woman who cursed another one and defamed her father; see further below.

⁸⁶⁴ Collection of decisions and abbreviations of responsa from the beginning of the 14th c.

⁸⁶⁵ “If one calls his neighbor “slave” [probably as a result of his liaison with a heathen bondmaid], let him be placed under the ban!” (translation from I. Epstein, ed. London, Soncino, 1935–48).

⁸⁶⁶ NMM. See Appendix II.C.6. for translation.

In conclusion, the punishment of excommunication for cursing functioned from the 12th century onwards as a severe regulation of the Rabbis in building fence against lawbreakers than flogging, based on and legitimized by the principle of the “measure for measure”, and by the application of the Talmudic source as a legal background.

(2) However, in NMM one can find the punishment of excommunication to be regularly imposed in cases of cursing and spreading rumors, as well as commutation for flogging in the case of women.⁸⁶⁷ For a woman who disparaged another one, a distinguished woman, transgressing a community decree thereby, the penance prescribed was thirty days of excommunication, divided into four seven-day periods, which had to be performed in four different communities; for defaming her apostate father who had returned and died as a Jew, flogging commutable to a further eight days of excommunication was assigned for her, which actually meant sitting outside the synagogue. Nevertheless, the whole time of excommunication could be redeemed with money by her husband.⁸⁶⁸

With regard to the lesser excommunication (*niddui*), the Talmud prescribes for the excommunicated person to stay at home and not to have contact with anybody else but family members. Apparently another type of ruling was also in use in these communities, at least at the turn of the 13th –14th centuries, but maybe already in the time of the earlier enactments (12th century?), viz. that the excommunicated person was required to stand or sit outside the synagogue, or in the synagogue, apart from the community, without being counted to the prayers, in order to emphasize the “separation from the community in all things holy”.

(3) In a 15th century sentence of excommunication (*niddui* for thirty days) decreed against R. Simelin in Ulm for transgressing the community ban in Nürnberg regarding tax-paying, as well as for denunciation, and for cursing, it is explicitly formulated that the days of the *niddui* are to be spent at home, in a quasi house-arrest.⁸⁶⁹

(4) For drinking *yayin nesekh* one can find about R. Tam that he intended to excommunicate some Jews who had bought from the Gentiles vats full of grapes that had already been trodden.⁸⁷⁰

(5) For the public desecration of the synagogue and of the honor of the Rav, a rabbi “excommunicated and separated” an offender from his *yeshivah* “a full time”. One can hardly

⁸⁶⁷ This being for her a lighter punishment, unlike the decision of Ra’avan (no. 1) according to which excommunication has been imposed for cursing repeatedly, while for simple cursing flogging has been decided.

⁸⁶⁸ See Appendix II.C.6. for translation.

⁸⁶⁹ Weil 147. See: Strassburger: „Zur Geschichte“; Keil. See Appendix II.C.6. for translation.

⁸⁷⁰ Colon 32. The *halakhic* basis for *yayin nesekh* by *hamshakhah* I AZ 55b, the saying of R. Huna that the wine as soon as it begins to flow – from the upper trough which contains the grape through a pipe into the lower where the wine collects – is considered *nesekh*. For translation, see App. II.C.6.

tell how the excommunication was understood in this case. Maybe it was only a separation from the study-house of the offended Rav, a kind of *niddui hakham*, maybe it was an excommunication spent in home confinement, with the proper laws regarding the excommunicated person (*menuddeh*).⁸⁷¹

(6) In a case of desecration of the Sabbath – probably one in the 11th century –, the ruling can be found that if they had desecrated the Sabbath voluntarily, the offender would have been excommunicated for thirty days, which would have been a heavier penance than fasting, flogging etc. imposed for involuntary transgression.⁸⁷²

At two places in the Sefer Or Zarua, R. Isaac b. Moses relates about certain rabbis who have a custom of instructing people to extinguish the conflagration on Sabbath or on a festival day, so that Gentiles shall not come and plunder the Jewish homes; then the same rabbis decree fasting, flogging or excommunication as penance for the desecration of the Sabbath or festival, basing their decisions on the Sanh. 26b, namely, that certain grave-diggers desecrated the festival so as to fulfill the *mizvah*. The author disagrees with this custom and concludes that the fire must be extinguished because of imminent danger of death, and no atonement or punishment is to be meted out, for fear that next time the people will refuse to extinguish the fire on the Sabbath causing severe damage to the community.⁸⁷³

II.C.6.3.2. Actual Decree of *Herem* for an Undefined Period of Time

According to the sources, actual decree of exclusion for a longer period of time was decreed in cases of grave crimes when the culprit was not willing to obey the decision of the court or to do penance, and for some reason the court did not have the authority or the means to punish him or her. The reason could be that either there was not incontestable evidence of an offence, or according to the law he was not liable to punishment, yet the offence was grave.

(1) (Murder) One of R. Hayyim b. Isaac Or Zarua's *responsa* shows that in a case in which there was no appropriate testimony regarding the murder, but there was evidence that the offender had threatened the victim before the act, on the basis of which he could be excommunicated for an undefined period of time.⁸⁷⁴ In the same manuscript, in R. Shabbatai b. Samuel's *responsa*, one can find, again, that there were no witnesses to the murder, but it was obvious that the accused person had committed the murder – being alone in the field together with the victim and with his own Gentile servant. The justification for

⁸⁷¹ Weil 152. See Appendix for translation .

⁸⁷² *Shibbolei ha-Leqet* 60. See Appendix for translation.

⁸⁷³ Or Zarua II . *Hil. Erev Shabbat* No. 38, OZ II. *Sanh.* No. 23–24.

⁸⁷⁴ Ms. Parma 86 par. 189. See II.B.1. See Appendix 10 for text and App. “Translations” II.B.1 for translation.

excommunication as “greater separation” is, on the one hand, derived from the decision of R. Hai with regard to an uncertain monetary case, based on *qal va-ḥomer* reasoning, and on the other hand, which is a more powerful argument, as usually in these sources, derived from the reason for decrees of “building fence”.⁸⁷⁵ In this case there is also a condition in the decision for limiting the time of excommunication: the offender is due to do penance until he subdues his heart and mends his ways, do penance.⁸⁷⁶

In a *responsum* of R. I. Bruna’s, there is a case of murder committed by two persons during a quarrel; the offenders are exempted according to the human law, but liable according to the law of Heaven. One of the offenders is not willing to do penance, therefore he is to be excommunicated, until he is ready to receive penance, and his excommunication must be proclaimed publicly.⁸⁷⁷

(2) (Beating the wife) Although the length of time of the excommunication is not mentioned in the decree concerning one who beats his wife, due to the gravity of the offense and the fact that the husband is treated as an evil-doer (as in the above discussed examples), it can be supposed that it is the case of the greater excommunication.⁸⁷⁸

(3) (Fleeing from the decision of the court) There is a case in the *responsa* of R. M. Minz, which is a clear example for one who not only disobeyed the decision of the court but also fled (*boreah din*), and the ban of R. Tam (in the source: it is quoted in the name of R. Gershom) was to be applied to him, namely he was to be excommunicated for an indefinite period of time. The *responsum* of R. Moses Minz intended to approve and confirm the decision of the Rabbis, and the guarantee that the assigned Rabbi, R. Yuzman Kaz, would also agree with it. After having been summoned, the culprit appeared before the court and after then ran away. As a matter of fact, the decision of imposing the major excommunication for running away from the court was simply an enforcement of the old (12th century) community enactment issued under threat of excommunication, which used to be in effect among all Ashkenazi communities throughout the Middle Ages.⁸⁷⁹

⁸⁷⁵ Ms. Parma 86 par. 190. See II.B.1. See Appendix for translation.

⁸⁷⁶ It is certain that in the earlier discussed *responsum* of R. Ḥ. b. Isaac (No. 25) the killer himself, concerning whom it is decided to be proclaimed in the synagogues that he is a murderer, is excommunicated, although the excommunication is not explicitly stated: “But here, on the basis of all the testimonies, the Gentiles have come to kill or to intimidate; he of whom is testified that he has brought the Gentiles and has drawn out half of his sword, and has brought them into the house of the victims, is a perfect murderer. And this is to be announced in all the communities where they know him, and his “bad smell” shall be spread widely, and he shall be captured in his own net.”

⁸⁷⁷ Bruna 265. See Appendix for translation.

⁸⁷⁸ Maharam Prague 81. See Appendix for translation.

⁸⁷⁹ Minz 83. See Appendix for translation.

(4) (Threatening the Rav with death) In the course of the quarrel between R. Eliyyah of Prague and R. Eliezer of Passau, in his answer to R. Eliyyah and to the community of Prague, R. Perez decided to impose major excommunication on one, called Meir Levi, who had threatened the Rav with death; this decree of excommunication was to be announced in the community⁸⁸⁰ and the time-limit of the ban pushed out until the accused person fulfilled the penance according to the indication of Rav Eliyyah of Prague.⁸⁸¹

(5) (Disgracing the Rav publicly) During another intra-community quarrel between R. Bruna and R. Anshil in Regensburg, in the middle of which it happened that crosses were drawn on the seat of R. Bruna in the synagogue by unknown offenders, R. M. Minz advised the community to curse the offenders publicly and to declare ban on them, as well as on all who know about them.⁸⁸²

It can be supposed that curses were pronounced in the course of other public excommunications as well; one of the versions is that in the *Ko Bo* quoted above, but this is a rare example when the curse is explicitly mentioned in a decree issued against a certain person.

(6) (informing) In the year 1370, R. Samuel Schlettstadt condemned two informers to death for endangering the integrity of the whole Jewish community of Strassburg. One of them was executed; the other informer betrayed his fellow Jews, sought to take revenge on R. Schlettstadt who finally fled to Babylonia. He returned to Schlettstadt with the sentence of great excommunication (*herem*) pronounced by the Jewish exilarch of Babylonia in agreement with the head of the rabbinic academy in Jerusalem against the whole community of Strassburg for betraying the rabbi.⁸⁸³

In conclusion, excommunication for indefinite period of time (*herem*, major excommunication) or until the offender did penance, was commonly decreed in cases of grave transgressions – such as murder, beating the wife, threatening or disgracing the Rav publicly, blasphemy, and denunciation, when the offender was not willing to repent and to do penance, or when a general enactment, proclaimed under threat of excommunication, was transgressed.

⁸⁸⁰ The letter is also an open letter to the whole community.

⁸⁸¹ Bruna 284. See Appendix for translation. See II.B.8.4.3.

⁸⁸² Minz 76. See Appendix II.B.14 (desecration of the Sabbath) for translation.

⁸⁸³ MGWJ 24, 408, see above II.B.16.

II.C.6.3.3. Warning and Decree Including a Stipulation under Threat of Excommunication

During the 12–15th centuries, decisions pronounced under threat of excommunication were more common than real excommunication. In most of the cases, these decisions, usually pronounced by one or more Rabbis against certain individuals included a stipulation: “If you do not hearken and subdue your heart to the decree, you shall be excommunicated.” In these particular cases – unlike in the general wording of the enactments – the threat of excommunication functioned like a warning against the individual, and it also served as a means of coercion or of enforcement of the law, sometimes by setting a definite deadline. Though in the majority of cases it is not known how the events developed, occasionally there are indications that the warned persons did not obey. It might be supposed that the warning often had its effect, but there is no mention of subsequent events. The cases in question are, again, graver crimes, transgressions of particular local or general enactments, disobedience to the law/court, denunciation.

(1) (Murder) In the case of a circumciser who has killed a child unintentionally, to the question whether the father can withhold the culprit from praying with the community, the answer of R. Isaac b. Moses is that the community members should separate themselves from him if he does not return and does not do penance.⁸⁸⁴ The community, and only the community has the right and duty to excommunicate the person who committed manslaughter, and only if the offender who committed homicide – whether the act was committed unintentionally or not – does not want to do penance.

(2) (Mocking the murderer) In the particular case of a “murderer” who killed his family members during a time of persecution, and then blinded himself as a sign of penance, the decisor Menachem of Merseburg decreed under threat of excommunication not to mock the penitent by calling him a “murderer”.⁸⁸⁵ The basis for the decision can be either the community ban decreed by R. Tam, prohibiting under threat of excommunication to disgrace the penitents – which is probable – or the punishment imposed on the murderer in the two different interpretations of Sanh. 27a.

(3) (Beating) (a) In one of his decisions, R. Ḥayyim b. Yeḥiel Ḥafez Zahav (second half of the 13th century) mentions that the Rabbis agree that one who beats his fellow must be disqualified, until he repents. However, it is not specified, whether the disqualification mentioned here means excommunication and not only prohibition from taking an oath, on the

⁸⁸⁴ OZ I.112. See II.B.1.

⁸⁸⁵ NMM. See II.B.1.

other hand, the repentance is defined as “visible to the public”, which means doing penance. The choice between penance or excommunication until repentance is accepted by the offender, was most common in the medieval Ashkenazi Jewish communities, and it is quite likely that the intention of the a rabbi by threatening with excommunication was frequently to compel the offender to do penance.⁸⁸⁶

(b) Moreover, it is probable that there existed a ban against evil-doers who were not ready to do penance, since there also existed a ban for those who intended to do and were released from excommunication before completing their penance.⁸⁸⁷

(4) (Robbery) In one of his *responsa*, R. J. Colon is the approves of the decision of R. Simon Kohen concerning certain individuals who have transgressed an enactment issued under threat of ban that declares that if anyone knows about a lost thing, they must report it to the Jewish authorities: excommunication can be applied.⁸⁸⁸

(5) (Disobedience in cases of beating, cursing, and slander) Between the 12th and the 15th centuries in the Ashkenazi Jewish communities, beating and cursing were punished by a fine or flogging, but if someone was not ready to accept punishment, excommunication was to be applied.

(a) It seems that even in such cases, the amount of fines being undetermined outside *Erez*, the culprits could refuse to pay the penalty, but the enactment accepted by all communities or by a certain community (if the case of a local enactment) could be enforced by the threat of the imposition or the actual imposition of excommunication (NMM).

(b) According to a decision of R. M. Merseburg, for slander proved to be false, one was to be punished or excommunicated, which undoubtedly meant that if he was not willing to accept punishment, the offender was excluded from the community (as in the cases of cursing, mentioned above). On the basis of backbiting proved to be false, one was prohibited under threat of excommunication from repeating his accusation.⁸⁸⁹

(c) A similar situation is encountered in a *responsum* R. M. Minz’s (no. 75): a woman who is accused of taking a false oath regarding her property on taxes; the respondent proves that the charge is unfounded, and, consequently, a decision prohibiting slander is issued under threat of excommunication (*naḥash*).⁸⁹⁰

⁸⁸⁶ Maharam Prague 383. See II.B.3.

⁸⁸⁷ NMM. See II.B.3.

⁸⁸⁸ Colon 110. See II.B.4.

⁸⁸⁹ NMM. See II.B.6.

⁸⁹⁰ Minz 75. See II.B.6.

(d) In one of his decisions, for a man, for causing a prayer leader to lose his position, by spreading rumors about him, R. Isserlein prescribes excommunication until he is willing to do heavy penance, the essence of which is to appease the offended person.⁸⁹¹

(6) (Defiance of court orders) (a) In the year 1439, for transgressing an enactment regarding tax-paying approved by all rabbis in Nürnberg, and signed by Simelin (Simon or Samuel b. Menahem, Simlin Walch⁸⁹²) as well, the community leader and rabbi ('*haver*') of Ulm, is forced to do penance under threat of excommunication.⁸⁹³

(b) In the 70s of the 15th century in North Italy, disobedience to a court order led to a situation that distinguished rabbis were threatened with excommunication, and have excommunicated each other.⁸⁹⁴

(c) When it is obvious that the culprit had acted unjustly, the pronouncement of a decision under threat of excommunication can not be prevented, and evidently the offender has no other choice but to obey the decision of the rabbi.⁸⁹⁵ This can be regarded as automatic excommunication.

(d) The threat of excommunication was also used automatically in a case in which the plaintiff demanded that the defendant, his own mother, litigate with him in another city, a procedure which was unlawful.⁸⁹⁶

(7) (Wrong decisions rendered by the Rav) (a) One of the reasons of the quarrel between R. Eliyyahu and R. Eliezer of Passau which lead to the threat by excommunication against the latter was that R. Eliezer had rendered wrong *halakhic* decisions.⁸⁹⁷ Another warning was sent by R. Perez to the community regarding the caretakers who had not been willing to testify on behalf of R. Eliyyahu.⁸⁹⁸

(b) In order to avoid excommunication from all the communities of exile, the rabbi accused with rendering erroneous *halakhic* decisions was required to revoke his wrong rulings and to do penance under threat of excommunication.⁸⁹⁹

(8) (disgracing the Rav) In the quarrel between R. Anshil and R. Bruna about the right of the latter to pursue his profession as a Rabbi in the community of Regensburg besides R.

⁸⁹¹ But not paying for the loss. Isserlein ThD 307. See II.B.6.

⁸⁹² See Keil "Language of Religion", 179 n. 28. Weil 147. See: Strassburger: „Zur Geschichte“, Keil. See II.B.8.4.1.

⁸⁹³ See II.B.8.4.1.

⁸⁹⁴ See II.B.8.4.

⁸⁹⁵ Colon 57. See II.B.8.4.2.

⁸⁹⁶ Colon 58. See II.B.8.4.2.

⁸⁹⁷ Bruna 282, 283, 284. See II.B.8.4.3.

⁸⁹⁸ Bruna 284.

⁸⁹⁹ Colon 83.

Anshil. The rabbis who supported R. Bruna,⁹⁰⁰ did not pronounce excommunication on R. Anshil and did not threaten him with it, but they reinforced their warning with harsh words. Possibly, the Rav was too old and influential to be threatened with excommunication or to be excommunicated. However the case was like the warnings with excommunication.

(9) (Denunciation) The most frequent bans were those pronounced against rabbis or other individuals who betrayed or denounced their fellow Jews or asked the aid of the Gentiles in quarrels between Jews, causing monetary damages or even endangering the life of another Jew or of the whole community. It is evident, on the one hand, that the rabbis (or courts) had no other power or means to prevent or restrain the betrayal, but excommunication. On the other hand, the dangers of such coercion were great, because the informer could convert and endanger the whole community.

(a) The first example is similar to the cases discussed above (8). In a quarrel between two rabbis in Oppenheim, R. David Oppenheim tries to prevent R. Seligman Oppenheim of Bingen from settling in Oppenheim, by resorting to the power of the Gentiles. R. M. Minz declares under threat of excommunication that the Rav and the community should not be betrayed. Undoubtedly, under such conditions both cases can happen in a Jewish community: either the individual gives up, and does not risk his position and even existence in the community, or, if he is powerful enough and determined to achieve his aim, he can create a situation, in which the community and the rabbi are forced to give up, in order not to endanger their status and existence among the Gentiles.⁹⁰¹

(b) During an argument between two distinguished Jews, both cup-bearers of the Gentile ruler, it is suspected that they mutually betray each other in order to hold the prestigious position without the other one. After clarifying – partly – the case, R. J. Mollin arrives at the conclusion that the betrayal has been committed by R. David, causing monetary loss to R. Yishai – who by taking an oath without mentioning the name of the person who would be liable to excommunication in case of perjury (a type of oath called *herem stam*), might be compensated by R. David.⁹⁰²

(c) In the case of a man for appealing to the Gentile court, the warning under threat of excommunication is delayed by R. M. Minz until he is ready to account for his deed.⁹⁰³

⁹⁰⁰ R. J. Weil, R. David Sprinz, R. I. Isserlein and R. M. Minz. Isserlein PuK 126 (= Weil 151), 127, 128.

⁹⁰¹ Minz 89. See II.B.8.3.3 and II.B.16.

⁹⁰² Mollin 86. See II.B.16.

⁹⁰³ Minz 57. See II.B.16.

(d) For transgressing the ban regarding community taxes and also for bringing Gentiles into the synagogue in Neustadt on Yom Kippur and disturbing the prayer on the High Holidays, R. J. Weil imposes on the offenders, under threat of *naḥash*, to mend their ways.⁹⁰⁴

(e) The community punishes a woman for not paying the tax due according to her property; her property is delivered into the hands of the Gentiles. The judgment of R. J. Colon is that this is not allowed. Therefore they must do proper penance, otherwise the ban will be applied to them.⁹⁰⁵

(f) A father causes his son to be taken captive by the Gentiles and to lose his property; R. J. Colon decides that the father is bound to deliver his son from captivity in one day, and also that the opponents shall choose Jewish judges to settle the case, or else, the *naḥash* will be decreed against the father (and against both). The threat is extended to the whole community of Verona.⁹⁰⁶

(g) In Nürnberg R. David Tebel Sprinz is falsely charged with fraudulence in tax and money-lending matters by R. David Frank before the Gentiles. In a letter, R. Isserlein warns R. David Frank under threat of excommunication to repair the damage caused.⁹⁰⁷

(h) In one of his *responsa*, R. Jacob Weil decrees under threat of excommunication that R. Abraham Ezra is bound to return the price of redemption paid for his wife and granddaughter to be rescued from the captivity of the Gentiles to R. David Zehner. R. David Zehner acted in a case of danger of life.⁹⁰⁸

II.C.6.3.4. The Validity of the *Niddui Hakham* Queried – the *Niddui Hakham* Invalidated

In the cases discussed above the decree under threat of excommunication is related to cases in which the interest of the Jewish community or the individual is unequivocal, even in quarrels between the rabbis. But the Talmudic ruling that a Talmudic sage can excommunicate (proclaim *niddui*) if his honor is hurt⁹⁰⁹, is also applied in cases in which it is doubtful whether this right is exercised justly.⁹¹⁰ In the next cases, there are examples for eight negative and nine positive answers to this question – namely whether the *niddui* pronounced by the sage is just.

⁹⁰⁴ Weil 140. See II.B.16.

⁹⁰⁵ R. J. Colon 127. See II.B.16.

⁹⁰⁶ Colon 154. See II.B.16.

⁹⁰⁷ Isserlein PuK 174. See discussion in II.B.16. and II.B.8.4.3.4.

⁹⁰⁸ Weil 148–149. See discussion in II.B.16 (informer).

⁹⁰⁹ bMQ 16b–17a.

⁹¹⁰ Rosenthal, Y. D., המבייש ת"ח, .

(a) The first example concerns a Rav who in four cases he used his right as a rabbi to threaten with excommunication his opponents, for his personal use and unlawfully, in order to win the suits.⁹¹¹ Therefore, R. I. Isserlein declared his decisions of excommunication to be illegal and under the threat of excommunication to repair the damage.

(b) A *responsum* of R. J. Weil's contains a letter to a rabbi who excommunicated a learned man not for the sake of his honor, but for financial gain, that is, with the intention of taking away his property, charging him with not being ready to obey the law. The man wrote a letter to rabbi Mahari Yaz, and he also sent it to R. Weil. In this letter to the rabbi who pronounced the excommunication, R. Weil regarded the decision as invalid, because of the following reasons: firstly, the rabbi did not have the right to excommunicate anyone unless his honor was hurt; secondly, the man was ready to obey the law, as he explained it in his letter to rabbi Mahari Yaz. To these two reasons, R. Weil added a third one, which reflected his general view on the *niddui* pronounced by a rabbi in his time, and it is repeated in other *responso* – as quoted below –, and this is a quotation from the *Aguddah*, the author of which lived and wrote at the beginning of the 14th century. It states that under the circumstances, the sages do not have the right to collect the one golden pound for being dishonored, because they do not deserve to be called sages, as in the time of the Talmud. The *responsum* relates about another case of the same rabbi: a woman is accused of betraying a fellow Jew and causing him to be taken captive by the Gentiles. The question of the rabbi to R. Weil is whether she should be excommunicated for betrayal. The answer of R. Weil is that without hearing the answer of the accused woman, the case can not be judged properly. But as long as she is ready to repent and to receive the penance meted out by the court, she can not be excommunicated.⁹¹²

(c) In another *responsum*, R. Weil answers the complaint of rich householders in Regensburg: they charged the Torah learners and rabbis with collecting the one golden pound from them and hurting their honor, and blamed them for not suing the defendants in the Jewish court to administer justice in monetary cases. In the opinion of the respondent, this is an unjust procedure: the rabbis do not have the right to collect the fine even for being disgraced, because they do not know the Talmud as they did in the time of the *amoraim*, so they are not worthy of being called sages. All they want is to increase their property. According to R. Weil, the Jewish system of justice has changed in the course of time,

⁹¹¹ Isserlein PuK 64. See II.B.8.3.2.

⁹¹² Weil 129.

especially the status of the Talmudic sage. Besides the *Aguddah*, he quotes the words of his teacher, R. J. Mollin, in this matter.⁹¹³

(d) In the *Trumat ha-Deshen*, R. I. Isserlein also maintains that the *niddui hakham* is invalid concerning the particular case he was asked about: the neighbor of a rabbi errs in a thing for which he would be liable to excommunication and the rabbi excommunicates him yet everybody knows that the rabbi hates his neighbor, and the reason for excommunicating him is other than the implementation of the law. In his answer, R. I. Isserlein quotes the Ra'aviah, viz. that no one knows exactly the meaning of the words of the *Yerushalmi*, namely what “for his own sake” means, which are the basis of the invalidity of such exclusions. His explanation is that while the rabbi excommunicates somebody who according to the strict words of the *halakhah* is liable to excommunication, the real reason behind his decision is a personal one.⁹¹⁴

(e) A similar case is to be found in a *responsum* of R. J. Colon's: a rabbi excommunicated a man by *niddui hakham*, for monetary reasons, or rather, out of greed. This was considered to be unjust by the respondent. All the more so since the excommunicated man did not intend to disobey, on the contrary, he wanted to give a horse or pledge to the rabbi and his heirs. Finally, the rabbi changed his mind and withdrew his decision, but there was no formal document proving it.⁹¹⁵

(f) In the five cases discussed above⁹¹⁶, the rabbis apparently excommunicate persons by using their right to pronounce the sentence of excommunication with the purpose of protecting their own honor, but in fact unlawfully, in the sense of the *Yerushalmi*, viz., that the *niddui hakham* applied “for his own sake” – that is, for monetary gain – is invalid. According to a *responsum* of R. M. Minz's, the abuse committed by a rabbi was not that he excommunicated someone for the sake of protecting his own honor, but that he wanted to forbid one of his students from entering his study-house, obstructing in this way the Torah-learning, which – in R. M. Minz's view – was not allowed to a rabbi.⁹¹⁷

(g) A similar problem arises, this time not about learning but teaching in a study-house in a place where there is already one. In one of his *responsa*, R. J. Weil is asked by a rabbi to protest on his behalf against some Torah learners who have set up a *yeshivah* by themselves against his study-house in the same locality. R. Weil replies that since R. Marburg, the

⁹¹³ Weil 123. This letter is also to be found in a shorter form in Weil DvH 68. See also the *responsum* of Weil 163.

⁹¹⁴ Isserlein ThD 274.

⁹¹⁵ Colon 25.

⁹¹⁶ Two of Weil, two of Isserlein and one of Colon.

⁹¹⁷ Minz 48.

prominent rabbi of the district, has approved of the setting up of the *yeshivah*, he can not prohibit it. So, the prohibition – and this time not real excommunication – can not be valid. It is obvious that here the interests of the local rabbi push the law and the interests of the community into the background.⁹¹⁸

(h) A more complex case is the one when two prominent rabbis want to enact decrees that will be valid for many – also remote – Ashkenazi communities in the center and eastern part of Germany, without the consent and against the will of other communities, of their prominent rabbis and distinguished members. R. I. Isserlein warns them that if they were to excommunicate offenders, their sentence of excommunication would be invalid; the excommunicated persons had the right to say “*adrabe*”, and then the two rabbis would be excommunicated.

II.C.6.3.5. The Validity of *Niddui Hakham* Queried – the *Niddui Hakham* Validated

(a) In one of his *responsa*, R. Eliezer Hayyim bar Eliezer states plainly that the court or rabbi has the right to excommunicate the offender, otherwise there would be no means in the hands of the judges to enforce the law; they do not have to be afraid that the excommunicated person will say “*adrabe*”, because his excommunication will never be valid. Even if the judge commits an error, the condemned person does not have the right to say “on the contrary” (which means that the judge or judges are to be excommunicated), because the erroneous decision is to be reconsidered, so there is no possibility of excommunicating judges for rendering a wrong decision. Beyond calling attention to the right of the court to pronounce the sentence of excommunication and the invalidity of the *adrabe* in all cases – R. Eliezer Hayyim bar Eliezer admits that excommunication is dangerous for certain reasons; first of all because it might be a stumbling block for the excommunicated persons in the circumstances of exile when the hands of the judges of Israel are weak. This is an allusion to the betrayal to the Gentiles, or to other harms caused by the excommunicated persons to the judges, to the litigants or to the whole community.⁹¹⁹

(b) According to Talmudic law, however, in some cases the opponent has the right to say “*adrabe*”, for instance, if the excommunicated person is equal in rank with or higher in rank than the rabbi who excommunicated him, or if the disagreement or disgrace that leads to

⁹¹⁸ Weil 161.

⁹¹⁹ Minz 56.

excommunication is between rabbis, student and master etc. This is explained in a *responsum* of R. J. Colon's.⁹²⁰

(c) Not only excommunication but a mere warning to the offender could be hazardous for a rabbi, and although the sages are required to admonish the lawbreakers – as all Jews are –, they are not expected to expose their own lives or their properties to danger.⁹²¹

(d) In the following three examples, the dangers of the excommunication are discussed. In the first one, the sentence of excommunication is not pronounced because of the harm that can be caused with the aid of the Gentiles; in the second one it is rejected; and in the third, it is severely questioned. According to a *responsum* of R. Hayyim Or Zarua's concerning assault and battery as well as murder⁹²², the attacked party calls the Gentiles, which is justified in such cases; R. Hayyim decides only to simply prohibit mocking – for fear that the threat of excommunication would cause irreparable damage to the Jewish community.⁹²³

(e) R. I. Isserlein is asked in connection with a sage who excommunicates a man for summoning his fellow litigant before the court of the Gentiles, so as to win a monetary suit; the excommunicated person goes to the Gentiles and they threaten the sage with severe punishments in order to force him to invalidate his decision. The question is whether the integrity of the community should be jeopardized by the decision of the sage. R. Isserlein's answer is that if the Name has not been desecrated by the excommunicated person, the community should not be jeopardized, therefore, therefore, the sentence of excommunication must be annulled. However, if the Name has been desecrated, the man must be excluded from the community.⁹²⁴

(f) The third example the *responsum* in Ms. Hamburg 45 par. 168: the respondent warns against the risk of excommunicating the delinquent, because if he runs away, he might expose the fellow Jew and his family, or even the whole community to danger.⁹²⁵

(g) In the following two examples, the decision of the rabbi or court is questioned by the excommunicated persons. In his two answers, the respondent, R. J. Colon, comes in support of the rabbi and the court, and confirms their decision, since the cases are unambiguous. The first *responsum* is against the rabbis of Würzburg who want to unlawfully

⁹²⁰ Colon 128.

⁹²¹ Weil 157.

⁹²² R. Hayyim O. Z. 25. See discussion in II.B.1.

⁹²³ Yet, regarding the Jew who has actually committed the murderer (an apostate), it must be announced in each community in the region that he is an evil-doer and is disqualified from giving testimony and swearing an oath. This probably means that he is excommunicated from the communities.

⁹²⁴ Isserlein ThD 276.

⁹²⁵ Ms. Hamb. 45 par. 168. See discussion in II.B.7.

deprive R. Moses of Augsburg of his property, and against whom R. Aaron has proclaimed excommunication. The excommunicated rabbis of Würzburg refuse to accept the sentence of excommunication, but according to R. Colon's explanation, R. Aaron's verdict is valid, because he has rendered it in order to save the property of R. Moses and not for protecting his own honor.⁹²⁶

(h) Two rabbis in Germany, namely R. Meir Zvi and R. Baruch of Oppenheim proclaim excommunication against Elyakim Gizlak for not obeying the instructions given to him to appease his litigant. R. J. Colon first requires him to obey the order, to do penance and to spend thirty days in excommunication (*niddui*) so that he might be exempted. If he does not act accordingly, only in this case the decree of excommunication (*herem*) will be pronounced against him by rabbi R. J. Colon himself as well.⁹²⁷

(i) In 1987, R. Joshua Hutner published four *responsa* from the Cairo Genizah concerning the case of a sage: R. Anshkin, by virtue of his right as rabbi to excommunicate (*niddui hakham*) his partner, David S., for oppressing him by not repaying him a debt of a thousand ducats.⁹²⁸ Despite that he has the money and swears that he will handle it fairly, David S. withholds it by force. The question is whether in this case the rabbi can use his right to excommunicate somebody, regarding that his own interest is at stake and not that of the Torah; secondly because this right, according to some respondents,⁹²⁹ is not applicable now as it was in the time of the sages of the Talmud.

(1) The first is a *responsum* of R. Jacob Margalit ztz"l's: he writes that though R. Anshkin is personally interested in the case, he is allowed to use his right, because David S. has sworn falsely; moreover, he would even be allowed to use it if it were about a rabbinic oath, all the more so since it is an oath from the Torah. Further, he can even use his right without summoning David S. before the court, because everybody knows the truth, and it is certain that David S. can not bring witnesses to the contrary. David S. can even be compelled by the aid of the Gentile authorities to testify to the truth and repay the debt. Besides, it is known that he has also robbed the orphans of R. Liwa Augsburg, for which the orphans had to pay 500 Rhinish guildens. Therefore, R. Margalit decided that David S. must appear under threat of excommunication (*nahash*), before R. Judah Minz and follow his instructions in everything and repair the damage; as far as he himself is concerned, he is ready to exempt David S., but if he does not obey R. Judah Minz's instructions, he will be excommunicated

⁹²⁶ Colon 1. See discussion in II.B.8.3.2.

⁹²⁷ Colon 189.

⁹²⁸ Huttner, "ארבע תשובות בענין תלמיד חכם."

⁹²⁹ R. Weil 146, R. Colon 163.

from all the communities of Israel. At the end of his letter, R. Margalit mentions that if the Gentile authorities do not approve of his (R. Margalit's) decision, as there are countries where they are empowered to interfere in Jewish affairs, then his decision is null and void.

(2) The second *responsum* is signed by R. Eizik Roitling ztz": on the basis of BQ 83a, he states that since it is a monetary case, they can compel David S. to repay the debt by excommunicating him until the end of his life. He agrees in all with the others decisors⁹³⁰ that David S. must appear before R. Judah Minz, otherwise he will be excommunicated. (3) The third *responsum* of R. Zalman ha-Levi Epstein ztz", he also agrees with the other rabbis. (4) The writer of the fourth *responsum* is not known, because the end of the manuscript is missing.

II.C.6.4. Conclusions

In most of the cases, the *niddui* was inflicted as a type of punishment, similar to the monetary fine or flogging, enacted by the court mostly on the basis of "*migdar milta*" or making fence, as the other punishments, and in most cases in the framework of some kind of process of penance. This punishment was used in cases of injury, curse, slander, disobedience to the court, desecration of the Sabbath and festivals, eating or drinking un-kosher food or drink, selling un-kosher food, swearing in vain or other kind of blasphemy etc. They can be found among the twenty four transgressions punishable with *niddui*, which Rambam enumerates in the *Mishneh Torah*⁹³¹; or it was applied for transgressions of local or general enactments of the medieval Ashkenazi communities. Since the punishments (e. g. flogging) or fines were very often newly enacted by local or general assemblies, sometimes the *niddui* for certain offence appears both in the Talmud and in the enactments. On the other hand, the *herem*, if actually decreed, was used against offenders who were not willing to do penance or accept the punishment, and for certain reasons the court, the community or the rabbi were not empowered to punish them against their will. Then the community was allowed to "separate itself" from the offenders. Another reason for the pronouncement of the *herem* ('great excommunication') was the transgression of an enactment proclaimed under threat of excommunication, which harmed the whole community, and among these, denunciation was the most common offence. Threat of greater excommunication containing a stipulation was pronounced against individuals disobedient to Jewish law, summoning or decision of the court, transgressors of bans, informers etc.; those are the three types of meaning of

⁹³⁰ R. Mose Jaz and R. J. Margalit.

⁹³¹ *Hil. Talmud Torah* 6.14.

excommunication in the sources. Besides, in the 15th century the special excommunication pronounced by the rabbi – *niddui Talmid ḥakham* – was a common practice, which must be discussed separately for certain reasons. It was based on the Talmudic principle that the sage has the right to excommunicate – *le-naddot* – for his own honor. This kind of excommunication had also its rules, and a frequently quoted limitation is set in the *Yerushalmi*, that the sage is not allowed to excommunicate “for his own sake”, which by some rabbis of the 15th century was explained as a prohibition from pronouncing the sentence of excommunicate in a case when the sage himself had financial reasons or might profit from the excommunication of the opponent party, and his right was used in this way, viz. If he used his authority abusively in order to achieve his own aim. Moreover, the right of the rabbi to excommunicate was regularly the only means to enforce the law, in cases when the rabbi decreed excommunication in order to make justice, or build fence against criminals, or even to save the whole Jewish community (mostly when Gentiles were involved). On the basis of Talmudic law, if the *niddui Talmid ḥakham* was proclaimed unlawfully, the opponent could say “*adrabe*”, that is “on the contrary”, and then the excommunication would be valid reversely: for the sage who excommunicated unjustly.

II.C.6a. Removal of the Ritual Slaughterer

In the medieval Ashkenazi Jewish communities, the ritual slaughterer who erred more than once, or who did not obey the warning, or caused serious harm by his error, had to be dismissed for certain period of time, generally for one month⁹³²; if he did not mend his way, forever. The status of the removed ritual slaughterer had common features with both the excommunicated person and the penitent who was interdicted from exercising his profession. He, however, could be regarded as a separate category, owing to his status in the community and his special function.

II.C.6a.1. *Hilkhot Teshuvah*

In HTR (=MT) one can find the following ruling for the penitent ritual slaughterer: if he errs, he is flogged and admonished, and if he still does not obey, he is removed, which is to be proclaimed in the synagogue(s) until he does penance recognizable to the public. Considering the ruling, it seems that in the first instance the warning was applied, which

⁹³² Which corresponds to the 30 days of *niddui*. In *Hil. Talmud Torah* 6,14.19–20.

practically meant punishment by flogging. On the other hand, the penance, according to this interpretation, was related to the removal from service, and it was applied if the admonished slaughterer erred the second time or repeatedly. In that case he was flogged again and allowed to return to his profession only by doing penance. This was also the law of repentance for those who prepared cheese and did not care for a trustworthy supervisor.⁹³³

II.C.6a.2. *Responsa*

R. Isaac b. Moses Or Zarua interprets the Talmudic ruling in a different way⁹³⁴, and apparently his interpretation reflects another notion of punishment and penance imposed on the ritual slaughterer and the severity of the punishments:

(I.) If it a piece of fat the size of a barley grain was found after him, the ritual slaughterer had to be removed for one month, which was to be proclaimed in the synagogue; he had to go to the sages of his town, confess his sin to them secretly, receive the penance according to their instructions, and after performing it, it had to be proclaimed publicly that he mended his ways and was allowed to return to his profession.

(II.) If a piece of fat the size of an olive was found after him, the ritual slaughterer had to be flogged publicly in the synagogue, after flogging he had to confess his sin publicly, and the rest was the same seen in the previous paragraph.

(III.) If someone sold un-kosher food to many people, then even if he did penance, he could not return to his profession, unless he went to a place in where he was not known and returned a lost thing or gave an amount of money to charity equivalent to the damage caused.⁹³⁵

This ruling of R. Isaac b. Moses was an authoritative model for generations afterwards. It was often quoted by R. M. Minz, R. Menachem Bacharach, R. J. Weil, R. I. Isserlein, and others. The authoritativeness of the model of penance prescribed by R. Isaac b. Moses for the ritual slaughterer who erred, could also be explained by the fact that it reflected the notion of excommunication, its types and steps, as practiced in the medieval Ashkenazi Jewish communities of the time.

In a letter, Menaḥem Bacharach asks R. M. Minz about a ritual slaughterer who has transgressed a rabbinic prohibition, and quotes R. Solomon Shapiro, who mentions a case concerning a ritual slaughterer in Worms: the man has been removed for six weeks, because

⁹³³ HTR 28.

⁹³⁴ See II.B.11.3.

⁹³⁵ OZI.448.

he has committed an error during the examination of the lungs of an animal, but has been returned to his place after learning the rules of slaughtering from the respondent (R. S. Shapiro) in order not to be compelled to go to another place where he is not known. This has been a greater punishment for the man than being merely removed from service for some weeks. R. M. Minz replies to R. Bacharach that in addition to the two weeks in which the person concerned has already been removed, he must be interdicted from his profession for two more weeks, to be totally one month, which is enough for the transgression of a rabbinic prohibition.⁹³⁶

In one of his *responsa*, R. J. Weil answers regarding the case of a ritual slaughterer who has committed an error during the examination of the lungs of an animal, and therefore has been removed for some time, that the punishment of being removed for a while is quite sufficient for the man, and he may resume his duty. He mentions another case that has happened in Mainz: a ritual slaughterer has been removed for one month and then allowed to resume his duty. Both slaughterers have been supposed to be pious Jews and they have indeed erred unwillingly.⁹³⁷

II.C.6a.3. Conclusions

In certain respects, the removal of the ritual slaughterer for a limited time – regularly for one month –, as well as the utter removal in case of repeated errors, follows the pattern of the excommunication, – lesser and greater, *niddui* and *herem* –, though not explicitly stated in the sources, and the removal of a person from service – temporarily or definitively – is never as grave a punishment as excommunication from all the communities in exile, temporarily or definitively.

II.C.7. Exile, Banishment, Decree to Change the Dwelling Place

In the medieval Ashkenazi communities exile was the penance for murder (this has partly been discussed in II.B.1); it usually lasted one or several years, during which – it seems that so was the custom – the penitents were required to go from place to place, to confess their

⁹³⁶ Minz 25. See II.B.11.3.

⁹³⁷ Weil 97. See II.B.11.3.

sins publicly, and to submit themselves to other public humiliations, and they apparently lived by begging for alms.⁹³⁸

II.C.7.1. *Haside Ashkenaz*

In order to give a sense of the Jewish notion of “exile” in medieval Europe, we shall discuss a story from SHP, which is not connected to penance for murder, but it is about two business-partners – one poor and one rich, who also becomes poor – who are compelled to go into “exile”, that is to say to go from one place to another and beg for alms in the communities⁹³⁹. From this example it is obvious that “to be exiled” meant not only a change of place but a penitent way of life. The principle that exile atones for half of man’s sin stated in case of repentant fornicators is to be understood in this context.⁹⁴⁰

The duration of the exile varied from one to five years, as can be seen in an example in SHP.⁹⁴¹ Besides, exile was not only a comfortless way of life, but also a dangerous one, and if not dangerous, un-kosher life, and for all these reasons Jewish penitents feared to be compelled to live among the Gentiles in places where no Jewish communities existed. According to SHP, one of the penitent murderers chooses to atone for his sin through self-mortification, remaining in his own community instead of going into exile, because he is afraid that among the Gentiles he will not be able to fulfill the commandments.⁹⁴²

The cities of refuge were interpreted not according to their original Biblical and Talmudic meaning, and thus “the saving of the murderer” was rather conceived as concern for the orphans of the murdered person.⁹⁴³ In the prohibition to give refuge to the murderer, one can even see a contradictory ruling as to the notion of the cities of refuge, although it is likely that the main intention of this ruling was to set limits to voluntary murder and not to involuntary murder. However, according to this ruling it was prohibited to hide any kind of murderer who was disobedient to the court’s decision and tried to run away.⁹⁴⁴ The main

⁹³⁸ In his book (*History and Folklore*) on the Scroll of Aḥimaaz (written in Italy in 1054 in Hebrew), Robert Bonfil states that the hero of the main story, Aaron, is exiled from Babylonia to Italy (about 867) to atone for his sin because of subversive behavior (as reported in the Scroll of Aḥimaaz, see Bonfil pp. 62–5). The same story is told in the commentary written by R. Eleazar of Worms on the prayer book (*siddur*, see *Perush* p. 228), but here the exile is only mentioned, because for the author in the 12th century there was no more need to highlight the centrality of Babylon, since it had already been accepted.

⁹³⁹ SHP 1209. About the conditions and way of life of marginal people like lepers, wanderers, madmen in the Middle Ages, see Shoham-Steiner: „An Ultimate Pariah?”; Id.: “The Humble Sage and the Wandering Madman”; “Poverty and disability”.

⁹⁴⁰ SHP 38.

⁹⁴¹ SHP 175. See II.B.1.

⁹⁴² SHP 176.

⁹⁴³ SHP 177. See II.B.1.

⁹⁴⁴ SHP 181.

distinction in the medieval Jewish rules and ideas about exile regarding homicide and the rules that governed the attitude towards murderers, was not between voluntary and involuntary murder, but between confession and the readiness to accept exile as penance and the unwillingness to do that. The repentant went into exile from community to community, while the unrepentant person had no right to be given refuge. The status of the latter was that of the excommunicated person from all the Jewish communities in the world.

HTR imposes three years of exile on the murderer.⁹⁴⁵ According to the sources discussed in connection with murder, SHP and Ms. Oxford 477 the period varies from five years to two.

II.C.7.2. Responsa

In one of his *responsa*, R. Isaac b. Moses Or Zarua discusses the case of a prayer leader: he causes, by circumcision, involuntarily the death of a child, then he goes into exile to a place where he is hired to work, and after fulfilling the penance, he returns home. According to the respondent, the sin of the penitent has been atoned for through exile. Further, R. Isaac b. Moses Or Zarua discusses the definition of exile, (whether staying in one place and not going from place to place can be considered exile), and the question whether it is permissible to be hired in the place of the exile. From the question it seems that in the Middle Ages the notion of exile was somehow connected with the idea of going from place to place and living by begging for alms and on charity, however, neither of these has Biblical or Talmudic precedents. The respondent explains that the penitent in question, has performed his penance even if he has stayed and worked in one place, because this is the Biblical form of the exile.⁹⁴⁶ However, as we have seen and will also see in further examples, the Roqeah and his followers have defined the exile of murderers as going from place to place and begging.

According to NMM, a man who has hit his wife so hard that she has died must go into exile as a murderer for two or three years. To a murderer who is willing to do penance in accordance with the instructions of the rabbi, R. Bruna prescribes exile for one year, which is an attenuation of penance compared to what the Roqeah imposed on murderers – three years of exile.⁹⁴⁷ The penance imposed by R. Meir of Rothenburg on an informer who has caused the death of one of his fellow Jews is the same as prescribed for murderers: one or two years of exile, with iron chains in their neck etc.⁹⁴⁸

⁹⁴⁵ HTR 23. See II.B.1.

⁹⁴⁶ OZ I.112. See II.B.1.

⁹⁴⁷ Bruna 265. See II.B.1.

⁹⁴⁸ Maharam TshM Neziqim 14. See II.B.16.

In the second quarter of the 15th century in Prague, in consequence of a quarrel between rabbis Eliyya and Eliezer of Passau the latter is condemned by R. Perez, by R. Bruna as well as by other prominent rabbis to leave Prague and to go into exile to a remote place. The sources tell only about the prohibition to render decision in Prague.⁹⁴⁹

In one of his *responsa*, Bruna maintains that if someone vowed to go on pilgrimage to the Holy Land and could not fulfill the vow, he or she had to go into exile, to atone for the annulment of the vow.⁹⁵⁰ However, the vow could also be released by charity money. Nevertheless, according to R. I. Bruna, exile was the proper means of “commutation” (that is replacement of the initial penance by a lighter one) if someone could not fulfill the vow to go on pilgrimage.

II.C.8. Pilgrimage

Pilgrimage as penance was a special kind of exile, which had a definite destination: either the city of Jerusalem or other holy places in *Erez Israel*, and very often graves of dead persons in the communities in Europe who had been offended by the penitent.

II.C.8.1. Pilgrimage to the Graves of the Cursed or Offended Person or of Their Parents

Asking for forgiveness – as penance – by kneeling down before the graves of the dead can be found in two Talmudic stories which are precedents for the medieval custom. One story is about R. Jehoshua who harms the members of the school of Shammai, the other is about R. Judah b. Tabbai, the *av bet din* (besides the *nasi* Simon b. Shetah) who puts a collusive witness to death before the accused person is executed, and consequently is declared by Simon b. Shetah guilty for shedding innocent blood; therefore, he is required to go and prostrate on the grave of the innocently murdered person and cry day by day for the rest of his life.⁹⁵¹

Going to the grave of the parents of a fellow Jew – sometimes barefoot – for calling the fellow Jew a “bastard”, was a common way of atonement.⁹⁵² In one of his *responsa*, R. Meir of Rothenburg emphasizes the gravity of the sin of cursing, especially when the hurt one

⁹⁴⁹ Bruna 278, 283. See II.B.8.3.

⁹⁵⁰ Bruna 76. See II.B.10.

⁹⁵¹ bMak. 5b. The parallel place in the bHag. 16b: “All the days of Judah b. Tabbai he threw himself to the grave of that killed person...”

⁹⁵² Maharam Lvov 492.

is from a good, or even illustrious family. The Talmudic way of atonement is quoted by R. Meir b. Baruch.⁹⁵³

The custom of prostrating on the grave of a dead person and confessing has Talmudic precedents, and the interpretation is extended to cases when the grave is far away: then the penitent can send his messenger instead of himself. He who desecrates somebody's grave must go with ten men to the grave and publicly confess and ask the pardon of the dead person in the presence of the ten men. That is also the way of atonement for one who slanders someone else's parents or a dead person.⁹⁵⁴ In the case of a man who dies of beating injuries, R. J. Weil decides that the offender must go to the grave of the victim and beg his pardon.⁹⁵⁵

In a *responsum*, R. Hayyim Paltiel of Magdeburg deals with the custom of vowing to go to the graves of the righteous.⁹⁵⁶ He disapproves of the custom, and accepts it only for the sake of asking forgiveness or of visiting the graves of the Patriarchs – holy places⁹⁵⁷

II.C.8.2. To the Mount of Olives on *Sukkoth*

There are two sources about penitents who in the 11th century, during the Festival of *Sukkot*, went on pilgrimage to the Mount of Olives in order to atone for their sins. The first one concerns a murderer who was tortured, as told in SHP.⁹⁵⁸

Another example of going on pilgrimage to the Mount of Olives in the time when the circular ritual processions on *Hoshanah Rabbah* were still in practice in Jerusalem on the Mount of Olives (before they were abolished 1070), is to be found a gloss of a manuscript about a certain R. Zechariah who went into exile to Jerusalem to atone for his unspecified sins.⁹⁵⁹

II.C.8.3. To *Erez Israel*

As can be seen in the three *responsa* of R. M. Minz, R. Bruna and R. Isserlein, vowing to go on pilgrimage to the Holy Land and going on pilgrimage were frequent in the 15th century. It is also evident – as in the case of all vows in general – that vowing to go on

⁹⁵³ Maharam Prague 132.

⁹⁵⁴ Four decisions of NMM.

⁹⁵⁵ Weil 87.

⁹⁵⁶ Maharam Lvov No. 164.

⁹⁵⁷ Shoham-Steiner: "Jews and Healing", 116, n. 13. See there the quotation from the "Testament of Judah Asheri" from I. Abrahams, *Hebrew Ethical Wills* 2:168

⁹⁵⁸ SHP 630. See App. for translation. Regarding rituals connected to the Mount of Olives see also: Rustow: "Laity versus leadership". About interreligious polemics on sacred places: Reiner, E.: "A Jewish response to the Crusades".

⁹⁵⁹ Ms. Ox. 1102 (Catalogue Neubauer) fol. 112a; Cited by Reiner, E.: *Pilgrimage* (1096–1517), p. 185. See App. for translation and text. Concerning atonement on *Hoshanah Rabbah*, see SHP and *Sefer ha-Manhig* 2:402.

pilgrimage had some connection with the atonement of sins through the fulfillment of the vow, as well as fasting or giving to charity etc., even if it is not explicitly stated.⁹⁶⁰

From the sources it is obvious that in the Middle Ages the fulfillment of the vow to go on pilgrimage to *Erez Israel* or to go to dwell there was difficult. In one of his *responsa*, R. Isserlein emphasizes the dangers and difficulties of dwelling in the Holy Land.⁹⁶¹ In a *responsum*, R. Israel Bruna explains that those who vow to go on pilgrimage to the Holy Land and are compelled to break their journey, it is as though they had entered the Holy Land.⁹⁶²

II.C.9. Legal Disqualification and Loss of Rights

In medieval Ashkenaz, evildoers and lawbreakers were legally disqualified from giving testimony or taking an oath until they repented, confessed, and accepted the penance meted out by the *bet din*, the Rabbi, or community. The offenders were persons who committed assault and battery, cursed, slandered, swore falsely, and transgressed other negative commandments.

II.C.9.1. *Ḥaside Ashkenaz*

According to the penance prescribed by HTR 17, he who hits his fellow Jew is reckoned among the evil-doers and is disqualified from giving testimony and from taking an oath.⁹⁶³ According to another paragraph of HTR, they who transgress an oath are not allowed to swear again for the rest of their lives, except on the fulfillment of the commandments and on their own bodies.⁹⁶⁴

According to a *responsum* of Judah Ḥasid's, he who transgresses a vow should never be allowed to vow or take an oath again, and he is obliged to make known the reason for not being able to take an oath so that in the future people might believe his words without requiring him to take an oath.⁹⁶⁵

He who transgresses one particular commandment repeatedly – for example, eats forbidden food regularly – is considered an apostate for that particular commandment and it is

⁹⁶⁰ Minz 79. See II.B.10. See App. for translation. Yuval: “Jewish Messianic Expectations Towards 1240”.

⁹⁶¹ Isserlein PuK 88. See II.B.10.

⁹⁶² Bruna 76 and 77. See II.B.10. See App. for translation. See n. 900.

⁹⁶³ HTR 17.

⁹⁶⁴ HTR 25.

⁹⁶⁵ RJH.

as though he denies its divine origin. Therefore, he is to be disqualified from taking an oath or giving testimony concerning that particular thing (in cases connected to *kosher* food etc.).⁹⁶⁶

The ritual slaughterer who sold un-kosher food to people or he who did not observe all the regulations in making cheese is legally disqualified from giving testimony and taking an oath.⁹⁶⁷

II.C.9.2. Responsa

(a) (Murder) In the *responsum Or Zarua* I.112, discussing the case of a circumciser who has caused the death of a child involuntarily, R. Isaac b. Moses Or Zarua maintains that everyone who commits homicide – either voluntarily or involuntarily – is automatically disqualified from giving testimony and from taking an oath. This decision is quoted by R. Isaac ben Moses in the name of R. Sherirah Gaon, and is accepted by R. Isaac ben Moses. R. Isaac ben Moses specifies that this statement refers to everyone who commits manslaughter or murder and is not willing to do penance. However, as soon as the offender is ready to do penance – even before doing it –, the penitent regains his or her status.⁹⁶⁸

According to the decision of R. Hayyim b. Isaac Or Zarua concerning an assault and battery case, it must be proclaimed in every community that the offender has murdered the victim, therefore he is disqualified from giving testimony.⁹⁶⁹

In another *responsum*, R. Hayyim b. Isaac arrives at the decision that the suspected murderer can be convicted on the basis of the testimonies that he has threatened the victim before murdering him. As legal source for his decision, R. Hayyim b. Isaac Or Zarua quotes the ruling of Rav Paltoi Gaon in connection with the denunciator who threatens his victim with denunciation, and in case of lack of other evidence, the offender can be convicted. Likewise, argues R. Hayyim, he who threatens another one, is regarded as a murderer, without other testimony, and is legally disqualified, like every evil-doer.⁹⁷⁰

In Ms. Parma 86, in a *responsum* regarding the case of a murder suspect against whom there is no testimony, but who admits that he has cut off the hands of the victim, R. Shabbatai b. Samuel is of the opinion that they can convict him of murder as well. He also supports his opinion by quoting a precedent concerning a denunciator who has confessed that he has denounced somebody and said that he will do it again. That denunciator has been convicted in

⁹⁶⁶ HTR 28.

⁹⁶⁷ Id.

⁹⁶⁸ OZ I.112. See II.B.1.

⁹⁶⁹ R. Hayyim OZ 25. See II.B.1.

⁹⁷⁰ Ms. Parma 86, p. 189. See II.B.1.

the second case without further testimony. In both cases, the offenders are legally disqualified.⁹⁷¹

In a case of a man who has caused the death by beating somebody, R. Weil quotes the *Sefer Mordehai* that the Jew who hits his fellow Jew, must be legally disqualified and is an evil-doer until he repents. It seems that in this case the respondent thinks that the delinquent must first do penance in order to regain his previous status.⁹⁷²

A murderer who rejects repentance is legally disqualified by R. I. Bruna.⁹⁷³ The decision regarding his legal disqualification must be proclaimed in the synagogue.⁹⁷⁴

(b) (Assault and Battery, Injury) In one of his *responsa*, R. Hayyim b. Yehiel clearly states that the person who hits his fellow Jew must repent and do penance which is recognizable to everyone; until then, according to all rabbinic authorities, he is disqualified from testimony.⁹⁷⁵

According to a *responsum* of R. J. Weil's, the injurer is legally disqualified until he performs the penance required. It seems that in this question – namely whether the penitent regains his status immediately after accepting penance or only after doing penance –, the opinions of R. Isaac b. Moses and R. Bruna differ from that of R. Weil: while R. Isaac b. Moses and R. Bruna think that the repentant sinner immediately regains his status by being ready to do penance, the latter thinks that only after doing penance, as R. Hayyim b. Yehiel has prescribed.⁹⁷⁶

According to a *responsum* of R. M. Minz's, Lea claims from Simon a pledge which and wants to disqualify Simon from taking an oath, R. M. Minz explains that Lea can in no way disqualify Simon from taking an oath from the Torah. Instead, R. M. Minz decides that for three known transgressions, two of which are not legally proved and the third is not so grave, Simon must do penance according to the instruction of R. Minz⁹⁷⁷, and then he will regain his previous status and can take the rabbinic oath.⁹⁷⁸

(c) (Cursing) For calling someone a “disqualified person” (“*pasul*” or “*pasul le-‘edut*”), the punishment of forty lashes is imposed, and if the offender refuses to obey, he or she will be excommunicated, which also means legal disqualification.⁹⁷⁹

⁹⁷¹ Ms. Parma 86, p. 190. See II.B.1.

⁹⁷² Weil 87.

⁹⁷³ See the case in II.B.1.

⁹⁷⁴ Bruna 265.

⁹⁷⁵ Maharam Prague 383. This *responsum* was copied by NMM and quoted by R. Weil 28, as precedent.

⁹⁷⁶ Weil 28.

⁹⁷⁷ By public flogging, fasts, public confession and charity money.

⁹⁷⁸ Minz 93. See discussion of the case in II.B.3, II.B.9 and II.B.15.

⁹⁷⁹ NMM, p. 177.

In a *responsum* by R. Avigdor b. Menachem, dealing with the question of cursing, the punishment imposed on him who calls his fellow Jew a “disqualified” person, is excommunication for seven days, which also means legal disqualification. In another *pesaq* of NMM, a reason is given for the punishment imposed for cursing: the principle of “measure for measure”. However, in the same *pesaq*, there is also a warning not to condemn the offender, but rather to interpret his words as carelessness, namely to say that the fellow Jew is “disqualified” not because he is an evil-doer – which would be cursing the fellow Jew – but because he is the relative of a certain person about whom he wants to testify. This reasoning is also quoted in a *responsum* of R. Weil’s.⁹⁸⁰

When a Jew (called R. Bendit b. Judah) said to one of his fellow Jews (R. Jacob), “You are lying as a bastard”, R. Weil advised the inquirer to treat the case leniently, just as other similar cases of cursing, because the offender may have had the intention of saying something else instead of cursing the other one.⁹⁸¹

(d) (Slander) Slander can not be accepted as proof for legally disqualifying the slandered person, as the five examples below prove. (1) A Jew is demanded to beg publicly the pardon of another Jew for trying to defame his mother in order to legally disqualify him, and the offender is prohibited from slandering her and her son again. (2) A slandered or cursed person can not be legally disqualified, giving credit to rumor or gossip, until the slander or curse is proved to be true, even if the slandered person does not belie the words of the accuser immediately. (3) If one slanders in anger, and later regrets it and gives reasons for the action, the words of the offender have no credit. If the slanderer does not regret the words, must be legally disqualified for wanting to harm the other. (4) Slander about somebody that he or she has given false testimony which is proved to be false, can not be given credit and can not be ground for legally disqualifying the slandered person. It is prohibited to accuse the falsely slandered person of perjury.⁹⁸²

The same decision is to be found in a *responsum* of R. M. Minz’s: a person shall not be disqualified on the basis of slander, as in the case of a woman, Mrs. Raina, who has been slandered that she has lied under oath regarding her property as to tax-paying, and the slander has been proved by the respondent unfounded and without basis. Consequently, the slanderers are prohibited to spread rumors about the woman again.⁹⁸³

⁹⁸⁰ See further, below; Maharam Lvov 491.

⁹⁸¹ Weil 59, 60, 61.

⁹⁸² In four decisions of NMM.

⁹⁸³ Minz 75. II.B.6.

(e) (Arson) According to Ms. Hamb. 45, one is suspected of falsely accusing a fellow Jew of arson before the Gentile court. In this case it is ruled that the suspected person can not swear that he has not accused the other one so that he might be exempted according to Jewish law; he is also disqualified from giving testimony, because otherwise everybody can make a false statement and later deny it under oath.⁹⁸⁴

(f) (Contempt of Court) R. Weil decides about R. Simelin who has refused to obey the decision of the court in connection with tax-paying that until he fulfills the penance, he is legally disqualified from giving testimony and from taking an oath. If the community needs to collect money, it will be done on the basis of the estimation and oath of the community leaders and not on the basis of Simelin's oath. If he disobeys the court order, he shall be excommunicated.⁹⁸⁵

(g) (Perjury) In the *TSh*, in a paragraph about declaring property regarding tax-paying, one can find that if someone swears falsely, and the community knows that the tax-payer has more than they have declared, they shall be disqualified from oath.⁹⁸⁶

In München, a prominent community member has sworn falsely before the tax-collectors concerning his property and has been willing to do penance. R. Weil has decided that he is not to be disqualified from giving testimony, since the tax-collectors have all been involved in the case.⁹⁸⁷

A different decision is to be found in a *responsum* of R. Isserlein's about one who has sworn falsely: a member of the community council who has lied under oath with respect to his property is not allowed to sit in the council until he does the penance. The agreement made among council members regarding mutual support does not prohibit them from interdicting the perjurer to sit in the council.⁹⁸⁸

In a *responsum* to the community of Prague with regard to a quarrel between the Rav Eliyyahu and R. Eliezer of Passau, R. Perez writes that Rav Eliyyahu has demanded the caretakers of the community under threat of ban (excommunication) to testify in his favor, but they have refused to obey and have obeyed the demand of Rav Eliyyahu's opponent, R. Eliezer of Passau, not to testify. Therefore R. Perez warns the caretakers to obey the ban of R. Eliyyahu, and do penance, especially as the caretakers have been found liars in their testimonies beforehand. If they are not willing to do penance, they will also be punished for

⁹⁸⁴ Ms. Hamb. 45 p. 168.

⁹⁸⁵ Weil 147, 178. See II.B.8.4.1.

⁹⁸⁶ *TSh* 1196, 1220, p. 158b.

⁹⁸⁷ Weil 123. See II.B.9.

⁹⁸⁸ Isserlein PuK 214.

their former sin (false testimony). Apparently, the false oath (which the false testimony involves) has required penance, and if they are ready to do penance for false testimony, they have regained their previous status. But without penance, they have been punished.⁹⁸⁹

According to R. Isserlein, a child can not be punished on the basis of the law for giving false testimony, but he can do penance when he has grown up, by *mishqal teshuvah*. Here also the penance is the reparation, and it seems that the transgressor is not legally disqualified, since he is not punishable on the basis of the law.⁹⁹⁰ According to a decision of Ra'avan in a *responsum*, someone has been driven out of the synagogue for having gambled, which is a graver dishonor than proclaiming his offence in the synagogue; and he is also disqualified from testimony.⁹⁹¹

(h) (Denunciator) According to a decision of R. Meir of Rothenburg, the denunciator is disqualified from giving testimony or taking an oath until he performs the penance prescribed for murderers⁹⁹² According to NMM, the denunciators is legally disqualified from giving testimony, and is not allowed to take an oath according to the Torah until he pays the damage caused and does penance through fasting and floggings.⁹⁹³

In one of his *responsa*, R. Colon decides in accordance with the words of the Rambam, namely that the informer is due to pay and is disqualified from giving testimony, as an evil-doer, but is not liable to be flogged.⁹⁹⁴

(i) (Apostate) An apostate who has repented falsely, is disqualified from giving testimony, even as witness [of the death of a husband] for the release of his wife [that is, in the case of an *agunah*].⁹⁹⁵

In the case of an *agunah*⁹⁹⁶, the testimony of an apostate named Michael Schrantz who has repented but not truly, is discussed at length by three prominent rabbis of the time, after the court and R. Eliyyah of Prague has sent an inquiry about it to R. I. Isserlein. R. Isserlein answers that the testimony of the apostate can be regarded as the “speaking innocently” of a

⁹⁸⁹ Bruna 284.

⁹⁹⁰ Isserlein PuK 62.

⁹⁹¹ Ra'avan ed. Prague p. 112a.

⁹⁹² Maharam Prague 485. לעדות ולשבועה ודאי פסול לעולם עד שישלם כל מה שהפסיד ויעשה תשובה בתענית [...] ובמלקיות כמ"ש הרוקח [...]

⁹⁹³ NMM.

⁹⁹⁴ Colon 126.

⁹⁹⁵ In the case of an *agunah*, Maharam TshM Nash 10.

⁹⁹⁶ A woman whose husband has disappeared and who wants to get married again must bring witnesses to testify that her husband is dead. In such cases – unlike in all other judicial cases in which only the testimony of two adult Jewish men can be taken as evidence – the testimony of women and the remarks of Gentiles in course of “speaking in all innocence” can be taken as evidence (mYeb 16.5–7, bBQ 114b). However, neither the testimony nor “the speaking innocently” of an apostate who has repented, but not sincerely, is accepted, since he is not supposed to speak innocently, nor is he accepted as *kosher* Jew for testimony.

Gentile, but R. Weil in his answer to R. Eliyyah explains that the apostate in question is not trustworthy regarding his “speaking innocently” like a Gentile who “speaks innocently”. He also sends a copy of his answer and a copy of the letter of R. Isserlein to R. Bruna. R. Bruna agrees with R. Weil, he answers to R. Isserlein and prohibits the woman from marrying. R. Isserlein answers to R. Bruna that he disagrees with him (and with R. Weil as well), but he renders not a decision; he writes instead answers that if the woman finds a court that is ready to allow her to get married, he will agree. Finally, in a *responsum* dealing with the case, one can read that the woman has been allowed to get married and that she has got married near Marburg.⁹⁹⁷

According to a decision of R. J Weil in a *responsum*, the apostate can not divorce his wife through a messenger, since he must take an oath not to abolish the *get*, and he is disqualified from taking an oath. With this decision R. Weil’s teacher, R. J. Mollin has also agreed.⁹⁹⁸

II.C.10. Loss of Honor, Titles, Service, and Functions

For important representatives of the community who have transgressed a ban or harmed to the community, or for Rabbis who have been prohibited from teaching or exercising their rights in the community as leaders or judges, loss of honors and titles is the means of humiliation.

II.C.10.1. Loss of the Function of a Prayer Leader

In one of his *responsa* concerning the case of a prayer leader who has involuntarily killed a child by circumcision, R. Isaac b. Moses arrives at the decision that the man in question should be allowed to return to his position as a prayer leader, because he has already been exiled and done penance. He argues that one who commits murder involuntarily and does penance is a perfectly righteous man, and the case must be judged in such a way that if a *kohen* were in the same situation fit to perform the sacrifice in the Temple, than the prayer leader is also suited to fulfill his religious duties.⁹⁹⁹

⁹⁹⁷ The case is in the PuK 218–221; Bruna 28–29, 32; Weil 164.

⁹⁹⁸ Weil DvH 17.

⁹⁹⁹ OZ I.112. See II.B.1.3.1.

A man who has hit his wife so hard that she has died must do penance by going into exile, and he is prohibited from being a prayer leader, but he is allowed to slaughter for the community both during exile and after it.¹⁰⁰⁰

A prayer leader has lost his right to exercise his profession for being accused of fornication. Though the accusation has been proved to be false, the accuser has not had to pay for the damage caused, and the prayer leader has not been allowed to continue his profession, since the community has already hired another prayer leader.¹⁰⁰¹

II.C.10.2. Loss of the Position of a Member of the Community Council

For a number of offences, such as contempt of court, transgression of a community ban, cursing the rabbi of the community of Ulm, as well as the judges, betraying the community members to the Gentiles, R. J. Weil decides about R. Simelin that he can no longer be considered a *haver* (rabbi, Talmudic sage), and he has no right to sit in the communities' council, and to sign enactments, his name shall also be erased from the enactments.¹⁰⁰²

R. Isserlein decides about a man who has sworn falsely concerning his property in tax matters that he can not sit in the community council, unless he repents and does penance. His argument is that he can not decide about the needs of the community before performing the penance.¹⁰⁰³

II.C.10.3. Loss of the Title of Rabbi

In the *responsa* discussed, there are two cases in which the rabbis are prohibited from exercising their rabbinic tasks¹⁰⁰⁴: that of R. Eliezer of Passau who has been instructed by R. Perez and R. Bruna to leave Prague and “not to transgress the borders”¹⁰⁰⁵ of R. Eliyyah of Prague; and the case of R. Capsali who has been forbidden by R. J. Colon to render decisions in Constantinople and in all other places.

There are cases in which the rabbi who has been earlier in a community protests against the settlement of a new rabb and his protest is not accepted by other prominent rabbis: e.g. (1) the case of R. Bruna in Regensburg, who has been supported by all other rabbis to

¹⁰⁰⁰ See II.B.1.3.5.

¹⁰⁰¹ Isserlein ThD 307. See II.B.6.3.

¹⁰⁰² Weil 147. See II.B.8.4.1.

¹⁰⁰³ Isserlein PuK 214. See II.B.9.4.1.

¹⁰⁰⁴ To render decisions in ritual, marital matters and decide other cases.

¹⁰⁰⁵ Not to interfere in matters of the other rabbi, because there was an agreement between the two regarding their tasks and because R. Eliezer has rendered erroneous decisions.

continue to exercise his rabbinic authority besides R. Anshil; (2) the case of R. Seligman Oppenheim, who has been supposed to settle in Oppenheim where there has already been a rabbi, R. David Oppenheim.¹⁰⁰⁶ In these two cases it has been maintained that the rabbi can not be prohibited from settling in any place, and that he must be supported. Why have R. Elyyah and R. Capsali been forbidden to exercise their rabbinic function?

The answer of R. J. Colon against R. Capsali is unambiguous: on the basis of halakhic sources, he proves that R. Capsali has rendered erroneous decisions at least in four cases. It is true that the accusation against R. M. Capsali has been proved false subsequently, and R. Colon, at the end of his life, asked his son to go to Constantinople and ask for forgiveness in his name from R. Capsali who forgave him wholeheartedly. But in this stage of the quarrel, R. Colon prohibits R. Capsali from exercising his rabbinic authority, and requires him to withdraw his erroneous decisions and to do penance.¹⁰⁰⁷

In the other case, the quarrel between R. Eliyyah of Prague and R. Eliezer of Passau, there has been an agreement that the latter “will not transgress the borders which belong to the rabbinate of R. Eliyyahu”, and will not have a *yeshivah* of his own, but will teach in the *yeshivah* of R. Eliyyahu. In other cases there has not been such an agreement. Probably, the “transgression of the borders” in the case of R. Eliyyahu and R. Eliezer has entailed also monetary loss for the former, as well as harm to his honor. Further, the question of the “borders” has been an agreement which has now been broken by R. Eliezer. Further, R. Eliezer not only has attempted to gain honor and money for himself by “transgressing the borders”, but has also been less learned and prominent than R. Eliyyahu. This is also clear from the fact that R. Eliezer has rendered erroneous decisions several times, therefore he has also been warned by R. Perez to withdraw his false decisions. Regarding that he has indeed transgressed the “borders of the other rabbi” and by this the agreement, he has been forbidden to remain in Prague and has been banished to a faraway place, where he has not have the possibility to transgress the borders of the Rav in Prague again.¹⁰⁰⁸

¹⁰⁰⁶ See discussion of all these cases in II.B.8.4.3.

¹⁰⁰⁷ See II.B.8.4.3.(6).

¹⁰⁰⁸ See II.B.8.4.3.(1). Bruna 278, 282, 283. For the removal of the ritual slaughterer, see II.C.6a.

II.C.11. Public Disgrace, Forms of Humiliation, Shame Sanctions

II.C.11.1 SHP

II.C.11.1.1. Shame in SHP

The atoning power of public disgrace and humiliation of the penitent sinner has a particular “ideological” background in the teaching of *ḥaside Ashkenaz* about shame. Knowing this, one can understand why the *ḥasids* were so diligent in avoiding a sin which entails public humiliation, and why their leaders prescribed public humiliation as atonement for great sins.¹⁰⁰⁹

In SHP, in the exemplum added to this teaching of *ḥaside Ashkenaz*, shame is exaggerated with the purpose of appearing to be a greater affliction and more unbearable than physical torments.¹⁰¹⁰

In the teaching of *ḥaside Ashkenaz*, the “instinct of shame” is “ontologically” connected with that of honor [*yezer kevod va-boshet*], and both have been given to the man by eating from the tree of the knowledge of good and evil.¹⁰¹¹

In another paragraph, it is explained that if somebody avoids committing sin because of shame, it is not his or her merit, but it is due to the particular character of the human soul.¹⁰¹²

II.C.11.1.2. Walking Barefoot

In SHP, one can also find gestures of self-humiliation in the time and geographical area of the *ḥasids*, outside the framework of penance, but very similar to it, as in the story about R. Jacob b. Yakar, who was asked why used he to go barefoot to the royal receptions. His answer was that this was his way appearing before kings and rulers, because he is poor, thus went with what he owned – with supplications, and they [the rich ones] with theirs – with their money. It is also related that the *ḥasids* followed his custom.¹⁰¹³

II.C.11.1.3. Wearing Sack-Clothes

¹⁰⁰⁹ See J. Dan, *R. Judah Ḥasid, “Torat ha-teshuvah”*, about the significance of shame in the atoning power of the *teshuva*. Besides physical tortures, shame is of major importance in the process of penance. And there he quotes paragraphs 39–41 and 43 about the concept of R. Judah Ḥasid, namely that shame sheds the blood of man.

¹⁰¹⁰ SHP 1010. See App.

¹⁰¹¹ SHP 1009. See App.

¹⁰¹² SHP 1008. See App.

¹⁰¹³ SHP 991. See App.

SHP decides about wearing sackcloth that it is a requirement for the penitent, unlike all Israel on Yom Kippur, when they wear white dresses.¹⁰¹⁴

Apparently, wearing sackcloth by the penitent is a general and customary requirement in medieval Ashkenaz. All the other regulations prescribed for mourners – like the rending of the garments – regulations for a fast day – as described in the tractate Ta‘anit – are imposed on the penitent. But not on Yom Kippur, because then all Israel must wear white shirt (*kittel*, like the dead), and the Jews on Yom Kippur are not allowed to rend their garments, for they must be pure before God.

The difference between the attitude of the community on Yom Kippur and that of the penitent on weekdays has a special significance. In the medieval times in Ashkenaz, a public proclamation in the synagogue on the eve of Yom Kippur is introduced for the evil-doer (that is, for those excommunicated either for crime or for transgressing a community ban¹⁰¹⁵) stating that he is allowed to pray together with the community on Yom Kippur. The difference between the fasting and penance of the ordinary Jew and the way of behaving of the penitent, who has committed grave offences, and is therefore allowed to pray together with the others only on this day, is emphasized by the clothes. The penitent sinners may fast and walk barefoot similar to the other members of the community, but the meaning of their atonement is different. As some commentators of this custom emphasize, by allowing them to pray together with the community on the Day of Atonement their excommunication is not lifted: they are neither exempted from punishment nor their sin is pardoned.¹⁰¹⁶ They must complete their penance fully so that their excommunication should be lifted. The exceptional allowance on the Day of Atonement is due to the high significance of Yom Kippur, when they can pray and fast for their sins as everyone else in the community.

In CShQ by R. Moshe b. Eleazar, one can find a section about Judah Ḥasid showing that he has been in the habit of wearing sackcloth, which is the sign of repentance and self-humiliation.¹⁰¹⁷ This section contains an important piece of information about the practice of R. Judah Ḥasid and also of the other grandfather of the author, whose name is omitted. In this context the wearing of the sackcloth symbolizes the stays of the penitent, and not the purity before God.

II.C.11.1.4. Wearing White Shirt (*Commentary on Shi‘ur Qomah*)

¹⁰¹⁴ SHP 65. See App.

¹⁰¹⁵ See II.E.3.2.

¹⁰¹⁶ See II.E.3.2.

¹⁰¹⁷ CShQ. See “Dress etc.”

The book *Commentary on Shi'ur Qomah* contains the description of God and His Names. The preparations for the study therefore resemble the process of penance: one must wear sackcloth during the preparation. But learning from it must be performed in a state of ritual purity. This is highlighted by wearing white shirt. This latter ritual resembles the ritual of the Day of Atonement.¹⁰¹⁸

II.C.11.1.5. Customs in *Sefer Minhag Tov* for Humiliation in Dress, Barefoot, Kneeling

In this composition one is advised to wear a dress which tortures his or her body, and is also required to always wear a garment which expresses humility. This is the permanent condition – symbolically – of the penitent or of the exiled person, explained with the Italian word “*umiliato*’.¹⁰¹⁹

II.C.11.2. *Responsa*

II.C.11.2.1. The Humiliation of the Murderer

The public humiliation and shaming of murderers during the years of their exile is very pronounced in the Ashkenazi Jewish communities, their outcast status being expressed through outward appearance, dress and gestures in the midst of the community, in the synagogue and outside of it. Part of these components can be traced back to Talmudic sources, for example the humiliation of the excommunicated person by the signs of the mourner – the prohibition of wearing shoes, shaving off the hair, washing himself, greeting others.¹⁰²⁰ Another Talmudic source for the appearance of the penitent murderer is the black cloth of the ritual slaughterer who sells un-kosher food and is exiled, in the third chapter of the tractate Sanhedrin.¹⁰²¹ And the outward appearance of the disqualified priest may also have had some influence on the law regarding the penitent murderer¹⁰²².

Other signs are probably medieval developments, for example the tying of the hand or hands around the neck, as a sign of his particular sin, the hands being the “instruments” of killing; tying chains on the body, and praying in chains; prostrating on the threshold of the synagogue so that people shall pass over him, as one can find it in HTR 23.

¹⁰¹⁸ CShQ. See “And one shall be careful etc.”.

¹⁰¹⁹ See App.

¹⁰²⁰ MK 15a–b, and so in the Taan. 13a–b, 14a–b.

¹⁰²¹ Sanh. 25a.

¹⁰²² Cf. parallel *sugyah* in the *Middoth* ch. 5. “‘The Chamber of Hewn Stone’ – there used the Great Sanhedrin of Israel to sit and judge the priesthood; and if in any priest a blemish was found, he clothed himself in black and departed and went his way; and he in whom no blemish was found clothed himself in white and veiled himself in white and went in and ministered with his brethren the priests.[...]” (Translation from I. Epstein, ed. London, Soncino, 1935–48).

In one of R. Isaac b. Moses Or Zarua's *responsa* (OZ. I.112), in which he answers to the inquiry of R. Jacob b. Isaac concerning the case of a circumciser who has committed murder involuntarily there is another midrashic source, from the *Pesiqta Rabbati*, for the outward signs of the medieval penitent murderer. The midrash mentions that the biblical Ahab, during his penance (for robbing and killing Naboth), wore sackcloth, walked barefoot and fasted. This is indicated by the author of the *responsum* as the source for his decision about the penitent murderer in question, the circumciser.¹⁰²³ In one of NMM's decisions, the source for the outlook of the exiled penitent murderer is HTR 23 – the paragraph in the penitential by R. Eleazar of Worms referring to the penance prescribed for murderers.¹⁰²⁴ The same paragraph is also the source for the outlook of the exiled murderer in the order of penance meted out to a murderer who is willing to do penance according to a *responsum* of R. Bruna's. In this latter *responsum*, there is also a clear reference to Sanh. 25a: the outlook of the exiled slaughterer who has erred.¹⁰²⁵

II.C.11.2.2. The Humiliation of the Adulterer and Adulteress

Regarding the adulterer, the source in the Talmud for wearing black clothes and going to an unknown place is to be found in the Qid. 49a and MQ 17a¹⁰²⁶. Thus, one can read in HTR 7 and 10 the following ruling prescribed for a man in case of fornication and adultery:

“[Unmarried] TK: [...] and shall wear black clothes [...]”¹⁰²⁷
 [Engaged woman] [...] And he shall not embellish himself with anything, [...] and live the life of pains, and sackcloth on his body [...]”¹⁰²⁸

As to the ruling regarding the outward appearance of the adulteress, the source is the Soṭa 7a–b. For sitting apart from the rest of the women or sitting opposite them, the Talmudic ruling prescribed for the behavior of the mourner might be a possible source (in the tractate Mo'ed Qatan 17a–b), as well as the ruling prescribed for the conduct of the excommunicated

¹⁰²³ OZ I.112.

¹⁰²⁴ See about this and the next example in II.B.1.

¹⁰²⁵ Bruna 265–66.

¹⁰²⁶ bMQ 17b: a Talmudic scholar was excommunicated and died in excommunication. When he was brought to 'The Grotto of the Pious', was not admitted, but when he was brought to 'The Grotto of the Judges' he was received, because he acted according to the dictum of R. Ilai, that if a man sees that his evil inclination is gaining sway over him, let him go away where he is not known, let him put on sordid clothes, don a sordid wrap and do the sordid deed that his heart desires rather than profane the name of Heaven openly. At the “black clothes” required of Epstein in his notes to the edition of the Bbaulonian Talmud to bMQ 17a mentions that probably the *sugyah* makes reference to the Roman custom for a discredited official to be sordidatus. Earlier references: mMid. 5.4; 37b. See bHag. 16a and bShab. 114a.

¹⁰²⁷ HTR 7.

¹⁰²⁸ HTR 10.

person (in the tractate *Middot*).¹⁰²⁹ In the “orders of penance” (*sidre teshuvah*) found in one of R. Bruna’s *responsa* (No. 226) and in one of R. Weil’s *responsa* (No. 12), the description of the outward appearance of the penitent adulteress is taken from the tractate *Soṭa*.

II.C.11.2.3. Humiliation For Cursing and Slander

The Talmudic sources for the custom of prostrating on the grave of the cursed person as a sign of asking for forgiveness are the Hagigah 22b and the Makkot 5b.¹⁰³⁰ In HTR, one can only find the indication that the insulter shall not answer his defamer.¹⁰³¹ In the decision in the name of Ra’avan, there is already the order that he who curses his fellow and calls him a “bastard” must go barefoot to the grave of his parents and beg their pardon:

“He who calls his fellow a “bastard” [...] shall go barefoot to the grave of his parents and beg their pardon [...] Ra’avan.”¹⁰³²

In NMM, for the same curse – “bastard” – in German language the order is to prostrate on the graves of the parents of the cursed person, but if the graves are far away, then one can send his or her messenger instead of himself. For cursing a woman, in the Mordeḥai there can be found the order to sit barefoot in front of the synagogue.¹⁰³³ For cursing the repentant apostate, a woman must go to the grave of the dead person and ask his pardon publicly before ten men.¹⁰³⁴

II.C.11.2.4. The Humiliation of the Disqualified Rabbi – Taking off the “Headdress and the Crown”

In two places, two sages, R. Weil and R. Colon are asked to judge two prominent community leaders, one a sage and community spokesman (the *ḥaver* Simelin of Ulm), the other a rabbi (R. Moses Capsali of Constantinople), and to decide their fate and way of penance. R. Weil and R. Capsali deliver the decision that they are prohibited from sitting in the community council and signing enactments etc., even from being called sages, as well as from deciding cases and from being leaders of the community, until they repent and do penance for the sin of disobedience to the decision of the court and of making erroneous decisions. And even afterwards their status will be doubtful in the community. The outer sign

¹⁰²⁹ mMiddoth ch. 2.

¹⁰³⁰ See above. See also Taanit 16a, Taanit 23b, Sotah 34b.

¹⁰³¹ HTR 16.

¹⁰³² Maharam Lvov 492.

¹⁰³³ Mordeḥai Qid. 558.

¹⁰³⁴ NMM. For translation, see App.II.C.11.

of degradation is in both cases the taking off of the headdress (or *mitre*, turban) and the removal of the crown, which is a quotation from Ezekiel's prophecy against the king of Judah, and is cited in the *Gittin 7a* and explained with reference to the headdress of the high priest and the crown worn by ordinary men in those times when the *mitre* was on the head of the high priest. In the 15th century, these material attributes were the signs of the sage and rabbi of the community.¹⁰³⁵

II.C.11.2.5. Humiliation for Gambling

Proclaiming publicly that somebody is disqualified from giving testimony, or that a Jew is excommunicated, or that a ritual slaughterer is removed from his service, is not only an act of "building fence" around the community, but also a public disgrace. One has been chased out of the synagogue for playing dice; by which the public humiliation of the offender is emphasized rather than the purpose of guarding the other members:

"If someone has been chased out of the synagogue for gambling, there can be no greater public humiliation than that; and he or she is disqualified from giving testimony."¹⁰³⁶

II.C.11.2.6. The Humiliation of the Apostate

In the penitential tracts written by or attributed to R. Eleazar of Worms, in the paragraphs concerning the penances prescribed for the apostate, one can encounter the same rulings regarding his or her appearance and way of behavior as for the murderer, except for the things developed during the Middle Ages; and thus the sources are those from the tractate *Mo'ed Qatan 17a–b* in the Babylonian Talmud for the mourner and excommunicated person, and those from the tractate in the *Sanhedrin 25a* for the exiled ritual slaughterer. In HTR and in DT we find it thus.¹⁰³⁷

In the "order of penance" (*sefer teshuvah*) prescribed by the author of a *responsum* in Ms. Ox. 784 with respect to two repentant apostates, a Jew and his wife, one can find the same rulings as in the penitentials written by R. Eleazar of Worms. In the *Leqet Yosher* II.49, the ruling is that the repentant apostate shall not answer his or her defamer, but bear the shame with meekness and humbleness. This is also in accordance with the ruling of the penitentials of R. Eleazar prescribed for repentant apostates. That is also the ruling in the other *responsum* in Ms. Ox. 784 about a repentant apostate, R. Isaac b. Samuel, called Zanvil,.

¹⁰³⁵ Weil 147 and Colon 83.

¹⁰³⁶ Ra'avan ed. Prague p. 112a.

¹⁰³⁷ HTR 24 and DT, see Appendix for translation.

II.C.12. Other Prohibitions and Interdictions

II.C.12.1. *Ḥaside Ashkenaz*

Other interdictions, besides corporal afflictions and various kinds of corporal abstinences, are in SHP and HT, as general instructions for penitents. The most common prohibition is that of rejoicing, and in cases of grave sins even the prohibition of speaking. Another one is the prohibition of washing: washing of the clothes, and also cutting the hair or shaving off the beard.

Seclusion and withdrawal from the world is prescribed in the *Commentary on Shi'ur Qomah* as preparation for dealing with the book:

“[...] abstinence: one must withdraw himself from the world – which means that from the ways of this world – and one shall reject the vanities of this world...”

In the *Sefer Minhag Tov*, washing, shaving, going out, and speaking are forbidden during the *teshuvah* and during mourning.¹⁰³⁸

II.C.12.2. *Responsa*

The most common interdiction for those who have committed a grave sin is the prohibition of rejoicing, as can be seen in HTR.¹⁰³⁹ The respondent of the *responsum* in Ms. Ox. 784 decides that the repentant apostate may not sit together with the mockers of the generation.¹⁰⁴⁰ According to SHP the penitent fornicator is bound to refrain himself from rejoicing.¹⁰⁴¹

In HTR, usually the *gader*-penance for fornication and adultery contains the prohibition of rejoicing, but also in the *katuv*-penance there are similar prohibitions. In some of the manuscripts of MH, there is a gloss that it is prohibited for women to dance together with men.¹⁰⁴² In one of his *responsa*, R. Weil forbids the repentant adulteress to speak or even see a man, or his clothes.¹⁰⁴³

¹⁰³⁸ See App.

¹⁰³⁹ HTR 38.

¹⁰⁴⁰ Ms. Ox. 784 fols. 25a–26b.

¹⁰⁴¹ SHP 38.

¹⁰⁴² E. g. Ms. Mil. X111.

¹⁰⁴³ Weil 12.

In one of his *responsa*, R. Bruna prohibits a murderer from going to a tavern and from having that particular alcoholic drink which he was having when he committed the murder, because the “evil thing” (murder without premeditation) happened to him at one of those places, owing to drinking:

“[...] he shall not get drunk, and he shall be careful not to drink that particular beverage from which he got drunk when the evil thing happened him. [...] And he shall not attend pubs, because the evil happened to him there, and he shall not play any games, because that is why the murder happened. [...]”¹⁰⁴⁴

Abstinence from washing is a life of self-denial, and the prohibition from washing is an important component of the penance for especially grave sins, such as murder¹⁰⁴⁵, adultery¹⁰⁴⁶ and apostasy¹⁰⁴⁷. Prohibition from shaving the hair and beard, from washing the head and clothes except before festivals, from sleeping in a bed with quilt and pillow belong also to the penances for these three grave sins.

Besides these prohibitions prescribed for grave sins, there are case-specific prohibitions – that is, they refer to the specific sin of the penitent offender or the specific circumstances under which the offense has been committed. For example, for beating raising the hand is prohibited¹⁰⁴⁸; for perjurers swearing is prohibited¹⁰⁴⁹; for those who sell un-kosher food selling meat is prohibited until they repent¹⁰⁵⁰; for those who have desecrated the Sabbath the staying among the Gentiles on the Sabbath is prohibited in a manuscript of HTR, as a “making of fence” around the law, since among the Gentiles the danger of desecrating the Sabbath is greater.¹⁰⁵¹

In the versions of HTR and HTRB, the penitentials written by R. Eleazar of Worms, it is prohibited for the repentant apostate to go to the houses of monks and Christian priests, to sit in a place where people speak about Christianity¹⁰⁵². In the *Leqet Yosher* the ruling is again that the repentant apostate shall not sit together with priests or monks and debate with them.¹⁰⁵³ In Ms. Ox. 784 the respondent, David b. Moses only prescribes for R. Isaac b. Samuel Zanvil not to sit together with the “mockers of the generation”.¹⁰⁵⁴ The expression

¹⁰⁴⁴ Bruna 266.

¹⁰⁴⁵ Bruna 266.

¹⁰⁴⁶ Weil 12.

¹⁰⁴⁷ Ms. Ox. 784 25b–26a.

¹⁰⁴⁸ Minz 93.

¹⁰⁴⁹ Weil 123 and Minz 93.

¹⁰⁵⁰ Ms. Parma 2999 fol. 58a.

¹⁰⁵¹ Ms. Parma 2999.

¹⁰⁵² HTR, HTRB, MH, DT and IT, with some variations: “ולא ישב אצל גלחים וכומרים או במקום שמדברים מטומאת ע”ז ויתרחק מצל ע”ז התועבות ולא יהנה מאשר להם וירחיק מפתח ביתם ומחצר התועבה”

¹⁰⁵³ LekYoshII.49.

¹⁰⁵⁴ Ms. Ox. 784 25b–26a. “ולא ישב במקום ליצני הדור המדברים דברי נבלה וחירופים לעג ולצון”

“mockers of the generation” can refer to all kinds of light-headed rejoicings, but it can mean a prohibition from rejoicing as the Gentiles do. The background of this latter possibility is reflected in a more general prohibition – not only for repentant apostates but for every Jew – from rejoicing as the Gentiles do in one of R. Weil’s decisions.¹⁰⁵⁵

II.C.13. Prayer, Begging Pardon Publicly, Crying, Daily Private Confession

In medieval Ashkenaz, besides the obligatory confession of sin, additional prayers were prescribed for the penitent in order to increase the willingness to repent.¹⁰⁵⁶

II.C.13.1. *Ḥaside Ashkenaz* – Texts and laws

Texts of the penitent’s prayer and confession vary in the different manuscripts. In SHP 41–42 and HTR 21 two versions of the same rhymed prayer are included. It is impossible to determine which the original version is, or which the first one is, and who has written it. It is possible that Judah Ḥasid (or even Samuel Ḥasid) has written it, and R. Eleazar of Worms has adapted it, or that R. Eleazar of Worms has written it, and it has been added to the text of SHP on the basis of HTR.¹⁰⁵⁷

MH Ms. Parma 2600 contains another confession to be said by the penitent.¹⁰⁵⁸

The “liturgy” of private penance in Ms. Vatican Ebr. 356¹⁰⁵⁹ – a collection of private prayers – contains texts of penitential prayers and confessions for penitents after the abbreviated HTRB version (abridgement of *Hilkhot Teshuvah*).¹⁰⁶⁰ At the beginning of this liturgical sequence there is a formula which must be said by the penitent the day before the fast, in the time of the *Minḥa* prayer: words of dedication and supplication.¹⁰⁶¹

¹⁰⁵⁵ Weil 7. Concerning prohibition of teaching for the rabbi and from slaughtering for the ritual slaughterer – see above.

¹⁰⁵⁶ According to the Talmud the simple statement “Truly, we have sinned” (Yoma 87b) is sufficient. The earliest confession formula is from the 3d century (Lev. R. 3,3), famous is the *viddui* of R. Hamnuna (Yoma 87b). About the development of confession and penitential prayer: Hogewood, “The speech act”; Deutsch, “The Sirac 51 acrostic”; Falk, “4Q393: a communal confession”; Id., “Biblical adaptation”; Krasovec, “Sources of confession of sin”; Boyarin, “Penitential Liturgy in 4 Ezra”; Boda, M. J., “Confession as theological expression”; Marmorstein, “The confession of sins”; Goldberg, “La confession juive” ; Ehrman, “Confession of sin”; Hollender, „Reaktionen“. יידיש פייטן. יונה. דוד, יונה. יידיש פייטן.

¹⁰⁵⁷ According to Marcus (*Piety*,), the par. 37 about the four ways of *teshuvah* is, for example, a later addition to SHP on the basis of HTR.

¹⁰⁵⁸ MH Ms. Parma 2600. See App. for text and translation.

¹⁰⁵⁹ 74a–81b. This Italian manuscript was written in 1412. See text and translation in Appendix II.A.3.3.

¹⁰⁶⁰ See the text of the manuscript – abbreviated version of HTRB and prayers – in Appendix.

¹⁰⁶¹ This was the rule for someone who wanted to undertake individual fasting. It was a frequent practice of Ri ha-Zaqen (R. Isaac b. Samuel of Dampierre, according to Semaq 87). See Kanarfogel, *Peering*, p. 43 and n. 29.

Laws

In HTR, MH, ST, DT penance through prayer, begging pardon and confession is decreed, either secretly or publicly, for the following transgressions: murder, fornication and adultery, stealing, injury, cursing, slander, leading others into sin, speaking in the synagogue during prayer time, false oath, denunciation, apostasy, desecration of the Sabbath, disobedience to the parents,.

In CShQ, during the preparation for the mystical explanation and learning of the *Commentary*, the student must flog himself secretly three times a day, and confess each time, secretly.¹⁰⁶²

As an impact of penitential private liturgies¹⁰⁶³, confessing three times a day is also ordered in the *Sefer Minhag Tov*; the penitential praying and supplications are to be said not only on Yom Kippur, but beginning with the month of Elul, each day, for forty days, until the Day of Atonement:

19. It is a good custom after concluding the blessing “He who makes peace” on a weekday, to confess the sins and to say, “Truly, we have sinned” and the *viddui*”.

II.C.13.2. *Responsa*

Public confession and asking for forgiveness is prescribed for grave sins in the framework of other public penitential acts, sometimes public flogging. The private fasting and sometimes flogging is bound together with private, secret confession.

(a) (Murder) Public confession and asking for forgiveness is required after the public flogging of someone who has hit his fellow.¹⁰⁶⁴ According to a *responsum* of R. Bruna’s, public confession is required from a penitent murderer after public flogging.¹⁰⁶⁵

(b) (Adultery, Fornication) Confession to another woman and self-humiliation is imposed on an adulteress, after she herself has asked for penance through secret confession to a rabbi.¹⁰⁶⁶ Public confession in the synagogue and secret confession after fasting is required from an adulteress.¹⁰⁶⁷ Asking publicly for forgiveness is required of a man who has raped a woman after she has fainted, besides the fine for seduction.¹⁰⁶⁸

¹⁰⁶² CShQ “And every day he shall receive flogging etc.”

¹⁰⁶³ See II.E.3.3.

¹⁰⁶⁴ Weil 87.

¹⁰⁶⁵ Bruna 265–6.

¹⁰⁶⁶ Bruna 226.

¹⁰⁶⁷ Weil 12.

¹⁰⁶⁸ Colon 129. However, the answer of R. Colon is theoretical. According to the *responsum*, the respondent does not know whether there are proofs for violation or not. If there are no witnesses for the claim of the woman, the man can not be fined, according to R. Colon’s decision. See II.B.2.

(c) (Assault and Battery, Injury, Robbery) According to R. Weil, for beating, confession and asking publicly for forgiveness in the synagogue is required after the public flogging.¹⁰⁶⁹ For injuring somebody in the synagogue during *Sukkoth*, the offender must publicly ask the pardon of God and his offended fellow before the Torah scroll.¹⁰⁷⁰ Public confession is decreed by R. Minz for injury, false oath, and desecration of the Sabbath.¹⁰⁷¹ For transgressing a community ban regarding the declaration of property for tax-paying, because the transgressors can not make restitution for all the members which they robbed by their lying, they must do penance, by beg their pardon, among other penances.¹⁰⁷²

(d) (Cursing) In NMM, asking publicly for forgiveness is decreed for cursing and for calling another one a “defiled’ (*tame’*).¹⁰⁷³ Ra’avan has rendered the decision that for calling someone a “bastard”, one must appease the offended person and also his or her parents at their grave.¹⁰⁷⁴ For calling somebody a “bastard” in German one must ask forgiveness, and if the offended person has died, the offender must ask for forgiveness at his grave (or at the graves of the parents, in this case). But if the graves are far away, a messenger can be sent there, according to NMM. For cursing a woman, begging pardon publicly in the synagogue on the *bimah* is required by the Mordehai.¹⁰⁷⁵ In NMM, for cursing a dead person, begging pardon publicly at the grave and in three communities is required of the offender; according to another decision of NMM, for cursing a dead person asking publicly for forgiveness at the grave of the offended person is prescribed; according to a third decision of NMM, on a man and his father who have slandered the wife of the son, saying that she has had sexual intercourse with her husband while being a *niddah*, public clarification of the truth is imposed.

(e) (Slander) For slandering a woman, public clarification of the truth is expected from the slanderer¹⁰⁷⁶. For a woman who has slandered another woman and her father, asking publicly for forgiveness in the synagogue of the women and at the grave of the father of the woman is ordered; for accusing a woman of fornication asking publicly forgiveness from the son of the slandered woman in the courtyard of the synagogue is required in NMM.

¹⁰⁶⁹ Weil 28.

¹⁰⁷⁰ Isserlein PuK 210.

¹⁰⁷¹ Minz 93.

¹⁰⁷² Colon 51. See II.C.14.

¹⁰⁷³ NMM 178.

¹⁰⁷⁴ Maharam Lvov 492.

¹⁰⁷⁵ Mordehai Kid. 558.

¹⁰⁷⁶ This is a *responsum* of Meir b. Baruch of Rothenburg, see Mordehai BQ par. 81; see also the *responsum* of J. Colon No. 186.

For falsely accusing a prayer leader of fornication and causing him to lose his position in the community, the slanderer must beg his pardon, but is not required to repay the damage. The slandered person on the other hand, is not expected to forgive him.¹⁰⁷⁷

For slandering the wife of a rabbi, the slanderer must publicly ask for forgiveness not only from the woman but also from her husband.¹⁰⁷⁸

(f) (Contempt of Court) For cursing a rabbi, for contempt of court and betrayal to the Gentiles, public confession and begging pardon in the synagogue and at the graves of the parents of the cursed rabbi is decreed by R. Weil against Simelin of Ulm.¹⁰⁷⁹ Since the offender has lied in his confession and has altered the words of the confession, he must confess again with the words prescribed for him.¹⁰⁸⁰

The community caretakers of Prague who have disobeyed the decree of Rav Eliyyahu of Prague and have refused to give testimony, supporting the other rabbi, Eliezer of Passau, are due, according to the decree of R. Perez, to beg pardon and to testify as required.¹⁰⁸¹

Because of contempt of court, R. Wiz, and his son – who have disobeyed the decree of the court of the rabbis of Padua – and rabbi Landau – who has supported them – are required to publicly beg the pardon of the offended rabbis of Padua and of the offended party, R. Cosi and his son, and to appease them.¹⁰⁸²

According to a *responsum* of R. Colon's, one who has disobeyed the law must ask for forgiveness and appease the rabbis whom he has harmed by his disobedience.¹⁰⁸³

According to another *responsum* of R. Moses Minz, a Jew has caused damage to his fellow Jew by not appearing in court after he has formally had the right to refuse to appear in court at the appointed time. R. Moses Minz decides that the Jew who has not appeared in court must beg pardon, and it must be proclaimed publicly in the synagogue that he is bound to appease the litigant by begging his pardon.¹⁰⁸⁴

(g) (Perjury) A prominent rich man in München has lied under oath regarding his property about tax-paying, and later has confessed his sin and wished to repent. R. Weil has ordered him to confess his sin publicly in the synagogue at the time of the evening prayer after being flogged.¹⁰⁸⁵

¹⁰⁷⁷ Isserlein ThD 307.

¹⁰⁷⁸ Minz 75.

¹⁰⁷⁹ Weil 147.

¹⁰⁸⁰ Weil 178.

¹⁰⁸¹ Bruna 284.

¹⁰⁸² Minz 97. See II.B.8.

¹⁰⁸³ Colon 189.

¹⁰⁸⁴ Minz 101.

¹⁰⁸⁵ Weil 123.

A man who gave false testimony as a child, and also cursed his father, apparently made a secret confession as an adult to a rabbi.¹⁰⁸⁶

(h) (Ritual Slaughterer Who Errs) Concerning a ritual slaughterer who has been removed from his duties for one month and has not been flogged, it must be publicly proclaimed in the synagogue that he has erred, and it is prohibited to buy meat from him; after doing penance, it must be proclaimed again that he has mended his ways. If he is flogged, the ritual slaughterer must confess his sin publicly after flogging. Even if he is not flogged, it is good to proclaim publicly that he has erred.¹⁰⁸⁷

According to a *responsum* of R. Weil's, public shaming by public proclamation is sufficient punishment for a ritual slaughterer to atone for his fault committed during his service.¹⁰⁸⁸

(i) (Desecration of the Synagogue) For committing public blasphemy in the synagogue, one must ask publicly for forgiveness.¹⁰⁸⁹

For public mistreatment and desecration of the sanctity of the synagogue, R. Isserlein requires the offender to ask publicly for forgiveness from God and from the harmed person.¹⁰⁹⁰ For the sanctity of the synagogue of Regensburg, where crosses have been drawn on the sitting place of R. Bruna, the community is due to pray.¹⁰⁹¹ To a Jew who has betrayed his fellow Jew to the Gentiles, it is ordered to ask publicly forgiveness from the offended person.¹⁰⁹²

(j) (Apostasy) In Ms. Ox 784, in a *responsum* of R. Isaac of Tyrnau's, for a man and his wife, rules of confession are prescribed.¹⁰⁹³ The small confession is also ordered by the *Leqet Yosher* for the repentant apostate.¹⁰⁹⁴ In another *responsum* of Ms. Ox 784's, rules concerning the confession of the repentant apostate are to be found.¹⁰⁹⁵

¹⁰⁸⁶ Isserlein PuK 62.

¹⁰⁸⁷ Minz 25.

¹⁰⁸⁸ Weil 97.

¹⁰⁸⁹ Weil 152.

¹⁰⁹⁰ Isserlein PuK 210.

¹⁰⁹¹ Minz 76.

¹⁰⁹² Mollin 86.

¹⁰⁹³ Ms Ox. 784 28a.

¹⁰⁹⁴ LeqYosh II.49.

¹⁰⁹⁵ Ms Ox. 784 25b–26a. To the fact that the texts of *viddui* varied, and that the custom of confession was not standardized yet, we bring two proofs: (1) In the *Sefer Kol Bo* there is a text that contains the confession of the dying man, which is a novelty in *halakhic* books. (Although confession before death penalty is dealt with in the Mishnah: mSanh. 6,2: “a criminal about to be executed is urged to confess: “May my death be an expiation for all my sins”; bShab. 32a: “our Rabbis taught: if one falls sick and his life is in danger, he is told, Make confession, for all who are sentenced to death make confession.”). In that paragraph it is stated that the text has been received from the *hasidim*, *anshei ma'aseh*, which probably means that it has been received by the author of the *Kol Bo* from the *haside Ashkenaz*. It is likely that the custom has not been accepted by the mainstream Judaism – as many other customs of the *haside Ashkenaz*. (*Kol Bo* 113). The second example is from one of R.

(Monetary Penances)

II.C.14. Monetary Penalties, Fines, Commutation of Penalties into Money

Sometimes monetary punishments are an integral part of the penitential process, without which the process is invalid. They constitute the pure legal part in remedying transgressions. Therefore, though they are punishments or requirements in the form of fines and not so much in the form of alms or charity, which could be called “penance” rather than “punishment”, they are indispensable components of the penitential process.

These monetary punishments can be divided into several categories, according to the transgression: (1) restitution (in case of theft and robbery: one-, two-, four-fold); (2) reparation of the damage caused (injury, slander, denunciation) ; (3) loss of the *ketubbah* (fornication, adultery committed by the wife); (4) covering the expenses of legal procedures (contempt of court); (5) fines (injury, cursing, seduction of a virgin, dishonoring of a rabbi or sage); (6) redemption of corporal punishment (flogging) – called also charity.

In connection with fixed-sum payments, first of all as penalties for injuries, Mordehai mentions in the name of R. Baruch (of Mainz) that “in Babel” there are no fines prescribed by the Torah, except the fines enacted by the Rabbis. Mordehai also points out that R. Baruch has mentioned that he has learned from Ri of Evreux that the fines must be judged by the 7 leaders of the city (*7 tove ha-‘ir*).¹⁰⁹⁶

II.C.14.1. *Haside Ashkenaz*

According to a gloss of a manuscript of HTR, the murderer must take care of the subsistence of the family members of the killed person.¹⁰⁹⁷ This is also the ruling of SHP in several paragraphs.¹⁰⁹⁸ According to HT, in case of injury, battery or physical wound the offender must pay a fine, even if there are no fines outside the Holy Land.¹⁰⁹⁹ He who curses a fellow Jew, or insults him or her, must pay for the harm if he or she has money.¹¹⁰⁰ One must

Isserlein’s *responsa*: he is asked about the text of the confession and he has answers that on Yom Kippur he is in the habit of reciting the text which is in fact the *Viddui Gadol* (Isserlein PuK 118). This latter example also reflects the situation that there was not yet fixed text of confession.

¹⁰⁹⁶ Gittin No. 384.

¹⁰⁹⁷ HTRB Ms. Jer. 621 fol. 22a gloss.

¹⁰⁹⁸ SHP 175–177. See II.B.1.1.

¹⁰⁹⁹ HTR 16.

¹¹⁰⁰ Both in HTR 16.

give back the stolen thing.¹¹⁰¹ In case of robbery, one must restore the money or goods taken unjustly.¹¹⁰² The denunciator shall repay all the damage caused.¹¹⁰³

II.C.14.2. *Responsa*

(a) (Murder) In the case of an assault and battery, R. Ḥayyim b. Isaac *Or Zarua* decides that those who have restored to the aid of the Gentiles during the fight, are not liable to pay the damage to the relatives of the murdered person, although, as a rule, denunciators are liable to pay all the damage caused by denunciation, all the more if they have caused the death of another Jew.¹¹⁰⁴ But because they have made complaint to the Gentiles in danger of death – “hour of wrath” (“*sha’at ha-za’am*”) – they are exempted.

According to a *responsum* of R. J Weil,¹¹⁰⁵ the penance or punishment imposed on the murderer cannot be commuted into monetary compensation.¹¹⁰⁶

According to a *responsum* of R. Bruna’s, the fine for an assault and battery committed by three Jews, during which one of them has died, is due to be paid by both murderers, though neither of them has hit the victim hard enough to kill him.¹¹⁰⁷

(b) (Adultery – Loss of the *Ketubbah*) Loss of the *ketubbah* is the punishment for fornication committed by a woman according to two *responsa* of R. Colon¹¹⁰⁸.

(c) (Injury, assault and Battery) According to R. Ḥayyim b. Yehiel Ḥafetz Zahav, in those places where they collect fines for battery on the basis of community enactments, the fines must be collected,¹¹⁰⁹. According to NMM, if someone hits another person repeatedly, he must pay as many times as he has hit him, and the fines can also be collected on the basis of deficient testimony – at least in France. But in other places the collection of fines and penalties are not so widespread.¹¹¹⁰

¹¹⁰¹ HTR 15.

¹¹⁰² Concerning the laws of restitution in SHP see II.B.4.2.

¹¹⁰³ HTR 27.

¹¹⁰⁴ Ḥayyim OZ 25. See II.B.1.3.5.

¹¹⁰⁵ DvH 61.

¹¹⁰⁶ Weil 61.

¹¹⁰⁷ In the answer of R. Bruna 265.

¹¹⁰⁸ Colon 81–82.

¹¹⁰⁹ Maharam Prague 383.

¹¹¹⁰ NMM. In the light of the above examples, the rules concerning fines in case of injury, battery and murder can be summed up in the following way: although according to the Talmud, compensations imposed for injury can not be collected outside the Holy Land, there are local community enactments in medieval Ashkenaz which decree fines in case of injuries. In those places, the offenders are required to pay the fines. However, the customs differ also in respect to the kinds of compensation which are collected from the five types prescribed in the Talmud. Sometimes the fines are paid to the community and not to the offended person. If beating results in murder, but according to the law and the testimonies the offenders can not be condemned as murderers, they must pay the fine for injury, besides other requirements. In the case of information to the Gentiles, the informer must pay the damage caused; however, if the complaint to the Gentiles has been committed in danger of death,

Concerning a man who has beaten his wife, Maharam decides that if she wants to divorce him, she must receive her *ketubbah*.¹¹¹¹ In a *responsum*, R. Isserlein writes that “the Gaons”, R. Alfasi (the Rif) and Ra’avyah, have decided that out of the five types of compensation established in the Babylonian Talmud for injury (BQ 83b) – damage, pain, shame, cessation from work and recovery (that is, the fee paid to the physician) – in post-Talmudic times and outside the Holy Land, only the last two types of compensation can be collected, because in post-Talmudic times no one is qualified to make the assessments on which the other types are based. However, R. Tam and Rosh have disagreed with the Rif, and have held that the other three must also be collected.¹¹¹² In another *responsum* concerning an injury-case, an offence committed in the synagogue, R. Isserlein decides that the fee due to the physician must be paid by the injurer, and the money must be spent on charitable purposes, but for the other four things (cessation from work, damage, pain and shame) he does not need to pay, because it cannot be estimated what the price for cessation from work (*shevet*) and the other three types of fines would be.¹¹¹³ In one of his *responsa*, regarding an injury-case, R. Weil concludes that a fine fixed by the local court must be paid by the offender (but not as the payment of one of the five things), but the offended one who have also hit the wife of the offender and cursed the offender is not liable to pay any fine, since the offence committed by him is insignificant.¹¹¹⁴

(d) (Robbery) If a woman transgresses a community enactment, her husband must pay the fine, because the interests of the community always come before the interests of the individuals – that is, the husband can not be exempted, saying that he is not responsible for his wife’s transgression.¹¹¹⁵ In his answer to the community of Ancona, R. Colon rules that the money which has been misappropriated by lying under oath regarding community taxation, must be returned. But if the offenders can not return it to the defrauded persons, it is sufficient to ask for forgiveness from them and to do penance.¹¹¹⁶

(e) (Fine for Transgressing the Engagement Agreement) According to R. Colon, the fine for breaking of an agreement of *shiddukhin* (engagement) must not be paid if the girl has become mentally sick. He refers to an answer of the *Rosh* according to which a girl has

during a battery, the informer is not liable, even if he has caused the death of the betrayed Jew. In case of premeditated murder, the fine as commutation is not accepted; the murderer must be punished.

¹¹¹¹ Maharam Prague 81.

¹¹¹² Isserlein PuK 208. See discussion of the three *responsa* (PuK 208, 210, and Weil 28) in II.B.3.4.2.

¹¹¹³ Isserlein PuK 210.

¹¹¹⁴ Weil 28.

¹¹¹⁵ Isserlein ThD 282.

¹¹¹⁶ also by charity giving, as it will be explained further, Colon 51.

become an apostate, and her fiancé has also been exempted from paying the fine for breaking the engagement agreement.¹¹¹⁷

(f) (Cursing) According to the words of R. Isaac the Elder, quoted in the Mordeḥai, the one who begins to curse his fellow Jew must pay.¹¹¹⁸ According to NMM the fines for the cursing are 1 *mane* (100 *zuz*), or 200 *zuz* or 400 *zuz*, but they can be commuted into flogging. According to another *pesaq* of NMM, he who calls his fellow Jew an “evil-doer” (“*rasha*”) must provide for his subsistence, because by cursing him, he causes him to be prevented from earning his livelihood¹¹¹⁹. He who curses his fellow Jew must pay the fine, but the person who is in the habit of doing so, must be excommunicated.¹¹²⁰ According to a *responsum* of Maharam’s, the penance for the offender must be to pay for the damage caused by his cursing in order to atone for his sin.¹¹²¹ He must give money to the cursed person for wanting to ruin him by calling him a “thief” or an “evil-doer”.¹¹²² The minor who curses his parents in his childhood is not liable to pay, but it is good for him to do penance.¹¹²³

(g) (Slander) According to the argumentation of R. Isserlein for the damage caused to a prayer leader by slander the slanderer is not liable to pay. However, R. Isserlein mentions that the court is empowered to decide that he is liable in order to build fence.¹¹²⁴ According to a decision of R. Minz’s, for falsely accusing a woman of lying under oath concerning her property, the slanderers are also due to pay for the damage if they are willing to do penance.¹¹²⁵

(h) (Contempt of Court) According to the decision of R. Weil in the famous case of the disobedient R. Simelin of Ulm, the penitent culprit must reimburse the expenses spent for the case. He is also due to pay the fine which one of his fellow Jews has been required to pay to the Gentile court.¹¹²⁶ According to a *responsum* of R. Minz’s, the defendant who has found a legal pretext not to appear in court, and has caused that the case has not been judged, is required to pay the expenses of the litigation. However, R. Minz thinks that the defendant is only liable to pay according to the law of Heaven; the other, anonymous rabbi thinks that if he

¹¹¹⁷ Colon 101.

¹¹¹⁸ Mordeḥai Qid. 554.

¹¹¹⁹ On the basis of bQid. 28a: “If one calls his neighbor ‘wicked’ (*rasha*), he may strive against his very livelihood.”

¹¹²⁰ Ra’avan in Maharam Lvov 492.

¹¹²¹ Maharam 132.

¹¹²² NMM.

¹¹²³ Isserlein PuK 62. R. Isserlein mentions that *Halakhot Gedolot* decides that he is liable to pay when he grows up.

¹¹²⁴ Isserlein 307. See II.B.6.

¹¹²⁵ Minz 75. See II.B.6.

¹¹²⁶ Weil 147. See II.B.8.

does penance, he must pay for the damage caused, he will be pardoned only in that case, according to the law of Heaven.¹¹²⁷

(i) (Dishonoring the Rabbi) Concerning R. Eliezer of Passau, who has disgraced the other rabbi in Prague by not calling him to the reading of the Torah in due occasion, the respondent, R. Perez decides that the offender would be liable to excommunication and to pay the one pound of gold imposed for disgracing a rabbi or sage. In the 15th century, the penalty imposed for disgracing a sage was a matter of debate; however, as we have seen, on the basis of the decision of the *Aguddah*, R. Weil writes at some places that the fine for the dishonoring a sage is not collected, because the contemporary sages can not be compared to the sages of Talmudic times.¹¹²⁸

(j) (Perjury) For lying under oath concerning one's property, the perjurer may commute the fast ordered as penance for charity. However, the *Haggahot Asheri* writes that a false oath can only be cleared by paying a large amount of money, as in the case of the ritual slaughterer who has sold un-kosher food according to the Sanh. 25a.¹¹²⁹

(k) (Selling Non-kosher Food) Regarding a ritual slaughterer who has sold un-kosher food, the *Or Zarua* orders that the offender must pay a large amount of money in order to atone for his sin, as it is decided in Sanh. 25a.¹¹³⁰

(l) (Informer) According to the decision of R. Meir of Rothenburg, the denunciator must repay all the damage done [...].¹¹³¹ Concerning one particular case quoted in the *Sefer Mordehai* to the chapter *Ha-Gozel* in Baba Qamma (chapter 9), Maharam decides that the individual who has summoned his opponent to a Gentile court – even if he has only wanted to force him to obey the Jewish law, but without the knowledge and consent of the Jewish court – must pay for the damage he has caused.¹¹³² In a *pesaq* of NMM, it is decreed that the denunciator can not swear since he is disqualified as evil-doer from giving testimony or taking an oath; therefore, if he admits a part of the sum from the damage caused, the denounced person shall swear and take the sum which he has sworn. This is the decision in one of Maharil's *responsa*: in a case of denunciation the denounced Jew, called R. Yishai, shall take an oath as to the damage caused, and shall take the money from the denunciator, called R. David.¹¹³³ R. Weil maintains that the property of the denunciator is allowed to be destroyed

¹¹²⁷ Minz 101.

¹¹²⁸ Bruna 278, which is a *responsum* of R. Weil.

¹¹²⁹ Weil 123. It is a gloss in R. Weil's *responsum* from the *Haggahot Asheri*.

¹¹³⁰ *Oz Zarua* I. 448.

¹¹³¹ Maharam 485; see: Agus: *Rabbi Meir of Rothenburg*.

¹¹³² the case of R. Ephraim and R. Yoel in *Mordehai Ha-Gozel*.

¹¹³³ Mollin 86.

“indirectly” – that is, to allow the Gentiles to confiscate the goods of a Jew who has denounced his fellow Jew.¹¹³⁴ According to a *responsum* of R. Bruna’s, it is allowed to destroy the property of the informer.¹¹³⁵

II.C.15. Alms, Charity for Torah Studying and Ransom for Captives

In medieval Ashkenaz, giving money for charitable purposes was ordered as penance and very frequently instead of other penances (as commutation), after fasting days, or for the commutation of flogging, or annulment or release of a vow, or for the desecration of the Sabbath.¹¹³⁶

II.C.15.1. *Haside Ashkenaz*

According to an *exemplum* of SHP, every time when one transgresses by hurting others by cursing them, it is useful to give to charity¹¹³⁷. The charity given for the soul of the dead is also useful¹¹³⁸; it is beneficial to their soul to redeem it from punishment in afterlife, according to the RJH as well. In HTR and RJH, for robbery, for leading others into sin, for breaking a vow and desecrating the Sabbath, it is prescribed to give money to charity as penance (15, 16, 28, RJH, MH Ms. Parma 2999, CShQ [11b]: “and one must sustain his or her fellow [...] with food and drink [...]”). In the SMT:

“82. It is a good custom that I have been following for years and intend to follow for the rest of my life [...] on Sabbath *Sheqalim*, which is the first Sabbath of the *’Arba’ Parshiyot*, after the Torah reading, to vow for charity a half *shekel*. This is today, according to Rambam, 190 *se’orim* [...] that is, one pound [...]”

II.C.15.2. *Responsa*

¹¹³⁴ Weil 160.

¹¹³⁵ Bruna 59.

¹¹³⁶ SHP 127. Concerning charity giving in Ashkenaz in the 12th – 13th centuries see the study of J. Galinsky “Public Charity in Medieval Germany” and the sources discussed there: Misnah Peah 8,7 Tosefta Peah 4,9–10, Bet Joseph Tur YD 250, Tsh. Maimoniot Kinyan 27, Ritzba, Raavan (ed. Ehrenreich, NY 1958) p. 176 col. 4, p. 208 col 4, R. Tam Tos. BB 8b, Semak 248, the responsum of R. Shemaryah b. *Mordehai* (E. Kupfer, *Teshuvot u-pesaqim* pp. 184–5), Maharam Prague 918, 533, SHB 144, Ra’avyah Megillah 551, 592, OZ Shabbat 42, SHP 864, 867, 908–12, 917, 921–2, 1591–2, OZ I. 3, 9, 10, 14, 25, 113, Tsh. Maharam Lemberg 112. See also: Cronbach, “Social Thinking”

¹¹³⁷ In the bBB 9b charity (*zedaqah*) is equaled to all the other commandments combined. The Torah legislated that Jews must give 10 percent of their earnings to the poor every third year (Deut. 26, 12) and an additional percentage of their income annually (Lev. 19,9–10). The Talmud ordered to give at least 10 percent of the annual earning to the poor, after the annual tithe for the Levites was suspended (Maim. MT, Laws concerning Gifts for the Poor, 7,5) (on the basis of the Jewish Encyclopedia).

¹¹³⁸ SHP 34, 35.

(a) (Murder) As part of the penance for murder, both R. Weil and R. Bruna decide that besides fasting and public flogging money shall be given to charity during penance, which is performed in exile.¹¹³⁹ Concerning indirect and involuntary murder, R. Weil decides that the murderer must fast and give money to charity in order to atone for his sin.¹¹⁴⁰

(b) (Injury) R. Isserlein orders a man who has injured another one in the synagogue to give the fee intended for the physician to charity so that a *mizvah* shall be performed.¹¹⁴¹ For injury and desecrating the Sabbath, R. M. Minz imposes on the offender who wishes to do penance to give charity to the needy, besides flogging, fasting, public confession and asking for forgiveness.¹¹⁴²

(c) (Robbery) In one of his *responsa* (No. 51), R. J. Colon renders the decision that for transgressing a community decree in which giving money for taxes has been ordered, the transgressors – since they have not been able to restore the money misappropriated from the other members of the community – shall ask for forgiveness and do penance through fasting and giving charity to the poor or for another *mizvah*.¹¹⁴³

(d) (Cursing) As penance for cursing, both Ra'avan and Maharam order the offender to give charity to the needy in order to atone for his or her sin.¹¹⁴⁴

(e) (Desecration of the Sabbath in Times of Fire) In two places R. Isaac b. Moses *Or Zarua* mentions that whenever a fire breaks out on the Sabbath or on a holiday, certain rabbis order the Jews to extinguish it together with the Gentiles, and after then they impose fasting, giving charity, flogging, and excommunication for on the Jews so that they may atone for their sin. R. Isaac b. Moses disapproves of this practice, because he thinks that next time the Jews will not extinguish the fire for fear of transgressing and becoming liable to punishment or penance; therefore, the rabbis put a stumbling block before the community, since they live among the Gentiles which means danger of death.¹¹⁴⁵

(f) (Contempt of Court) For disobeying a court order, transgressing a community enactment, cursing the rabbi and the judges, and betraying one of his fellow Jews to the Gentiles, R. J. Weil decides for Simelin of Ulm to be flogged, or that the punishment of flogging be commuted into donating money for the benefit of the synagogue and Torah learning. Likewise, the money intended for repairing the damage caused by denunciation shall

¹¹³⁹ Bruna 265–6, Weil 87.

¹¹⁴⁰ Weil 125.

¹¹⁴¹ Isserlein PuK 210.

¹¹⁴² M. Minz 93.

¹¹⁴³ Colon 51.

¹¹⁴⁴ Maharam Prague 132.

¹¹⁴⁵ OZ II. *H. Erev Shab.* No. 38, OZ II. *Sanh.* No. 23–24.

be given to charity. Since the offender has disregarded the decision, it has been pronounced again.¹¹⁴⁶

(g) (Perjury) In two further cases (of lying under oath), R. J. Weil decided that the punishment of flogging can be commuted into giving charity. In the first case the defendant has publicly taken an oath to divorce her wife without her consent, which was considered by the respondent to be an oath in vain. R. Weil decided that he is due to do penance by flogging and fasting. In the second one, a man has lied under oath regarding his property as to tax-paying. In both cases, R. J. Weil suggests that if the offenders are not able to bear flogging, they can commute it to donating money to charity.¹¹⁴⁷

(h) (Breaking a Vow) In one of his *responsa*, R. Bruna maintains that the vow to go on a pilgrimage to the Holy Land to visit the graves of the fathers can partly be released by donating money to charity, and it is not necessary to go into exile in order to atone for one's sins. Apparently, the original penance and atonement for breaking the vow to go on a pilgrimage to the Holy Land is exile.¹¹⁴⁸ R. Minz is also of the opinion that the vow may be released by giving money for charitable purposes.¹¹⁴⁹

(i) (Desecration of the Synagogue) For beating publicly a fellow Jew in the synagogue, R. Isserlein orders the offender to give the equivalent of the money paid to the physician by the injured person as charity money to the synagogue so that a *mizvah* may be performed.¹¹⁵⁰ According to R. Minz, in the case of rabbi Bruna, the sanctity of the synagogue is also to be restored by giving money for the sake of a *mizvah*.¹¹⁵¹

(j) (Desecration of the Sabbath) According to Maharam, in his time (in the second half of the 13th century) the fine for the desecration of the Sabbath must be equal with the costs of the sin-offering the sinner was due to offer when the Temple stood.¹¹⁵² Also according to the decision of R. Isserlein, the atonement for the desecration of the Sabbath is decided on the basis of the costs of the sin-offering for unintentional desecration of the Sabbath in the time of the Temple. According to R. Isserlein, the commutation of fasting is also possible by giving money for charitable purposes.¹¹⁵³

¹¹⁴⁶ Weil 147, 178.

¹¹⁴⁷ Weil 123, Weil 172. See II.B.9.4.3.

¹¹⁴⁸ Bruna 76.

¹¹⁴⁹ Minz 79.

¹¹⁵⁰ Isserlein PuK 210.

¹¹⁵¹ Minz 76.

¹¹⁵² Maharam Lvov 431.

¹¹⁵³ LeqYosh I.63.

(k) (Apostasy) In both *responsa* of Ms. Ox. 784, concerning the penance prescribed for repenting apostates – in the first *responsum* for a man and his wife, in the second one for a man – it is prescribed that after each fast the penitents must confess and give charity to the poor.¹¹⁵⁴

II.D. The Process of Penance

II.D.1. *Viddui*

The *viddui* as part of the penitential process ordered by the rabbis – either private or public – has already been discussed in chapter II.C.13. The *viddui* as a precondition for beginning the penitential process will be discussed here. Depending on the kind of the *teshuvah*, the confession as the marking and declaration of the repenting and entering the penitential process, can be performed (1) strictly in private, as confession to God, and in some cases to the harmed party together with begging pardon; (2) to a rabbi or *bet din*, without a *minyan*; (3) in the presence of a *minyan*. In the latter case not only the words themselves can be regarded as confession, but the ritual acts performed publicly express symbolically, by non-verbal means, the admission by the penitent of his sinfulness, also making reference to the sin committed.

II.D.1.1. SHP

The rules of the proper confession are formulated in the *Sefer ha-Teshuvah* of R. Samuel Ḥasid, at the beginning of SHP.¹¹⁵⁵ There is a further principle in SHP about the confession:

“‘Building a fence’ around the piety [that is, safeguarding of piety] is that one shall examine the deeds of the people, and if he sees or hears people [...]”¹¹⁵⁶ he shall be careful if he sees that they transgress; he must know that they will be punished in the same measure as they sin; and that is how he shall examine his deeds and refrain himself from sinning.”¹¹⁵⁷

One can clear himself of suspicion as the following rule shows:

“[...] If someone can clear himself of suspicion, he should not publicly speak about the alleged sin [...]”¹¹⁵⁸

¹¹⁵⁴ Ms. Ox. 784 28a, Ms. Ox. 784 25b–26a.

¹¹⁵⁵ SHP 19, 25.

¹¹⁵⁶ Some words are erased in the Parma manuscript of SH.

¹¹⁵⁷ SHP 993. See for the 16th century use of this image in Fine, *Physician of the soul*.

¹¹⁵⁸ SHP 82.

SHP mentions concerning the confession on Yom Kippur that one shall not repeat his sins already confessed on the previous Yom Kippur. However, if he wants to confess his sins on another day of the year as well (that is to say, before Yom Kippur, the sins committed between two Yom Kippurs), he may; moreover, it is advisable to always repeat in confession all his sins in order to remember and avoid them.¹¹⁵⁹

There is a story in SHP about one who has been warned to confess before he dies.¹¹⁶⁰ Confession in sickness and in danger of death is advised by SHP, but another man shall not mention to a woman her sins before childbirth, only the sick should remind themselves of their sins.¹¹⁶¹ Concerning confession and repentance in the hour of death, the RHJ also declares that it is advisable to confess and repent.¹¹⁶²

In CShQ, the great-grandchild of R. Judah Ḥasid repeats the advise of the SHP that a *ḥasid* must always write down what he has done in order to know and remember his sins and atone for them.

II.D.1.2. *Responsa*

In II.C.13 we have already discussed (ritual) public confession required within the frame of a penitential process, and also private confession to God, in the course of the penitential schedule. Here we shall discuss the third type of confession, the *viddui* as a precondition for beginning the penitential process. In the *responsa* discussed below, the offenders (murderer, adulterer, adulteresses, disobedient to court's summon, perjurers and apostates) go to certain rabbis or write to them, confess their sins privately, and ask them for penance. That confessions mark the beginning of their penances. The first example is an exception, because we do not know, how the offender received his penance (exile and self-mortification), we only know that he confessed at the beginning.

(a) (Murder) Regarding a man who has killed a child unintentionally, in the *Or Zarua* it is explained that immediately after confession he is received back in the community as a perfectly righteous man, even before starting to perform his penance, and this also applies to somebody who has committed murder intentionally. This is a rather extreme decision, and

¹¹⁵⁹ SHP 75.

¹¹⁶⁰ SHP 1524.

¹¹⁶¹ SHP 1446. It is noteworthy that the prophylactic confession (before a journey or danger) and confession in illness was also much in fashion at the end of the 12th c. and in the 13th c. in the Latin Christianity as well.

¹¹⁶² RHJ.

apparently it is rendered on the basis of the explanation and influence of *ḥaside Ashkenaz* on the laws of repentance.¹¹⁶³

(b) (Adultery, Fornication) An adulteress has confessed in writing that she has committed adultery with two men ten years earlier; however R. Mollin considers that she is not to be trusted, and she also has to divorce her husband.¹¹⁶⁴ According to a *responsum* of R. Bruna's, an adulteress has gone to a rabbi to receive penance for her transgression.¹¹⁶⁵

One who has had sexual intercourse with an unmarried girl and has gone to a sage to receive penance, is required to atone for his sins as though he had intercourse with a *niddah*.¹¹⁶⁶

(c) (Contempt of Court) In one of his *responsa*, R. Moses Minz decides about a Jew who has caused financial loss to his opponent by not appearing in court that he is exempted according to the law of men, but liable according to the Law of Heaven. The Jew has claimed to R. Minz that he has had in mind to go to a rabbi to ask for penance for his transgression and other sins committed against his Creator.¹¹⁶⁷

(d) (Perjury) For lying under oath concerning a pawn, a woman tries to legally disqualify a man from taking an oath, who has also been accused of injuring a fellow Jew and desecrating the Sabbath, but since there is not enough evidence for a trial and the man, Simon, being afraid that the woman will disqualify him or prove his guiltiness, asks for penance from a rabbi. However, the rabbi, R. Minz, proves that the wish of the defendant to do penance has been false, because he has only intended to be acquitted of charges. Nonetheless, Simon is ready to accept the penance imposed on him by R. Minz and prescribes for him to do penance, and after fulfilling the penance he will be fit to take the rabbinic oath.¹¹⁶⁸

For lying under oath, a rich man in München is asked – by R. J. Weil – to do penance, which he accepts humbly. That acceptance can be regarded as his first confession, marking the beginning of his penance.¹¹⁶⁹

(e) (Apostasy) In two *responsa* (found in the manuscript Ox. 784), those of R. Isaac of Tyrnau and R. David b. Moses, concerning some apostates – a couple who has repented and a man who has been forcibly converted and has repented, have gone of their own accord to the rabbis and have confessed their sins and accepted to do penance.

¹¹⁶³ OZ I.112. See II.B.1.

¹¹⁶⁴ J. Mollin TH 181. See II.B.2.

¹¹⁶⁵ Bruna 226. See II.B.2.

¹¹⁶⁶ Minz 98a. See II.B.2.

¹¹⁶⁷ Minz 101. See II.B.8.

¹¹⁶⁸ Minz 93. See II.B.3, II.B.9 and II.B.15.

¹¹⁶⁹ Weil 123. See II.B.9.

II.D.2. Institutions: The Role of the Rabbi and Bet Din

II.D.2.1. *Haside Ashkenaz*

II.D.2.1.1. The Role of the Sage-confessor

The role of the sage in the process of penance is defined by R. Samuel Ḥasid in the *Sefer ha-Teshuvah*, at the beginning of SHP, in the following way: the sage is an advisor whose role is to assign penance which is as a medicine for the penitent. If he instructs in a way that the penitent stumbles, he is not a good advisor.¹¹⁷⁰

In a paragraph of SHP there is a rule about the role of the sage regarding the confessed sin. It states that if a man dies – presumably before time or in an unnatural way – and the sage knows that he has committed a grave sin, it is a *mizvah* for the sage to notify the relatives of the dead person of the sin committed, and let them know that his death has occurred as punishment from Heaven. However, the sage must do that secretly.¹¹⁷¹

Consequently, the Sage-confession can be defined as a “quasi-judicial” process in which the sage alone constitutes the *bet-din* for *ba'al teshuvah*. The secrecy of the confession and the role of the sage as physician rather than judge make the process only an imitation of a real juridical process.

However, in the penitentials of R. Eleazar of Worms, the sage plays no role, as the introduction to the manuscript versions of these compositions shows. According to these texts, he penitent confesses to God alone.¹¹⁷² In this case, the “quasi-judicial” institution is constituted by the penitent alone who stands before God.

II.D.2.1.2. The Idea of the Heavenly Court (*Bet-din shel Ma'alah*)

The idea of the different roles of the earthly and Heavenly courts, repeatedly explained in SHP, can be seen as one of the constituting elements of a larger, hidden worldview of *haside Ashkenaz* which is also behind the institution of the Sage-confession. The different functions of the two courts – more precisely, the role of the idea of the Heavenly Law and Heavenly Court [*din-Shamayim, Bet din shel ma'alah*] – are explained in a paragraph of SHP: (1) firstly, there are things that the earthly *bet-din* can not judge and the Heavenly *bet-din* punishes them; (2) secondly, though there are things that are permitted, they will be punished,

¹¹⁷⁰ SHP 17. See quotation and discussion in II.A.1. See further: Agus: “The Use of the Term *Hakham*”. For the role of the scholars in Ashkenazi communities, Agus: “Rabbinic Scholarship in Northern Europe.” Ben-Sasson, H. H.: *The Northern European Jewish Community and Its Ideals*. See II.A.1.

¹¹⁷¹ SHP 994.

¹¹⁷² See discussion on this problem at the end of II.A.1.

because of the principles “what is hateful to you, do not do to your neighbor” (Shab. 31a, the saying of Hillel) and “you shall love your neighbor as yourself (Lev. 19,18). To the first class (1) pertain cases in which, for example, there is no proper testimony for the liability of an offender, but it is known that he/she committed a transgression, then he is condemned according to the Heavenly law. To the second class (2) pertain cases in which, for example, according to Talmudic law the offender did not commit offence, but transgressed the laws of equity (oppressed the poor lawfully, did smaller abuses using his position, power).¹¹⁷³

II.D.2.1.3. The Role of the Earthly Court in the *Teshuvah* (*Bet-din shel Maṭṭah*)

According to SHP and HTR, in the process of penance, the earthly *bet din* and its “real” jurisdictional framework can also play a role, as seen in one of the paragraphs of HTR. It is stated that if someone steals something from his fellow Jew, he must return it to him. If the fellow Jew has died and the thief does not know the heirs, or if the dead person has no heirs, he must make restitution to the *bet din*.¹¹⁷⁴ Another case which requires a *bet din*, according to HTR, is that of the apostate, who must ritually immerse before a court after he has decided to repent¹¹⁷⁵.

II.D.2.2. *Responsa*

II.D.2.2.1. The Right of the Court (Community, Rabbi) to Excommunicate, Punish (by Flogging), Impose Fines or Pass a Sentence of Divorce in Case of Criminal Offence Only by Proper Legal Process.¹¹⁷⁶

Regarding the treatment of evil-doers, the only right of the community is to separate the offender from other members. According to R. Isaac b. Moses Or Zarua, the prohibition of mingling with the community, that is, excommunication, can only be carried out by the entire community and through its leaders, and not by the offended person or his relatives.¹¹⁷⁷

The fines for the violation of a woman, seduction of a girl, can only be collected on the strength of valid testimonies obtained through the procedure prescribed by Talmudic law. A legally unproven accusation of fornication brought against a young girl by her husband and father-in-law can not be accepted, and if the husband wants to divorce her, she has the right to receive her *ketubbah*.¹¹⁷⁸ On the basis of the explanation of bKet. 36a, a minor girl who claims

¹¹⁷³ SHP 1005.

¹¹⁷⁴ HTR 15.

¹¹⁷⁵ HTR 24.

¹¹⁷⁶ See: Shohet: *The Jewish Court in the Middle Ages*.

¹¹⁷⁷ OZ I.112. See II.B.1.

¹¹⁷⁸ Colon 81. See II.B.2.

that she has been violated, has the right to the fine for seduction, which must be paid by the accused man, but a barren woman in the same situation, under the same circumstances does not have.¹¹⁷⁹ In case of accusation of rape, it must be proved that the accused man has had sexual intercourse with the woman who accuses him against her will, otherwise he can not be fined.¹¹⁸⁰

In case of fornication only unequivocal evidence obtained through a legally acceptable testimony about the *yihud* – that is, two male Jewish witnesses are needed to testify about the fact that the man and the woman have been alone together at a secluded place – and an examination of the witnesses according to the Talmudic law can be grounds for divorce. That is difficult to obtain in every case, especially in cases of fornication.¹¹⁸¹ Two fornicators, a man and a woman, can also be flogged because of the *yihud* only on the basis of clear testimony.¹¹⁸²

II.D.2.2.2. The Court and the Rabbis are Entitled to Punish, Fine, Flog, and Excommunicate in Order to Build Fence (*Le-migdar Milta*)¹¹⁸³

(a) (Injury) The judges in a case concerning an offence committed in the synagogue must be careful in making a “fence”.¹¹⁸⁴ According to R. Mordehai, for injuring a fellow Jew, the one who has started the fight must pay.¹¹⁸⁵

(b) (Cursing) Accordign to the examples below, in the 13–15th centuries, in the medieval Ashkenazi communities, local enactments were almost everywhere issued by the *bet-dins* which imposed fines, flogging or other punishemtns for cursing. Rabbis prescribed penances along with punishments (fasting, paying fo charity). Exemption form punishemtn and penance was sometimes accorded for cursing in the “hour of anger”, that is to say, during a quarrel.

In one of his decisions, Ra’avan prescibes fasting, flogging, and giving charity for cursing. He adds that the community prefects are allowed to increase the punishment for the offender and excommunicate him in order to make fence.¹¹⁸⁶ R. Isaac b. Moses exempts one

¹¹⁷⁹ Colon 167. See II.B.2.

¹¹⁸⁰ Colon 129. See II.B.2.

¹¹⁸¹ Weil 8, Isserlein PuK 222. Moreover, there were already in the Middle Ages opinions that testimony about *yihud* is not enough proof for adultery, and on that basis one can not divorce her wife.

¹¹⁸² Bruna 8.

¹¹⁸³ Reiner, A.: “Rabbinical courts.”

¹¹⁸⁴ See, for example, a reference to the right of the court to impose fines and to punish based on Talmudic precedents and permission to “build fence” in a decision regarding an injury committed in the synagogue in Isserlein 210. See II.B.3. See also Weil 152 and Colon 154. See II.B.14.

¹¹⁸⁵ *Mordehai Qiddushin* 554. See II.B.3.

¹¹⁸⁶ Maharm Lvov 492. See II.B.5.

who has cursed his fellow Jew “in the hour of anger.”¹¹⁸⁷ R. Avigdor b. Menaḥem maintains that the person who curses must be punished – flogged, excommunicated, fined –, and that in his community he has enacted these punishments because there has been a need for “building fence” against this kind of offender. Before his appointment as rabbi, the community used not to impose fines for cursing.¹¹⁸⁸ According to a decree of Maharam, fine, flogging and fasts are to be imposed on the person who curses.¹¹⁸⁹ For one who has cursed a woman public penance is prescribed by R. Mordeḥai.¹¹⁹⁰ Several decisions in NMM written by R. Menaḥem of Merseburg, deal with cases of cursing: according to a decision of NMM, one who calls his fellow Jew a “bastard” is to be judged severely; according to another one, for calling a fellow Jew an “apostate”, one is to be judged as the judges decide; for calling him an “informer”, flogging is decided; in another decision of NMM, flogging is decreed instead of fines for cursing. Flogging is decreed for cursing the dead, but if there are no witnesses to the desecration of the dead or cursing, the accused person must take an oath in order to be acquitted of charges. According to NMM, for cursing one must appease the cursed person.

According to a *responsum* of R. Weil’s, for cursing and beating one must be punished as the court decides.¹¹⁹¹ According to a decision of R. Isserlein, the minor who has cursed his parents, must do penance when he grows up.¹¹⁹²

(c) (Slander) In NMM, there are also several decisions also regarding cases of slander. According to one, a woman who has slandered another woman is liable to flogging, but she is allowed to commute the penance into “minor excommunication” (*niddui*). If her husband wants to redeem her excommunication, he can do it with money. In two other decisions of NMM, the threat of excommunication has been used for speaking evil of a woman, as “building fence” against such transgressions. According to another decision of NMM, after clarifying the situation in a case of slander, it is prohibited to slander again. The prohibition pronounced under threat of excommunication is a decision of the court “*le-migdar milta*”.

According to a *responsum* of R. Isserlein’s, one is not liable to pay the damage caused by slander to his fellow Jew, but if the court decides otherwise in order to build fence, paying can be claimed.¹¹⁹³ According to a *responsum* of R. Minz’s, after clarifying the situation in a

¹¹⁸⁷ Weil 28. See II.B.5.

¹¹⁸⁸ Maharam Lvov 491. See II.B.5.

¹¹⁸⁹ Maharam Prague 132. See II.B.5.

¹¹⁹⁰ Mordeḥai Qid. 558. See II.B.5.

¹¹⁹¹ Weil 28. See II.B.5. See II.B.5.

¹¹⁹² Isserlein PuK 62. See II.B.5.

¹¹⁹³ Isserlein ThD 307. See II.B.6.

case of slander, the court has prohibited the offender under threat of excommunication to slander again. Also that prohibition is here a decision “*le-migdar milta* ”.¹¹⁹⁴

II.D.2.2.3. The Right of the Rabbis (Communities, Courts) to Enact Emergency Decrees – *Hora' at Sha' ah*¹¹⁹⁵

According to *Or Zarua*, in a time of fire, rabbis are in habit of instructing Jews to desecrate the Sabbath and festivals by extinguishing the fire, firstly, for not being accused by Gentiles with arson. Then, according to *Or Zarua*, the same rabbis impose on the desecrators fasting, flogging, excommunication, fines as atonement. Isaac b. Moses of Vienna emphatically disapproves of the practice of the rabbis who first instruct the community to extinguish the fire and then to do penance for it. He is of the opinion that the imposition of penances is not proper.¹¹⁹⁶

In one of his *responsa*, R. Isserlein reproves the desecrating of the Sabbath and festivals; he only accepts it in danger of death. However, he writes that it depends on how the court or rabbis decide.¹¹⁹⁷

The respondent of the *responsum* in paragraph no. 68. of Ms. Hamburg 45 maintains there is an enactment issued by rabbis that if a Jew threatens another Jew in a time of fire that he will deliver him into the hands of the Gentiles as an arsonist (by accusing him falsely with arson), the threatener must be excommunicated. However, if there is a fear that the offender might run away and let his fellow Jew and his family in danger of death, he is not to be excommunicated.¹¹⁹⁸ According to NMM, the one who has accused his fellow Jew of arson or has only threatened him that he will deliver him into the hands of the Gentiles as arsonist, is considered a pursuer, and it is allowed to kill him. This decree is enacted on the basis of the principle of *hora' at sha' ah*.¹¹⁹⁹

In conclusion, in medieval Ashkenaz enactments concerning measurements in times of fire – with the purpose of either instructing the community to extinguish the fire or prescribing severe punishments for those who accused their fellow Jews of arson – had one single reason: to declare “emergency situation” (the decree was called *hora' at sha' ah*). The true background for “emergency situation” was not the danger of fire itself, but the new

¹¹⁹⁴ Minz 75. See II.B.6.

¹¹⁹⁵ mSanh. 6,4; bYev. 90b; yHag 2,2, 78a.

¹¹⁹⁶ OZ II. *Sanh.* No. 23–24.

¹¹⁹⁷ Isserlein PuK 158. See II.B.7, II.B.15.

¹¹⁹⁸ Ms. Hamb. 45 p. 168. See II.B.7.

¹¹⁹⁹ NMM. See II.B.7.

historical situation in which medieval Ashkenazi Jewry lived for four centuries: the danger of false accusations brought against the Jews in time of fire.

II.D.2.2.4. Liability According to the Law of Heaven, Exemption According to the Law of Men: Penance

In a decision delivered by R. Israel Bruna concerning a case of murder committed during an assault and battery in a guesthouse, both murderers are exempted from the law of men, but they are liable according to the law of Heaven. The one who has refused to do penance is excommunicated until he is willing to obey; the other is to be exiled for one entire year and required to do penance.¹²⁰⁰

In one of his *responsa*, regarding a quarrel between two Jews, called in the *responsum* Mendlen and Zanvil, R. Minz decides that Mendlen is liable according to the law of Heaven, and consequently he must appease Zanvil; but, according to R. Minz, he is not liable to pay the expenses of the lawsuit to Zanvil and the amount of money he owes him. Nevertheless, in the opinion of the other rabbi, who has been asked by R. Minz, he is liable.¹²⁰¹

With respect to the problem of asking for penance from the rabbi, see chapter II.D.1 (*'Viddui'*).

Regarding the coercive power of the *bet din*: threat of excommunication and sentence of excommunication containing a stipulation: until the offender repents – this has already been discussed in chapter II.C.6.3 in connection with the decrees of excommunication..

II.D.2.2.5. The Rights of the Individual: *Iqquv Tefilla* [Delaying of the Prayer]

The delaying of the prayer¹²⁰² was applied in three cases – similar, in fact – of information and disobedience to community enactment, court contempt, cursing, in matters of tax paying.

A quarrel between R. Simelin of Ulm and the community of Ulm has broken out because of the disobedience of R. Simelin in tax-matters, in consequence of which two

¹²⁰⁰ Bruna 265–6. See II.B.1.

¹²⁰¹ Minz 93. See II.B.8.

¹²⁰² Goldin writes (“The Synagogue“ pp. 24–7): “The essence of the practice was the interruption of public worship in the synagogue by an individual who would stand up during services and prevent the recitation of prayers, reading the Torah, or returning the Torah to the Ark. This action was taken in order to draw the attention of the group to an injustice which had been perpetrated by a member of the community, or by the community itself. The aggrieved individual could prevent the community from continuing its worship or to continue the discussion of the wrong done to him, until a decision had been reached. Accordingly the practice was called “delay of the prayer”, “abrogation of the daily sacrifice”, “crying and protesting”, “seating the cantor” or “holding the cantor’.” Bibliography and sources referred to or quoted by him: Grossman 1983: 199–220, 208–215; notes 2–11, 33–35.

members used their right to delay the prayer in order to force R. Simelin of Ulm to obey the decree enacted by several community leaders in Nürnberg, signed by himself as well. The prayer has been delayed three times because of him. The two persons who have delayed the prayer have refused to answer to the claims of the offender, because they have intended to take him to court. However, Simelin did not fulfill the requests of the delayers, and was condemned to severe one-year penance with the alternative of excommunication by R. Weil.¹²⁰³

In Schlettstadt, an argument has arisen between R. Liezer, who has not paid the due amount of money for taxes, and R. Liwman, the representative of the community who has taken R. Liezer to the Jewish court. In spite of the fact that R. Liezer has been warned not to go to the Gentile court to complain against his litigant, he has taken no notice of the warning. Therefore, R. Liwman has delayed the prayer in order to administer justice, but R. Liezer has gone to a Gentile court. Three weeks later, R. Liezer has returned to the city and the prayer has again been delayed because of him. The litigants have been instructed to go for arbitration.¹²⁰⁴

The third case in which delay of the prayer has been employed is contempt of court. A quarrel has developed between the litigants, Maharam Zvi and his adversary, R. David; though later they have agreed to go to court, R. David has tried to run away, and therefore Maharam Zvi has delayed the prayer, in consequence of which R. David has fled.¹²⁰⁵

There are other cases in which individuals or groups have delayed the prayer; one has been quoted above in II.B.2.3.2 in connection with jealousy accusation.¹²⁰⁶

II.D.2.2.6. The Rights of the Individual against the Rabbi: *Adrabe*

If a sage pronounces *niddui* against an individual for the sake of his honor or for injustice, and the excommunication is considered invalid, then the individual has the right to say *adrabe*; that is “on the contrary”.¹²⁰⁷ But in the 15th century, the opinions are very different among the rabbis concerning the validity of the *niddui*, all the more the validity of

¹²⁰³ Weil 147.

¹²⁰⁴ Minz 57. See II.B.8, II.B.16 and II.C.6.

¹²⁰⁵ Minz 83. See II.B.8, II.B.16 and II.C.6.

¹²⁰⁶ See Maharam's *responsum* (Maharam Lvov 310), quoted by R. Isserlein in PuK 222 and by R. Colon in 81–82 as precedent (see below). According to the *responsum* of Maharam, the husband “has delayed the prayer”, on the grounds that his wife has got “pregnant through adultery”, intending to compel the community to convene a court which would enable him to divorce her without paying the *ketubbah* and would declare the child illegitimate. The court then would begin to investigate the case. See S. Goldin: *The Synagogue*, p. 25 and there n. 58.

¹²⁰⁷ To reverse the excommunication to the excommunicator, see glossary in Introduction.

the *adrabe*. An extreme opinion is to be found in a *responsum* of R. Eliezer Hayyim b. Eliezer's who maintains that the *adrabe* against the sentence of excommunication is never valid, and that the sage has the right to pronounce excommunication against the individual; and if he errs, his whole process of judgment is invalid, his excommunication as well. After an invalid legal process, the *adrabe* has no meaning and no purpose.¹²⁰⁸

R. Colon explains the validity of the *adrabe* according to the Talmudic law.¹²⁰⁹

In the 15th century Italy, in the course of the quarrel concerning the breaking of an engagement (*biṭṭul shiddukhin*) – between R. Cosi, his son, and the rabbis of Padua, on the one hand, and R. Wiz, his son, and R. Landau, on the other – a sentence of excommunication was pronounced against R. Wiz and his son by the court of Padua. R. Landau, who supported R. Wiz and his son in the quarrel, rejected the sentence of excommunication, and pronounced *adrabe* (on the contrary) against the court of Padua and R. Cosi and his son. R. Moses Minz, R. Israel Bruna, R. Judah Minz and other prominent rabbis of the time decided that the *adrabe* of R. Landau was invalid and the sentence of excommunication of the rabbis of Padua was valid; consequently, R. Wiz, his son and R. Landau had to repent and do penance.¹²¹⁰

Concerning the quarrel about the decrees enacted unlawfully by the rabbis R. Seligman of Bingen and R. Man, R. Isserlein has written a *responsum* to three great communities of three German provinces that have rejected the decrees; and another *responsum* to R. Seligman and R. Man expressing his views in connection with the case. In both *responsa* he has drawn attention to the fact that the two rabbis have not tried to enforce their decrees yet. But if they tried to excommunicate anybody, their decision would be invalid. Further, anyone, either a group or an individual, can reply to their sentence of excommunication with *adrabe* (“on the contrary”) and that would be valid.¹²¹¹

The problems related to the power of the rabbis against individual rabbis have been discussed in chapter II.B.8 in connection with contempt of court, and in chapter II.C.6. with respect to *niddui*, in II.B.10 with respect to vows, in chapters II.B.11 and II.C.6a to the ritual slaughtering, in II.B.16 to the denunciation, and in II.B.17 to the apostasy.

¹²⁰⁸ Minz 56. See II.B.8 and II.C.6.

¹²⁰⁹ Colon 128. See II.C.6.

¹²¹⁰ Minz 97. See II.B. See II.B.8 and II.C.6.

¹²¹¹ Isserlein PuK 253. See II.C.6

II.D.3. Place

In his article on the integral function of the synagogue in medieval Ashkenaz¹²¹², S. Goldin states that the synagogue was the public place not only for liturgical purposes, but also for all communal activities.

II.D.3.1. *Haside Ashkenaz* –

II.D.3.1.1. Synagogue

The space for performing public penances in medieval Ashkenazi communities was the synagogue, the courtyard or entrance of the synagogue. The public space in the process of penance occurs in three contexts:

(1) As the sacred space where a transgression has been committed – like beating, pushing – considered as blasphemy. (E.g. public penance is prescribed for the murderer in each community of his exile before and in the synagogue.¹²¹³)

(2) As the place of public penance. (E.G. in HTR speaking in the synagogue at the time of prayer is considered “public” sin and blasphemy¹²¹⁴).

(3) as prohibition to appear in certain public spaces in connection with penances for special sins. (The repentant apostate is prohibited from going to church or from sitting among Christian monks and priests.¹²¹⁵)

II.D.3.1.2. Nature, Icy Water, Beehives

In SHP 19, in the RJH, in HTR 11 and 14, for fornication with a married or engaged woman, or relapse into sin (repeated fornication with a Gentile woman) the prescribed penances are supposed to take place in a “natural” environment: in winter the penitent is required to sit in icy water, in summer in beehives or among ants. In two glosses of MH Ms.

¹²¹² Goldin: “The Synagogue”; sources quoted or alluded by him: Mahzor Vitry 71, SHP 414; 1713, 911; Kol Bo 139; Sota 20a; Maharam Berlin 938; Maharam Lemberg 78; S. *Mordehai* BB 517; SHP 1291–129, 1641; Sanh. 45b; MK 23b s. v. Mar; Ned. 10b s. v. Olah la-Shem; OZ I448; HagMai HuM 5,1. SHP 461; OZ II 382–87. Rosensweig, *Ashkenazic Jewry*, 42, in connection to the 15th century *responsa*, especially that of R. J. Weil: In the center of the synagogue there was a wooden platform which was called *bimah*. It was from that platform that excommunication was recited. As part of the punishment which R. Jacob Weil decreed upon Simelin for informing against R. Seligman of Ulm, Simelin was required to ascend to the reader’s stand at the morning services, and from there to recite a public confession before the assembled congregation. It was in the synagogue that oaths were taken and physical punishments like flagellation were actually inflicted. Here the prayers could be interrupted to insure that the defendant would appear in court, and that justice would be done. In this forum, the dishonesty of men could be exposed. In a case involving unethical business dealings, R. Moses Minz, like R. Meir Halevi of Vienna before him had the cantor denounce the recalcitrant publicly at the synagogue services.

¹²¹³ HTR 23, Bruna 265–66, see discussion of the public penance for murder in II.B.1 and II.C.10.

¹²¹⁴ HTR 26.

¹²¹⁵ HTR 24.

Parma 2410 fol. 15a there are further penances prescribed to be performed in nature. The first gloss is to the paragraph on *teshuvat ha-katuv* concerning fornication with a married or engaged woman: here it is maintained that there are hermits who live in the wilderness among wild animals, endangering their lives; who walk naked in the forest at night, shoot, cry and torture themselves with whips. The other gloss is to the paragraph concerning the penance of the apostate who has deliberately converted to Christianity: the penance prescribed for this transgression is to torment oneself with thorns and thistles of the wilderness. The begging pardon at the grave of the fellow Jew is also to be performed in the nature.¹²¹⁶

II.D.3.2. Responsa

II.D.3.2.1. Public Insult, Battery and Disturbance in the Synagogue

There are several cases in the *responsa* literature of medieval Ashkenaz according to which public insult has been committed in the synagogue.¹²¹⁷ These cases are all considered blasphemy (*hillul ha-Shem*), and are also discussed in this respect, apart from being regarded as transgressions committed by a Jew against his fellow Jew.

According to a *responsum* of R. Isserlein's, beating and injury has been publicly committed in the synagogue, at the time of the circling procession on *Hoshanah Rabbah*¹²¹⁸. According to a *responsum* of R. Bruna's, R. Eliezer of Passau has transgressed against Rabbi Eliyyah of Prague in the synagogue by not calling him first to the Torah reading as the custom of the communities has demanded.¹²¹⁹ For blasphemy in the synagogue public confession must be made because of the desecration of the Name, as R. Weil maintains in one of his *responsa*.¹²²⁰ According to a *responsum* of R. Colon's, in the synagogue of Verona R. Asher Yatz has been publicly beaten by some community members.¹²²¹ According to a *responsum* of R. Minz's, the sanctity of the synagogue of Regensburg has been desecrated by some crosses drawn on the seat of Rabbi Bruna¹²²². According to another *responsum* of R. Weil, the sanctity of the synagogue of Neustadt has been publicly desecrated when some men have brought Gentile officers into the synagogue at the time of prayer on the High Holidays.¹²²³

¹²¹⁶ HTR 16. See discussion of the self-tormenting also in II.A.4, II.B.2 and II.C.2.

¹²¹⁷ The cases discussed in this section and the next – unless indicated otherwise – have been discussed in II.B.14.

¹²¹⁸ Isserlein PuK 210.

¹²¹⁹ Bruna 278.

¹²²⁰ Weil 152.

¹²²¹ Colon 154.

¹²²² Minz 76.

¹²²³ Weil 140.

II.D.3.2.2. Public Flogging (and Confession) in the Synagogue

According to a *responsum* of R. Bruna's, the murderer who has accepted to do penance, must be flogged publicly.¹²²⁴ Public flogging has been prescribed for an offender by R. Weil about one who has injured.¹²²⁵ In NMM about one who has beaten his wife and she died because of this, "flogging without mercy" is decided (NMM). For swearing falsely, injuring a fellow Jew, desecrating the Sabbath public flogging is imposed by R. Minz.¹²²⁶ For beating public flogging is ordered by R. Weil.¹²²⁷ Public flogging is decided by R. Weil about Simelin of Ulm for contempt of court, betrayal and cursing.¹²²⁸ Public flogging is imposed for lying under oath about one's property concerning tax-paying.¹²²⁹ Public flogging and confession are inflicted on the ritual slaughterer.¹²³⁰

II.D.3.2.3. Public Announcement in the Synagogue

About the murderer who has not been willing to do penance, it must be proclaimed publicly in the synagogue that he has refused to repent.¹²³¹ Concerning one who has insulted publicly a fellow Jew, Ra'avan has decided that the offence must be proclaimed publicly in the synagogue.¹²³² In case of slander the situation must be clarified publicly (NMM)¹²³³. According to a *responsum* of R. Minz's, it must be proclaimed publicly in the synagogue that one who has failed to appear in court and has caused financial loss to his fellow Jew is liable according to the law of Heaven.¹²³⁴ About the ritual slaughterer who has committed an error while practicing his profession, it must be proclaimed publicly in the synagogue that he has been dismissed.¹²³⁵

II.D.3.2.3a. Expelling from the Synagogue

According to a decision of Ra'avan, someone has been driven out of the synagogue because of gambling, which is a graver dishonor than proclaiming his offence in the

¹²²⁴ Bruna 265.

¹²²⁵ Weil 87.

¹²²⁶ Minz 93. See II.B.9.

¹²²⁷ Weil 28. See II.B.3.

¹²²⁸ Weil 147. See II.B.9.

¹²²⁹ Weil 123.9.

¹²³⁰ OZ I.448. See II.B.1.

¹²³¹ Bruna 265–6. See II.B.1.

¹²³² Maharam Hagahot Maimoniyot Hoshen Mishpat 5.1.

¹²³³ This is a *responsum* of Meir b. Baruch of Rothenburg's, see *Mordehai* BQ par. 81, and a quotation from it in the *responsum* of R. J. Colon 186.

¹²³⁴ Minz 101.

¹²³⁵ OZ I.448.

synagogue.¹²³⁶ NMM permits the person who insults a fellow Jew in the synagogue to be expelled from the synagogue. We have not additional information about the meaning of the expulsion from synagogue. In the decision of Ra'avan it is mentioned that this is a graver humiliation for him than any other public proclamation. We can suppose that it served as both a substitute for public proclamation about his sin for the information of the community, and also as punishment similar to *niddui*, home arrest, greater excommunication (*herem*), separation (from the community prayer) or (legal) disqualification.

II.D.3.2.4. Begging Pardon Publicly or/and Confession in the Synagogue

For beating, one must ask publicly for forgiveness from the beaten one in the synagogue after being flogged.¹²³⁷ The murderer must confess publicly after being flogged. An adulteress is required to confess her sin in the synagogue of the women in the three communities in which she has transgressed.¹²³⁸ For insult committed in the synagogue during *Sukkoth*, the insulter must beg pardon publicly in the synagogue.¹²³⁹ For beating and cursing, one must ask publicly for forgiveness from the injured person before the Torah scroll.¹²⁴⁰ A man who curses a woman must beg her pardon publicly on the *bimah*.¹²⁴¹ A woman who slanders another woman must ask publicly for forgiveness from the offended one in the synagogue of the women.¹²⁴² Simelin of Ulm has been ordered to beg publicly pardon in the synagogue for cursing, betrayal, contempt of court etc.¹²⁴³

II.D.3.2.4a. Public Apology or Sitting in the Synagogue of the Women (as a Type of Silent Public “Confession”) and in the Courtyard of the Synagogue

A woman who has slandered the father of another woman is liable to flogging, but the punishment of flogging can be commuted into excommunication for eight days, that is sitting outside the synagogue. According to two decisions of NMM, a man is bound to ask publicly for forgiveness from another one in the courtyard of the synagogue for slandering his mother accusing her of fornication.

3.2.5. Public Penance in the Synagogue

¹²³⁶ Ra'avan Prague ed. p. 112a.

¹²³⁷ Weil 87. See II.B.3.

¹²³⁸ Weil 12. See II.B.2.

¹²³⁹ Isserlein 210. See II.B.3 and II.B.14.

¹²⁴⁰ Weil 28. See II.B.3.

¹²⁴¹ *Mordehai* Kid. 558. See II.B.5.

¹²⁴² NMM. See II.B.7.

¹²⁴³ Weil 147. See II.B.8.

A murderer who has accepted the penance prescribed by R. Bruna is required to perform a ritual of self-humiliation in the synagogue at the place where he has been exiled: he must pray with iron chains on his hands and body, lying down at the entrance of the synagogue, receiving public flogging and making public confession.¹²⁴⁴

II.D.3.2.5a. Penance and Confession in the Winter House

According to a *responsum* of R. Bruna's, R. Maharzaq has ordered to an adulteress who has asked him to impose penance on her to confess and humiliate herself before the wife of the rabbi in the "winter house/chamber"¹²⁴⁵ every time the wife of the rabbi enters the that house. Probably the repentant adulteress has been a maid servant in the house of the rabbi.¹²⁴⁶

II.D.3.2.6. Begging Pardon at the Grave of the Harmed Person

Public flogging and begging pardon at the grave of the cursed person is prescribed for the offender.¹²⁴⁷ Maharam has also decided that one who has called his fellow Jew a "bastard" must go to the graves of the offended person's parents barefoot and ask for forgiveness from them.¹²⁴⁸ The offender or his messenger is required to beg pardon at the graves of the parents of the one called "bastard"; one must beg pardon in three communities and at the grave of the parents of a man because he has harmed them by calling them "apostates"; one must beg the pardon of the offended person and if he or she has died, at his or her grave publicly; a woman who has slandered the father of another one must beg pardon at his grave according to four decisions of NMM. R. Simelin of Ulm is ordered to beg pardon at the graves of the parents of R. Seligman whom he has offended by calling him a "bastard".¹²⁴⁹

II.D.3.2.7. The Place of Exile

A man who has committed a murder unwillingly has gone into exile – not from place to place but only to one place – where he has been hired to work and that has been a perfect atonement for his sin.¹²⁵⁰ According to NMM, the penitent murderer is required to shave his head and go into exile for two or three years and confess in every community. The murderer

¹²⁴⁴ Bruna 265–6. See II.B.1.

¹²⁴⁵ *Bet ha-horef*, the chamber where the family dwelt in winter in medieval Jewish European houses and where also an oven was places.

¹²⁴⁶ Bruna 226. See II.B.2.

¹²⁴⁷ Weil 87. See II.B.3.

¹²⁴⁸ Maharam Lvov 492. See II.B.5.

¹²⁴⁹ Weil 147. See II.B.8.

¹²⁵⁰ OZ I.112. See II.B.1.

who is willing to do penance is ordered to go into exile for a whole year¹²⁵¹, and confess his sin publicly.¹²⁵² R. Isaac b. Moses has decided that the ritual slaughterer who has sold unkosher meat must be exiled and he must do penance as the slaughterer in Sanh. 25a.¹²⁵³

II.D.4. Time

The duration of the penance has varied between three days and several years. Sometimes the penitent has had to perform penances until the end of his life.

II.D.4.1. *Haside Ashkenaz*

In HTR, for murder, fornication, apostasy, drinking the wine of the Gentiles, and desecrating the Sabbath, penances of different durations are prescribed. The *teshuvah ha-ba'ah* is to be performed immediately; the duration of the *teshuvat ha-gader* is 2 years for fornication with a married woman; the duration of the *teshuvat ha-mishqal* for the same offence is 40 days of fasting, the duration of the *teshuvat ha-katuv* is 40 days of flogging and fasting; the duration of the *teshuvat ha-mishqal* for fornication with a married woman is 1 year of prohibition from eating meat and drinking wine; the duration of the *teshuvat ha-katuv* for all kind of fornications is 40 days of continuous fasting and flogging; or 40 days of fasting and flogging, discontinuously, only on Mondays and Thursdays; or fasting and flogging for 40 days only on Mondays and Thursdays; or fasting and flogging 3 times 40 days¹²⁵⁴. In the IT there are periods of half a year of fasting only on Mondays and Thursdays¹²⁵⁵. In MH there are periods of three years, of 40 days and of three days of fasting, as well as 40 days continuous fasting with an addition of 3 days of continuous fasting day and night (Esther's fast); and the *teshuvat ha-gader* lasts 3 years.¹²⁵⁶

II.D.4.2. *Responsa*

II.D.4.2.1.1 Fasting – Every Day for One Year; Only on Mondays and Thursdays for One Year; for 40 days; for 6,5,3 Days

¹²⁵¹ Instead of three, as the Roqeah prescribes.

¹²⁵² Bruna 265–6. See II.B.1.

¹²⁵³ OZ I.448. See II.B.11.

¹²⁵⁴ HTR 2–17.

¹²⁵⁵ Ms. Vat. 183 fol. 174a.

¹²⁵⁶ Ms. Parma 2999.

II.D.4.2.1.1.1 Fasting for One or More Years Continuously or Only on Mondays and Thursdays

In one of his *responsa*, R. Bruna imposes on the penitent for murder fasting every day for the first year of his penance, for the second year fasting on every Monday and Thursday, and for the rest of his life 3 days every year.¹²⁵⁷

For adultery, R. Weil has decreed fasting daily for one year, and in the second and third years of his penance fasting only on Mondays and Thursdays.¹²⁵⁸

In one of his *responsa*, R. Weil imposes for contempt of court, cursing, betrayal and other offenses, a penance of one year of fasting on Simelin of Ulm.¹²⁵⁹ In another *responsum*, R. Weil decrees for false oath 40 days of fasting and an additional year of fasting on Mondays and Thursdays.¹²⁶⁰ Maharam imposes on an informer fasting for one or two years as on murderers.¹²⁶¹

In Ms. Ox 784 fol. 28a, for repenting apostates the following orders of fasting have been decreed by R. Eizik Tyrnau:¹²⁶² For the man:

(1) In the first year three days of continuous fasting (Esther's fast), and sitting in cold water for one hour; then every week on Mondays and Thursdays; after Yom Kippur 40 days.

(2) In the second year one day of fasting every week;

(3) In the third and the following years until the end of his life every month one day of fasting.

For the woman: at the beginning 3 days continuous fasting (Esther's fast) and sitting half an hour in cold water; 40 days of fasting after Yom Kippur; fasting for half a year on Mondays and Thursdays.

In the *Leqet Yosher*, the following order of fasting has been decreed for the repentant apostate: one year of fasting on Mondays and Thursdays and prohibition from eating meat and drinking wine; in the second year fasting on Mondays and Thursdays and he or she is allowed to eat meat and drink wine; all his or her life he or she has to fast one day in every month.¹²⁶³

In the *responsum* in the name of R. David b. Moshe in Ms. Oxford 784, for the repenting apostate the following order of fasts has been decreed: in the first month 3 days of continuous fasting every week, or 2 days and one day (with interruption); in the remaining 9

¹²⁵⁷ Bruna 265–6. See II.B.1.

¹²⁵⁸ Weil 12. See II.B.2.

¹²⁵⁹ Weil 147, 178. See II.B.8.4.1.

¹²⁶⁰ Weil 123. See II.B.9.

¹²⁶¹ Maharam TshM Neziqim 14. See II.B.16.

¹²⁶² Ms. Oxford 784 28a. See II.B.17.

¹²⁶³ LeqYosh II49. See II.B.17.

months of that year which has remained, fasting every day regularly, or if he can as in the first 3 months; after the first year each week 1 day of fasting; all his life on Mondays and Thursdays¹²⁶⁴.

II.D.4.2.1.1.2 Fasting for Forty Days

Hayyim Paltiel has decreed forty days of fasting for a mother for murdering her child by mistake.¹²⁶⁵

In one of his *responsa*, R. Minz has imposed forty days of fasting on a man for false oath; for the desecration of the Sabbath three days; and for injury six days of fasting.¹²⁶⁶ R. Colon has ordered fasting on Mondays, Thursdays, Mondays for transgressing a community ban by robbery.¹²⁶⁷

R. M. Minz has decreed forty days of fasting for a ritual slaughterer who has erred, from the 10th of Iyyar until Rosh ha-Shanah on Mondays and Thursdays, which are totally forty days.¹²⁶⁸

For the desecration of the Sabbath the fasting of forty days was ordered by the scholars of the 14–15th centuries, for example by R. Menahem of Merseburg and by R. I. Isserlein. R. Isserlein has decreed forty days of discontinuous fasting for desecrating the Sabbath, in the same way as Maharam has prescribed fasting for a man who has had sexual intercourse with someone without knowing that she was *niddah* – from the tenth of Iyyar to *Rosh Ha-Shanah* on each Monday and Thursday, which amounts to forty days. Maharam has ordered three days of fasting.¹²⁶⁹ In another *responsum*, R. Isserlein orders forty days of fasting for the desecration of the Sabbath.¹²⁷⁰ In the next paragraph he maintains that these forty days are equal to two days and nights of continuous fasting.¹²⁷¹ In the *Leqet Yosher* forty days (on Mondays and Thursdays) is decreed in the name of R. Isserlein by one of his disciples.¹²⁷²

¹²⁶⁴ Ms. Oxford 784 25b–26a. See II.B.17.

¹²⁶⁵ Ms. Oxford 784 27b. See II.B.17.

¹²⁶⁶ Minz 93. See II.B.3, II.B.9, II.B.15.

¹²⁶⁷ Colon 51. See II.B.4.

¹²⁶⁸ Minz 25. See II.B.11.

¹²⁶⁹ Maharam Lvov 431. See II.B.15.

¹²⁷⁰ Isserlein PuK 55. See II.B.15.

¹²⁷¹ Isserlein PuK 61. See II.B.15.

¹²⁷² LeqYosh I.63. See II.B.15.

II.D.4.2.1.1.3 Fasting for Three or Five Days

In the ST¹²⁷³, for drinking involuntarily *yayin nesekh* (the wine of the Gentiles), five days of fasting is decreed, for drinking voluntarily, forty days. In the name of R. Juda Ḥasid, Rosh decrees five days of fasting for drinking involuntarily *yayin nesekh*.¹²⁷⁴ This has been decreed again by R. Mollin.¹²⁷⁵ For desecrating the Sabbath involuntarily, three days of fasting (on Monday, Thursday and Monday) is ordered in the name of Maharam.

II.D.4.2.1.2. Public Flogging, Confession, Begging Pardon Once or Three Times

Usually, public flogging has only been imposed within the frame of public penance one or a few more times, and it was not applied permanently, during the entire period of penance.

According to a *pesaq* of NMM, flogging, without mercy is decreed for a man who has beaten his wife so heavily that she has died.¹²⁷⁶ Public flogging has been decreed by R. Weil for an offender (R. Simelin of Ulm) for betrayal, contempt of court and cursing.¹²⁷⁷ For false oath, R. Weil has decreed public flogging; three times: on Monday, Thursday and Monday.¹²⁷⁸ Public flogging has been decided for the ritual slaughterer who has erred.¹²⁷⁹

II.D.4.2.2.1. Excommunication for Thirty Days (*Niddui*)

In NMM, excommunication for thirty days (*niddui*) is prescribed for a woman for slander. These thirty days have been divided by R. Menahem Mereburg in four weeks; she has had to fulfill every seven day of the *niddui* in another community, sitting outside the synagogue. For the commutation of the flogging – that being not a suitable punishment for women – she has had to spend a further eight days sitting outside the synagogue. Thirty days of excommunication (*niddui*) have been imposed by R. Weil on R. Simelin of Ulm for contempt of court, betrayal, and cursing.¹²⁸⁰ For contempt of court thirty days of excommunication has been prescribed by R. Colon.¹²⁸¹

¹²⁷³ Ms. Vat. 183 fols. 177a–178a (=ST Mun. 232; HTRB Mos. 221 fol. 22a–b, Jer. 621).

¹²⁷⁴ Rosh 19.16. See II.B.12.

¹²⁷⁵ Mollin TH 89. See II.B.12.

¹²⁷⁶ NMM. See II.B.1.

¹²⁷⁷ Weil 147. See II.B.8.

¹²⁷⁸ Weil 123. See II.B.9.

¹²⁷⁹ OZ I.448. See II.B.11.

¹²⁸⁰ Weil 147. See II.B.8.

¹²⁸¹ Colon 189. See II.B.8.

II.D.4.2.2.2. Prohibition for the Ritual Slaughterer to Practice his Profession for One Month

As explained in II.C.6a, the removal of the ritual slaughterer has followed, in some respects, the pattern of the minor excommunication (*niddui*), and therefore it has lasted for thirty days.

According to R. Isaac b. Moses *Or Zarua* of Vienna, the ritual slaughterer is to be removed for one month.¹²⁸² In one of his *responsa* (25th), R. Minz also decrees for the ritual slaughterer to be removed for one month, in the same way as in the decision of the *Or Zarua*. The questioner, R. Menahem Bacharach, quotes from the decision of R. Shapiro that he has removed a ritual slaughterer for six weeks¹²⁸³. In the *responsum* of R. Weil, a ritual slaughterer is also removed from his service for one month, which has been a sufficient atonement for his error.¹²⁸⁴

II.D.4.2.2.3. Exile for One, Two or Three Years

Exile is the typical penance for murderers. In SHP, as well as in Ms. British Library 477, there are periods of five years prescribed for murder.¹²⁸⁵ According to HTR, the period of exile for murder is three years; in NMM two or three years of exile have been prescribed for murderer. According to a *responsum* of R. Bruna's, one year of exile has been prescribed for a repentant murderer.¹²⁸⁶ Consequently, there is a decrease in the period of exile from the 12th to the 15th centuries¹²⁸⁷.

II.D.5. The Public and Private Character of Penance

Public penance was connected to the rituals performed in public places (especially in the synagogue) and has been discussed in the chapter about the place.¹²⁸⁸ The purpose of the public rituals was above all the humiliation of the sinner. The rituals connected to public penance had their own symbolism (quite specific to the transgressions committed) which will be discussed in the following chapter (II.E.1).

¹²⁸² OZ I.448. See II.B.11.

¹²⁸³ Minz 25. See II.B.11.

¹²⁸⁴ Weil 97. See II.B.11.

¹²⁸⁵ See the discussion in II.B.1 and II.C.6.7.

¹²⁸⁶ Bruna 265–6. See II.B.1.

¹²⁸⁷ See discussion about the shortening of the period of the exile in III.B.1 “*Ritualdynamic*” (dynamics of the ritual).

¹²⁸⁸ See II.D.3.

The private character of the penance was expressed above all in private fasts within the frame of a penitential schedule, and has been discussed in the chapter about the fast and time.¹²⁸⁹ Apart from fasting, secret flogging, confession, prayer, almsgiving belong to private penances. The reason of the secrecy of penance is above all the imperative to behave discretely within the religious community, and to avoid blasphemy (*hillul ha-Shem*).¹²⁹⁰ Another reason is offered by the author of the *Commentary on Shi'ur Qomah* who says that “there is no success in things which are known publicly”¹²⁹¹.

II.E. Penitent and Community, Rituals and Symbols

II.E.1. The Status of the Ba'al Teshuvah (Penitent) in the Jewish Communities

II.E.1.1. *Haside Ashkenaz* and the Decrees of the 12–13th Centuries

II.E.1.1.1 The Status of the *Ba'al Teshuvah* Before Penance

According to the sources of *haside Ashkenaz* and the decrees (*taqqanot*) of the medieval Ashkenazi communities from the 12–13th centuries, there is a difference between the status of the excommunicated person and that of the penitent. According to SHP, it is prohibited to speak with an excommunicated person.¹²⁹² Contrary to this ruling, according to the *Taqqanot Rabbenu Tam and his fellows* (1160)¹²⁹³, it is allowed to speak with a transgressor of the *herem*¹²⁹⁴ who is willing to do penance: namely, it is allowed to speak with a penitent. While the status of the excommunicated person is total exclusion from the community not only legally, but also socially, generally, the status of the penitent is better: the social contact with him is not to be totally severed – even if he is not considered in every case and in every respect a full member of the society.

Of special status are those whose penance is not accepted because of the nature of their sin. The status of these transgressors is equal with the status of the excommunicated persons. These are considered dead with respect to community life, or even worse: if they die they are even not buried in a Jewish cemetery but outside of it. In SHP and also in HTR,

¹²⁸⁹ See II.D.4.

¹²⁹⁰ Committing a sin in public, moreover, committing before Gentiles, is graver than transgressing a commandment in private. See Introduction 4.1.

¹²⁹¹ Which is, however, a Talmudic saying. See II.A.2.

¹²⁹² SHP 1234.

¹²⁹³ TRT, Maharam Pargue fol. 158b

¹²⁹⁴ That is of a decree enacted under threat of excommunication.

there are paragraphs which deal with such people: these are the Jews who lead others into sin or those who have robbed many fellow Jews.¹²⁹⁵

II.E.1.1.2. The Status of the *Ba'al Teshuvah* During Penance

The murderer must perform penance in exile that lasts three years, during which he is an outcast from his own community in some respects. However, his status is not equal to the status of an excommunicated person, because he lives on alms received from the community, he is allowed to enter synagogues and pray, even if his standing is inferior to that of the other members of the community. His lower status is enhanced by outer humiliating signs worn on his body and clothing and by special rituals performed by him publicly in the community¹²⁹⁶.

Unlike the status of the penitent murderer, according to SHP and HTR, after the fornicator has confessed his sin, he is immediately received back into the community, before he has performed his penance. However, without confession, nobody can be considered to have the status of the penitent, but must remain excommunicated.

For some transgressions, there are, nevertheless, further requirements besides the confession prescribed for one to be considered a penitent. He who robs or steals something, must restore the stolen thing to the owner.¹²⁹⁷ There is no remedy for slander unless the offender appeases the offended person.¹²⁹⁸ The denouncer shall serve the denounced person as a permanent slave¹²⁹⁹; that is, he must pay him for the damage caused by the denunciation, and if he can not do that, he must serve him permanently. Without compensation, even if he confesses his sin, the offender is not considered a penitent.

Of particular importance is the status of the repentant apostate: immediately after he has repented and immersed ritually, the repentant apostate is considered a Jew.¹³⁰⁰

II.E.1.1.3. The Status of the *Ba'al Teshuvah* After Penance

Penance (*teshuvah*, in the terminology of *haside Ashkenaz*) brings about *kapparah* (atonement), and purifies the sinner wholly from sin. The status of the penitent after penance is therefore the same as that of other members who have not committed sin, and his destiny depends only on his future deeds. It is prohibited, therefore, to mock the penitent after fulfilling his penance. According to HTR, it is forbidden to mock penitents after penance, and

¹²⁹⁵ SHP 1233, HTR 28.

¹²⁹⁶ HTR 23.

¹²⁹⁷ SHP 16.

¹²⁹⁸ SHP 16, HTR 28.

¹²⁹⁹ HTR 27.

¹³⁰⁰ HTR 24.

the punishment of the mocker is the same disgrace by which he has offended the penitent.¹³⁰¹ The *herem* in the name of R. Tam contains the prohibition of mocking the penitent during his penance¹³⁰². According to NMM, it is prohibited to humiliate a penitent who has only accepted to do penance but has not atoned for his sin yet.

The idea of purification can be demonstrated with many examples. As explained in II.A.4, atonement has a central role in the initiatory rituals, and therefore has a purifying effect. According to the *Commentary on Shi'ur Qomah*, atonement leads to saintliness and purity. “Whiteness’, that is innocence after penance is expressed in several paragraphs of SHP. For example, there is a paragraph which plays with the homonymous words in Hebrew “treachery” and “clothes’, (*bagad – beged*). Commenting on biblical verses that contain these words, and explaining them with reference to penance, SHP concludes that “whiteness” in the Qohelet-quotation (‘Let thy garments be always white’ – Qoh. 9,8) is to be interpreted as the status of the penitent that is “white” (meaning “innocent’) if he repents without “treachery’.¹³⁰³

II.E.1.2. Responsa

II.E.1.2.1. The Status of the Penitent Murderer

According to a *responsum* of R. Isaac b. Moses, as soon as he accepts to do penance, the penitent murderer is considered an equal member of the community¹³⁰⁴. R. Bruna decides in the same way.¹³⁰⁵

II.E.1.2.2. The Status of the Penitent Adulteress

According to the 15th century *responsa*, when the adulteress entered penance, her status changed in two respects: (1) in the community; (2) related to her husband. The second question is a *halakhic* issue (pertaining to *dine 'ishut*), and on the basis of mSota 5.1, the woman who deliberately committed adultery must be divorced from her husband, without *ketubbah*. The status of the penitent adulteress, who was accepted to do penance, was inferior to the rest of the community members, and this inferiority was expressed in humiliating rituals. Sometimes she never returned to her former status. We do not know whether her penance influenced her *halakhic* status concerning *dine 'ishut*. Probably, her penance had not

¹³⁰¹ HTR 16.

¹³⁰² TRT, Maharam Prague fol. 158b.

¹³⁰³ SHP 1064.

¹³⁰⁴ OZ I.112.

¹³⁰⁵ Bruna 265–6.

the power to change her divorced status. Sometimes, her confession and willingness to do penance was not accepted by the rabbis, because she was suspected that wants to divorce her husband and marry another man. Consequently, the fear existed from the part of the rabbis that the intention of repentance is false, and the adulteress needs the formal repentance in order to get married anew. Therefore, we can not know precisely what effect the process of penance had in certain cases.¹³⁰⁶

II.E.1.2.2a. The Adulteress Who has Borne a Bastard, Must Perform Penance for the Rest of Her Life

A young woman who has fornicated and has borne an illegitimate child must do penance for the rest of her life through fasting and self-mortification, and is never allowed to be together with men or to speak with them.¹³⁰⁷

II.E.1.2.2b. The Confession of a Woman about her own Fornication is not Accepted; but/and she is also Prohibited to her Husband

According to a decision of R. Mollin, a woman who has confessed that she fornicated ten years before her confession is not to be trusted, and she is no longer allowed to stay with her husband either.¹³⁰⁸

II.E.1.2.2c. The Adulteress is Prohibited to her Husband and to the Man with whom she has Fornicated

A woman is prohibited to marry the man with whom she has fornicated, even after her husband and the wife of the man have died.¹³⁰⁹ R. Colon has explained and has also decided that the woman who has committed adultery of her own free will is prohibited to her husband and must be divorced from him, according to mSota 5.1.¹³¹⁰ (The status of the suspected and captured women has already been discussed in chapter II.B.2)

II.E.1.2.3. The Status of the Penitent Injurer

R. Minz has decreed penance for beating, lying under oath and desecrating the Sabbath, and only after completing his penance will the offender regain his status and be

¹³⁰⁶ See II.B.2.

¹³⁰⁷ Weil 12.

¹³⁰⁸ Mollin TH 181.

¹³⁰⁹ Isserlein PuK 29.

¹³¹⁰ Colon 167.

allowed to take a rabbinic oath.¹³¹¹ According to a decision of R. Weil, the injurer can also regain his legal status after he has fulfilled his penance, through public flogging, confession, and asking for forgiveness.¹³¹²

II.E.1.2.4. The Status of the Penitent Rabbi or Community Spokesman

According to one of R. Weil's *responsa*, R. Simelin of Ulm was required to do public and private penance for one year, beginning with thirty days of excommunication. If he fulfills all the conditions required, after one year he will regain his legal status, but be forbidden to reassume his position in the community council. If he does not, he will be excommunicated from every Jewish community.¹³¹³ He has not repented truly, since he has altered the words of the confession; therefore, he remained legally disqualified.¹³¹⁴

For breaking the agreement not to transgress the "borders" of rabbi Eliyyahu of Prague, R. Eliezer of Passau is required to leave his residence, Prague, for a faraway place; till then he is prohibited from teaching and rendering decisions, that is to say, he is not considered a Talmudic sage. If he does not obey, he will be excommunicated from every Jewish community.¹³¹⁵ The decision has been repeated and confirmed by R. Bruna.¹³¹⁶ It has also been strengthened by R. Perez under threat of excommunication, since the offender has refused to obey.¹³¹⁷

Rabbi M. Capsali of Constantinople, who has been accused – falsely – by the rabbis of his city and country of rendering erroneous decisions, has been required by R. Colon to withdraw his decisions, to apologize publicly, and do penance. Until the conditions are fulfilled, he is prohibited from exercising his rabbinical authority, under threat of excommunication from every Jewish community, and this has also been decreed for the whole community of Constantinople.¹³¹⁸

In the three cases mentioned above, the rabbis are prohibited from teaching (one of them is even legally disqualified), until they complete the penance assigned and fulfill the requirements, under threat of excommunication.

¹³¹¹ Minz 93.

¹³¹² Weil 28.

¹³¹³ Weil 147.

¹³¹⁴ Weil 178.

¹³¹⁵ Bruna 278.

¹³¹⁶ Bruna 282.

¹³¹⁷ Bruna 283.

¹³¹⁸ Colon 83.

II.E.1.2.5. The Status of the Penitent Perjurer

According to a *responsum* of R. Weil's, for taking a false oath concerning his property, a rich man in München has been required to do severe penance through public flogging and confession in the synagogue, private fasting and giving to charity; but immediately after accepting the penance assigned and before completing it, he regains his legal status, namely he is allowed to take an oath and give testimony, since the witnesses – the tax-collectors of the community – have all been involved.¹³¹⁹

The decision rendered by R. Isserlein in a similar case differs from that of R. Weil: the member of the community council who has sworn falsely concerning his property is allowed to reassume his position and render decisions in community matters only after performing the penance imposed on him, and the council members are not bound by the oath taken among themselves.¹³²⁰

II.E.1.2.6. The Status of the Penitent Apostate

(a) In the second half of the 12th century in Northern-France, three Tosafist sages, R. Isaac b. Samuel, R. Isaac b. Abraham and R. Samson of Abraham rendered decisions concerning the way a repentant apostate must be reaccepted into the community.¹³²¹

In one of his *responsa*, R. Isaac b. Samuel (Ri, the Elder) decides in the case of a repenting apostate that ritual immersion in the presence of three laymen is not required. If the repentant claims that he has ritually immersed and accepted to keep the commandments of the Torah, he is to be trusted without witnesses.¹³²²

R. Isaac b. Abraham, R. Isaac b. Samuel's disciple, in his commentary on the *Yev.* 47b, writes in a similar way that the repentant apostate does not need to be accepted before three laymen.¹³²³

R. Samson of Shanz, on the other hand, in his *responsum* written to his brother (R. Isaac b. Abraham), preserved in MS. Oxford 844, disagrees with his brother in connection with his decision of accepting a repentant apostate relying solely on the man's words that he has ritually immersed on his own, without witnesses. He writes that his immersion performed "before *haverim*" is not proper. He must be accepted in the presence of three sages, confessing and promising to keep the commandments, although he does not have to ritually immerse. He

¹³¹⁹ Weil 123

¹³²⁰ Isserlein PuK 214.

¹³²¹ See Kanarfogel, "Changing Attitudes". See discussion of the attitude towards converts in 12th century France in the study of Reiner, A.: "'L'attitude envers les proselytes".

¹³²² Ms. Vercelli C235/4.

¹³²³ Id.

refers to the decision of Rav Zemaḥ Gaon, who has decided that even if the repentant apostate has received flogging, he must also confess publicly and promise to keep the commandments of the Torah in the future. His opinion is that not the ritual immersion, but the acceptance of the commandments must be performed before three sages.¹³²⁴

(b) In the next seven examples (one from France, second half of the 13th century; two from Germany, end of the 12th and beginning of the 13th century; one from Central-Germany, second half of the 13th century; one from Austria, second half of the 13th century; two from Austria, 15th century), all decisors agree that ritual immersion is required of the repentant apostate, as a rabbinic commandment, before three laymen at night, and he must prove with his behavior that he has truly repented. If not, he is not accepted as a Jew.

In the *Tosafot Shittah* to Yev. 47b, quoted in Ms. Vercelli, the repentant apostate must perform ritual immersion according as a rabbinic ruling.¹³²⁵

Ra'avyah writes – in a *pesaq* quoted in his name in the *Semaq of Zürich* – that the repentant apostate must shave and ritually immerse, as a proselyte, before three men, and the immersion can be performed at night.¹³²⁶

R. Bonfent, the pupil of R. Simḥa of Speyer writes in the name of his master that a Jewess who has given birth to children among the Gentiles and returns to the Jewish community together with them, needs ritual immersion, but not necessarily before three sages. It is sufficient before three laymen and the immersion can also be performed at night.¹³²⁷ According to a *responsum* of Maharam, the testimony of a repentant apostate who has insincerely returned to Judaism can not be accepted, even if he has ritually immersed.¹³²⁸ According to a *responsum* of R. Avigdor b. Eliyyah of Vienna, a man and his wife, repenting apostates, have ritually immersed and asked whether they can have marital life, or must wait for three months to complete their penance. The respondent answers that they do not need to wait.¹³²⁹

R. I. Isserlein maintains that the repentant apostate is allowed to shave in the intermediary days of the festival so that he may perform the *ṭevilah*. R. Isserlein's argument for the allowance to shave even in the intermediary days of the festival is that it is better for the repentant apostate not to delay the fulfilling of the *mizvot* (because he is *kosher* to fulfill them only after *ṭevilah*). It is evident that, according to R. Isserlein's opinion, the repentant

¹³²⁴ Ms. Ox 844 p. 206.

¹³²⁵ Ms. Vercelli C235/4.

¹³²⁶ *Semaq of Zürich*. יצחק מקורביל. עמודי גולה (סמ"ק), סאטמאר תרצ"ה.

¹³²⁷ *TuPHAZ* 171.

¹³²⁸ Maharam TshM Nashim 10.

¹³²⁹ Avigdor b. Eliyyah of Vienna PuP 454.

apostate is required to ritually immerse in order to be fully readmitted into the community.¹³³⁰

In another *responsum*, R. Isserlein explains that the repentant does not need to mortify himself, because it is enough for him to be deprived of all the good things which the Christians enjoy.¹³³¹

(c) In the last three examples (from Austria, East- and Central Germany, the 15th century) all decisors agree that the repentant apostate must ritually immerse in the presence of three sages, and declare, while he is still standing in the water, that he will keep the commandments of the Torah, confess in the water by saying the *viddui* three times, and commit himself to do the penance assigned to him. Immediately after the immersion, he or she is regarded as a Jew or Jewess (in one example, after the three fast-days and nights).

In Ms. Oxford 784, in the two *responsa* (R. Isaac of Tyrnau's and R. David b. Moses) the orders of penance for repenting apostates have the same pattern: ritual immersion in the presence of three laymen, confession (reciting the *viddui* three times in the water, probably the "‘*Ashamnu*'"), three days and nights continuous fasting, promise that they will perform the penance required of repenting apostates; immediately after the immersion, before completing the whole penance, they are considered Jews.¹³³² According to the *Leqet Yosher*, ritual immersion, shaving the hair and confessing the 'Ashamnu three times are required of the repenting apostate so that he or she may be considered a Jew.¹³³³

II.E.2. Case-specific Signs of the Status of the Individual Penitent and their Place in the System of Symbols of the Respective Rituals

Signs for marking the penitent-status in general or case-specific signs (signs that indicate the specific sin committed by the penitent) are applied either for penitents who have committed grave sins or for those who served in important community functions and therefore marking their current status (their deposition or suspension) or their humiliation is a public concern.

II.E.2.1. Signs for the Murderer and Apostate, Similar to Those of the Mourner or Excommunicated Person

¹³³⁰ Isserlein ThD 86.

¹³³¹ Isserlein PuK 198.

¹³³² Ms. Ox 784 fol. 28a and fols. 25b–26a.

¹³³³ LeqYosh. II. 49.

Especially for the murderer and apostate, there are instructions to act as a mourner or as an excommunicated person during the period of penance: to let his hair and beard grow, to wear black clothes, to wear sackcloth, to put ashes on his head, to go barefooted. These instructions and symbols have three important functions: (1) the penitent murderer and apostate are required to show their special status by their outward appearance in order to warn the other members of the community to behave themselves carefully with them; (2) these signs are warnings for the penitents to abstain from worldly affairs or rejoicing; (3) the symbolic significance of their appearance is the utmost humiliation in the eyes of God and the community. Both the mourner and the penitent sit on the ground and put ashes and dust on their head. They express symbolically that they make themselves equal with the dust and ashes, a ritual meaning the total annihilation of all characteristics of his human existence. The penitent's purpose by that ritual is to receive forgiveness from God and the community.

II.E.2.2. The Special Marks of the Murderer

The murderer has to wear the special signs of his transgression in the face of the community: beyond confessing his sin openly during his exile in every place where he goes, he must let his hands be tied around his neck with a chain and lie down on the threshold of the synagogue so that the congregation should pass above him when they leave the service. The resemblance to Cain is explicitly stated in some sources concerning the penance imposed on the murderer. The purpose of the outward marks of the penance is to publicly humiliate the murderer during his penance.

II.E.2.3. The Marks of the Adulteress (*Sotah*)

The adulteress is required to appear in the community as a *sota*: her hair disheveled, without veil, sitting apart in the synagogue, confessing all the time her transgression and promising not to return again to the sin committed.

II.E.2.4. The Marks of the Deposed Rabbi

The deposed rabbi is required to "take off the headdress and the crown". That means symbolically that he is prohibited from now on to exercise his rights as rabbi.

II.E.2.5. The Marks of the Ritual Slaughterer who has Erred Several Times

The ritual slaughterer who has erred several times and agrees to do penance must appear like a mourner: to wear black clothes, let his hair grow. Besides, he has to go into exile to a place where he is not known and return a lost object to his owner or to give to charity.

II.E.3. Common Rituals for Penitents, Community Rituals of Yom Kippur

II.E.3.1. Ritual Immersion for all Transgressors

In the IT, there is a quotation from the lost book of R. Simḥa of Speyer (a contemporary of Eleazar of Worms), *Seder "Olam*, which states that all the transgressors who repent must undergo ritual immersion.¹³³⁴

The story about the Jewess captured by Gentiles who returned to Judaism and was required to immerse in the *Avot de-Rabbi Natan* refers to ritual immersion in connection with purification from the abomination of the *goyim*. The statement of R. Simcha of Speyer was quoted frequently in the 13th century in cases concerning repenting apostates, and it was emphasized that these must undergo ritual immersion – with or without proper *giyyur*. However, the general character of R. Simḥa of Speyer's statement, which does not specify from which kind of transgressions the repentant must make *tevilah* when he/she returns, caused that in quotations his statement is applied also to other repentant sinners, not only apostates, the result being the ruling that every sinner who repents must undergo ritual immersion. We do not know whether that generalization was R. Simḥa's intention or the interpretation of those who quoted him. However, since it is known that R. Simḥa of Speyer was under the influence of *ḥaside Ashkenaz*, the possibility that he thought that general purification was needed for all transgressors who had repented, can not be excluded.¹³³⁵

According to CShQ, penance requires ritual immersion. Purity also means that each fast needs ritual immersion. Ritual immersion three times a day is required at least in the first three days of the fast; thereafter, for the remaining days of the fast for forty days, ritual immersion once a day is required.

In another magical anonymous composition from *Ashkenaz*, which shows the influence of the penitential prescriptions of *ḥaside Ashkenaz*¹³³⁶, which contains magical

¹³³⁴ Ms. Vat. 183 fol. 185b.

¹³³⁵ OZ I.112. For translation, see App. II.E.3.

¹³³⁶ Ms. London, British Library, Catalogue Margaliouth no. 752, *Seder Pe'at ha-Yezirah*. See II.A.4. A composition probably from the end of the 13th century.

spells for healing and begins with the creation of a golem, ritual immersion is prescribed for every fasting day. In addition, the incantation must also be said sitting in the water up to the neck (and with the assistance of a young boy), which can be connected also with purification rituals.

These two latter examples show that in the conception of *ḥaside Ashkenaz* and the circles or individuals influenced by them, ritual purification by *tevilah* and atonement were connected. Ritual immersion meant generally symbolic purification from sin, also independently from the rite of the *giyyur* or *giyyur*-like rites of readmission.

II.E.3.2. Readmission of the Excommunicated Transgressors on *Yom Kippur*

There was a custom introduced at a certain time in medieval Ashkenaz to allow, before the *Kol Nidre* to pray together with the transgressors on *Yom Kippur*: “By the authority of God and by the authority of the community we allow to pray with the transgressors”. The first source for the text of the proclamation is in Mordeḥai, at the end of Yoma.¹³³⁷ Traditionally, the custom was attributed to Meir b. Baruch of Rothenburg

The establishment of this custom was based on the Talmudic source in *bKeritot* 6b: “A fast in which no sinners of Israel participate is no fast”. Further sources – some of them mentioning the custom in the name of Maharam – are the *Tashbez* (131), *Tur* (par. 619), *Kol Bo* (68), and *Zedah le-Derekh* (4.5.7). In this latter halakhic compendium the author – Menahem bar-Avron Abu-Zerah, (1310–1385, Sfarad) – specifies that the custom is practiced in Germany and France. In his commentary to the *Tur*, *Bayit Ḥadash*, Yoel Sirkes (1561–1640, Lublin, Poland) explains on the basis of a quotation from the *Tzedah le-Derekh* that it is only an announcement, and the sinners should not think that they have been pardoned.¹³³⁸

In one of his studies, Shlomo Ashkenazi writes that this proclamation has been established by Maharam not because of the forced converts, as many think, but for the sinners and for those who have transgressed the enactments of the community.¹³³⁹ However, the custom is already mentioned in the *Sefer ha-Ra'avyah*.¹³⁴⁰

¹³³⁷ For translation, see App. II.E.3.

¹³³⁸ For translation, see App. II.E.3.

¹³³⁹ Ashkenazi. "מנהגי כל נדרי": “The proclamation before *Kol Nidre* “By the authority of God and by the authority of the community we allow to pray with the transgressors” was established by Meir b. Baruch of Rothenburg, and not for the sake of the *anusim* (forced converts), as many think, who proliferated then, but for the sake of the sinners and of those who transgressed the enactments of the community.” (Hebrew). Agus: *Rabbi Meir of Rothenburg*.

¹³⁴⁰ *Ra'avyah* 528. For translation, see App. II.E.3.

According to a *responsum* of R. Jacob Weil, R. Isaac b. Moses *Or Zarua*, his son, R. Hayyim b. Isaac and R. Shabbatai b. Samuel, a prominent rabbi, contemporary of R. Hayyim, maintain that it is prohibited for an individual to interdict someone (a transgressor) from praying with the community during the High Holidays. One is only allowed to ask the prefects of the community to interdict a transgressor from entering the synagogue to pray during the High Holidays, and they should decide the case.¹³⁴¹

II.E.3.3. Impact of the Laws of *Teshuvah* on the Rituals of Yom Kippur

According to the *Sefer Minhag Tov*, it is a good custom to go – from the 1st of *Elul* until Yom Kippur (during the forty days) – every day early in the morning to the synagogue and say *slihot*, and in the evening to receive flogging in the presence of a *minyan* (at least ten adult Jews) in the synagogue, and also on the eve of Yom Kippur. The custom is quoted in the name of R. Judah Ḥasid (par. 69), and both customs (forty days of fasting and flogging) are explained by *gematria*. (1) In these forty days of repentance Jews hope for forgiveness of God, which is alluded by the word “*miqveh*” [‘hope’, and also the name of (the merciful) God]. The *miqveh* means also the ritual bath, which contains forty *se’ah*; that alludes to the forty days of *teshuvah*.. (2) The [numeric value of the word] *shofar*” – which is blown as a call for repentance on the 1st of *Elul* and on *Rosh ha-Shanah* – is equal in the *gematria* with “*malqut ’arbai‘im be-‘asarah*” [forty lashes in *minyan* – in the presence of ten men, that is publicly].

According to the *Kol Bo*, there are places in which the Jews say *slihot* every morning and fast from the 1st of *Elul* until Yom Kippur – and not only during the ten days of *teshuvah* –, because these forty days correspond to the forty days when Moses ascended up to Mount Sinai to receive the Torah for the second time, and on Yom Kippur God pardoned Israel for the sin of the golden calf. This is also the argument in the SMT, par. 69. According to the *Kol Bo*, there is support in the *midrash* for this custom.¹³⁴²

The customs of ritual immersion and flogging on the eve of Yom Kippur was a widespread Ashkenazi custom through the Middle Ages, and in some places the custom of standing all night in the synagogue also was practiced. The origins of ritual immersion (on the eve of Yom Kippur) go back to the Geonic period; the other two customs are probably

¹³⁴¹ Weil DvH 60. For translation, see App. II.E.3.

¹³⁴² *Sefer Minhag Tov* par. 69 (see App. II.C.3 for translation) and *Kol Bo* par. 65 (fol. 30b).

Ashkenazi developments.¹³⁴³ There are several sources in Ashkenazi *halakhah* which codify this custom, e.g. *Sefer ha-Roqeah*, *Hilkhot Yom Kippur*.¹³⁴⁴ In the *Sefer Minhag Tov*¹³⁴⁵, the customs of flogging, ritual immersion on the eve of Yom Kippur and standing all night in the synagogue are mentioned as “good customs” by the author. In the *Minhagim* of Yehezkiel of Magdeburg, the customs of Yom Kippur also include ritual immersion and flogging.¹³⁴⁶

According to a *responsum* of Maharil (no. 204) that contains answers to several questions connected to fasting and ritual immersion, ritual immersion on the eve of Yom Kippur is not a general requirement, but it must be imposed on a repenting member of the community in some cases, depending on the person and the transgression he committed. According to the *Kol Bo* (Provence, end of the 13th century), there are several rituals to be performed before Yom Kippur.¹³⁴⁷

One can also find these two customs among the laws of repentance and Yom Kippur in the *responsa* J. Weil 191 (this paragraph is not a *responsum*, but a summary of *Yom Kippur* laws). According to this source, ritual immersion must be performed after midnight. Further, R. Weil maintains that there is no sense in the custom of those who perform ritual immersion three times, nor in that of those who say *viddui* under the water. If someone can not perform ritual immersion, must pour on himself 9 *qabs* of water, which are equal to 216 times the measure of an eggshell, [and that is] because in the *gematria* this is “lion” [i. e. the numerical value of the word “lion” is 216]. Then every Jew must say *viddui*; receive flogging with a calf-strip¹³⁴⁸, ask for forgiveness from the fellow Jew, light candles in the synagogue, since this is the day when the souls are judged. Thereafter, it is forbidden to eat before the fast.

¹³⁴³ About the origins of the two customs (ritual immersion and standing all night in the synagogue on Yom Kippur), see Kanarfogel, *Peering*, pp. 57–58, n. 68. Ritual immersion is already mentioned in *Siddur Rav Amram* (ed. Goldschmidt 1971, p. 160); standing all night long on Yom Kippur and saying supplications is mentioned by the Ra'avyah (*Ra'avyah* 529) regarding *perushim* and by Avraham ha-Yarhi concerning *haside Zarfai*, who could be, according to Kanarfogel, early followers of the *haside Ashkenaz* in Northern France (*Sefer ha-Manhig* 1:363). According to Rosh (commentary to Yoma chapter 8), “many people in Ashkenaz” stood during Yom Kippur based on a passage in *Pirke de-Rabbi Eliezer*. See also in connection with these customs in *Sefer Minhag Tov* II.C.12 and 13.

¹³⁴⁴ SR 214. For translation, see App. II.E.3.

¹³⁴⁵ Pars. 69–74.

¹³⁴⁶ End of the 13th century, preserved in Ms. Parma 1265 fol. 36d. The manuscript is from the 14th century or from the 15th century; the *Minhagim* of Yehezkiel of Magdeburg is considered a custom-book containing east-Ashkenazi customs. According to this book, in the eve of Yom Kippur ritual immersion is performed, then the members of the Jewish community enter the synagogue, pray the eighteen benedictions until “He makes peace”, say the *viddui*, complete the eighteen benedictions, say *Borkhu*, and do not say *'Avinu Malkenu*, and say *Yitgaddal*. Before eating, they receive forty lashes with a calfskin scourge. The flogged one is required to say during flogging “*Ashamnu*”. The one who is flogging must say “*Ve-hu rahum*” three times. Then they eat, begin to fast, ask for forgiveness from each other, go to the synagogue barefooted, say *Kol nidre* three times, *Shehecheyyanu*, *Borkhu*, *Ma'ariv*. This compilation has been the basis of many other *minhagim* books in east-Germany and Austria (R. Abraham Klausner, R. Eizik Tyrnau, Maharil). See also: Zimmels, H.J. *Ashkenazim*.

¹³⁴⁷ *Kol Bo* 68. For translation, see App. II.E.3.

¹³⁴⁸ Reference is made to the *Mahzor Vitry*.

Then every Jew must confess his or her transgressions, with the specification of the sins. But those transgressions that are not known to other Jews of the community, the individual should not confess publicly. Those individuals who sleep in the synagogue must sleep far away from the Holy Ark. R. Weil mentions that it is a custom to remain in the synagogue during the night to sing praises, but that is not a *mizvah*. During Yom Kippur it is forbidden to wash oneself, he or she is only allowed to wash his or her fingers if necessary. Likewise, if he or she falls ill, they are allowed to put on a sandal. Children have to fast “according to hours”, i.e., they are supervised and if they seem to be too weak, they are allowed to drink or eat something. According to R. Weil explanation, the five self-mortifications on Yom Kippur correspond to the five books of the Torah. Making mention of a dead person is a duty on this day because the dead also need atonement. He or she who commits transgression on this day is punished twice as much.

In one of his *responsa*, R. Jacob Mollin answers to questions concerning ritual immersion on Yom Kippur in general, as well as specially in case of pollution [*ba'al qeri*], likewise, the problem of self-mortification (i. e. flogging) on this day.¹³⁴⁹

II.E.3.4. *Kol Nidre*, the Explanations of R. Tam and R. Asher b. Yehiel (the Rosh) and the Relation of the *Kol Nidre* to Vows

According to the text in the *Siddur Rav Amram Gaon*, the *Kol Nidre* rite declares that vows and oaths made to God during the period between the previous Day of Atonement and the present one are void from the beginning.¹³⁵⁰

Rashi's son-in-law, R. Meir b. Samuel has changed the original phrase “from the last Day of Atonement until this one” into “from this Day of Atonement until the next” and has added the words “we repent of them all”.

II.E.4. Typology of Rituals

The ritual character of public excommunication and humiliation of the penitent, his or her reacceptance on Yom Kippur and from the impact of penances prescribed for sinners on the customs of self-mortification of Yom Kippur clearly show that the role of the penitential acts of sinners goes beyond the atonement for personal sins and has a general atoning

¹³⁴⁹ Mollin 204. For translation, see App. II.E.3.

¹³⁵⁰ See: Benovitz: *Kol Nidre*.

character for all the community. The secret or private acts of penance, and/or the different forms of the excommunication may bring about a full atonement for the individual, but his or her sin is regarded also as a symbolic blow on, or flaw in the integrity of the whole community. This is the *raison d'être* for the ritual forms of humiliation of the penitent.

Applying Victor Turner's theory of "social drama"¹³⁵¹ to the rituals of penance we can identify six types of rituals connected to penance: (1) rituals of separation; (2) rituals of humiliation; (3) rituals of the outcast; (4) rituals of imitation of execution and public flogging; (5) rituals of public begging pardon and confession; (6) rituals of reacceptance.

Some rituals in the examples below belong to more than one categories.

Before discussing these types of rituals, it is necessary to make some observations on the importance and prevalence of rituals.

Our sources clearly indicate the great importance of rituals in the process of *teshuvah*. Very often, rituals were either a precondition of the process of *teshuvah* or served as the only means of reconciliation. For example, sometimes one could not repair the damage unless he ritually asked for forgiveness from the harmed person (in case of injury, theft etc.). Or, rituals prescribed for the murderer were the only tools to reintegrate him into the community, otherwise he would be excommunicated.

It is difficult, indeed impossible, however, to quantify this importance, and to produce figures and statistics about the concrete performance of different types of rituals of penance in medieval Ashkenaz.¹³⁵²

Some of our sources concerning rituals are normative (theoretical or codificatory, e.g. HTR), and we do not know in what extent its prescriptions were followed and carried out. Another main type of our sources, *responsa* from the 12–15th centuries, usually deal with individual cases, and they inform us about the decision and instructions of rabbis and courts of law regarding the performance of rituals, even if it can not be ascertained, as a rule, whether the prescribed rituals were performed by the penitents or not. A third category of sources is SHP, which provides important information about the practice of penance. However, SHP is highly problematic as a historical source for *halakhah*/penance. The narratives and case-descriptions in this book concerning penitents and penance avoid concrete details such as personal names, place names or dates.

¹³⁵¹ See II.A.5.

¹³⁵² This difficulty is not specific of the study of the rituals of penance, but generally characterizes the study of medieval Jewish sources. See Grossman's statement about the impossibility of statistics in cases of *moredet* (rebellious wife) in *Pious and Rebellious*.

Therefore, the issue of actual observance of penitential prescriptions and performance of various penitential rituals and practices remains vague. Apparently, there are differences among the six types of rituals regarding their frequency in actual practice. On the basis of the *responsa*, we can make the following tentative statements:

(1) Rituals of separation and exclusion: It is certain that in medieval Ashkenaz, the pronouncement of the lesser or greater excommunication was performed within the frame of a public ritual. The pronouncement of the *herem* was not frequent, but the *niddui* and threat of excommunication was often announced in synagogues within a ritual frame. The removal of the slaughterer was also ritually pronounced. The entering of the penitent status for certain offenders (murderer, adulteress, rabbi) is not so well documented. Generally, public announcements of separation or change of status of an offender/penitent was made ritually.

(2) Rituals of humiliation: There is evidence for rabbinic prescription in individual cases: for murderers, adulteresses, slanderers, cursers to undergo public ritual humiliation. However, we do not know how widespread these public humiliating rituals were. Normative sources are more numerous. SHP sources are also important in this respect; however, they are problematic, as mentioned above.

(3) Rituals of the outcast and rituals of humiliation in holy places: The same is true for this category as for the rituals of humiliation: there are a few cases in the *responsa*; besides, there are only the normative prescriptions of the Jewish penitentials and SHP sources.

(4) Rituals of imitation of execution and rituals of public flogging: The ritual of public flogging is well documented in the *responsa* (e.g. NMM, 15th century *responsa*), and certainly it was a frequent public ritual within the frame of a penitential schedule.

(5) Rituals of reconciliation between parties: confession and asking for forgiveness: This category is also well attested in the sources (e.g. NMM, 15th century *responsa*), and it is certain that it was an important part of the penitential process.

(6) Rituals of readmission: There are detailed descriptions from *responsa* concerning the ritual of readmission of penitent apostates. Concerning the end of the penance of the murderer there are only normative sources.

II.E.4.1. Rituals of Separation and Exclusion

II.E.4.1.1. The Ritual of Excommunication as “Spiritual Death” and its System of Symbols

In medieval Ashkenaz, great excommunication (ban, *herem*) meant total separation from the community and – theoretically at least – from all Jewish communities in the world:

the excommunicated person was forbidden to pray, eat and have any communion with Jews. The condition of reacceptance was the fulfillment of the decision of the court, community council or rabbi, or the mere promise to fulfill the penance assigned and other requirements.

The lesser excommunication (for thirty days, *niddui*), on the other hand, was applied as a warning, during which, as a rule, the excommunicate was forbidden to leave his or her home and speak with other members of the community or other Jews or non-Jews, except family members. Sometimes, he could or even was required to sit outside the synagogue during prayer, sometimes inside the synagogue, but separated from other people. The latter requirement had a symbolic significance and was applied as a shame sanction.¹³⁵³

The ritual of the pronouncement of greater excommunication was performed in the synagogue during a ceremony: the text of the excommunication¹³⁵⁴ – the ritual cursing of the excommunicated person and blessing of the rest of the community – was read by the prayer leader, while blowing the *shofar*, in front of the open Ark, facing the Ark, after the reading of the Torah, before returning the Torah Scroll to its place. The community lamented, holding black candles like mourners. Finally, while the community extinguished the candles, a public warning was issued forbidding all to associate with the excommunicated person.

This ritual, the text of the ban¹³⁵⁵ and the metaphorical expressions used by the rabbis who threatened or pronounced the excommunication in the 15th century were of symbolic value: the metaphors of the biting of the snake or *seraf*, stroke or plague, sword, thorn, wall or partition, net which captures, and the symbolical smothering of the lighted candles were all part of one system of symbols. The meaning of this system of symbols referring to *herem* alludes to the cursed person's fate according to the Bible (*'arur*): death through the invisible power of God. In the medieval system of symbols the community of God represents life, and cutting off someone who has transgressed from it means spiritual (and sometimes even physical) death.

In Talmud *Mo'ed Qatan*, one can find descriptions of the behavior of the person excommunicated for thirty days (*menuddeh, niddui*), which are similar to the signs of the mourner. In the Middle Ages, this ritual was adapted to the status of the penitent and not to that of the *muḥram* (person excommunicated for indefinite time or forever). The person punished by the greater excommunication became spiritually dead for the community, symbolically and actually cut off from the life of every Jewish community. The person

¹³⁵³ See II.C.6.

¹³⁵⁴ See II.C.6.

¹³⁵⁵ See for example in the *Kol Bo* 139, translated in Appendix II.C.6.

excommunicated for thirty days, on the other hand, was perceived rather like one in the status of the penitent, and he was required to behave himself accordingly (to stay at home, to sit outside the synagogue etc.).

II.E.4.1.2. The Ritual of the Public Announcement of the Removal of the Ritual Slaughterer

The public announcement of the removal of the ritual slaughterer who had erred several times or had sold un-kosher food willingly to the community had a humiliating character and had signs similar to the announcement of the lesser excommunication (*niddui*). The announcement had symbolic meaning. From the time when it was pronounced that the ritual slaughterer had been dismissed from his duties – and in some cases after he had been publicly flogged –, the members of the community were prohibited from buying meat from him. He who had transgressed was liable to the same penalty – deposition and excommunication. In graver cases – like selling un-kosher food willingly for the purpose of securing monetary gain – the ritual slaughterer was banished from the community and city, therefore, to some extent, the pronouncement was similar to the entering the status of the penitent murderer.

II.E.4.1.3. Case-specific Rituals of Entering the Penitent Status

According to the penitentials of R. Eleazar of Worms, and some other sources¹³⁵⁶, for grave sins, like murder and apostasy, the penitent had to wear signs similar to that of the mourner when he was about to start the period of penance: to put on sackcloth, go barefoot, put ashes on his head, let his hair grow and to restrict washing etc.

According to the sources¹³⁵⁷, repentant murderers, injurers, cursers, slanderers, those who threatened during fire, those disobedient to court decisions, perjurers, those who sold voluntarily un-kosher food to the community, blasphemers, public and voluntary desecrators of the Sabbath, informers were required to publicly confess and ask for forgiveness from God, the community and/or the harmed fellow Jew in the synagogue before the Torah scroll, in the presence of the community and the involved persons, with or without public flogging before. This was performed within the frame of a well defined ritual. In special cases, like injury or cursing, ritual asking for forgiveness was required at the grave of the offended person who

¹³⁵⁶ See discussion of the sources for these symbols of public humiliation in II.C.11.

¹³⁵⁷ See II.B.1, 3, 5, 6, 7, 8, 9, 11, 14, 15, 16.

had died or at the grave of his parents. At the same time, these rituals, usually, marked the beginning of the period of penance.

According to two *responsa* of the 15th century¹³⁵⁸, the adulteress was required to appear according to the description of the suspect adulteress in the tractate *Sota* in the Babylonian Talmud: to take off her skullcap and her veils, dishevel her hair, put down all her ornaments, be belted only with a rope, cover her hair with a shabby cloth etc. The changing of her appearance marked the entering of the penitent status.

The penitent apostate was required to put down his fine garments¹³⁵⁹ and appear like a mourner when entering the repentant apostate status.

The punishment of going barefoot into the synagogue or to the graves of the cursed parents in case of cursing or slander was also a sign of the beginning of penance.

For a deposed rabbi the “removal of the headdress [or *mitre*, turban] and the crown” – a quotation from Ezekiel’s prophecy against the king of Judah symbolically applied to the situation –, the attributes of the rabbi in the 15th century, marked the beginning of penance.

The public announcement and chasing out from the synagogue in case of gambling marked also the beginning of the infamous status of the “evil-doer” and of the “legally disqualified”.

II.E.4.2. Rituals of Humiliation

II.E.4.2.1. Common for Penitents who have Committed Grave Sins

According to the sources, for grave sins like murder, apostasy, adultery, fornication, during the whole period of penance – not only at its beginning – the penitent had to behave himself like a mourner: to put on sackcloth, go barefoot, sit on the ground, sit barefoot on the ground and cry, put ashes on his head, let his hair grow and restrict washing.

In addition, sometimes other acts of self-mortification with symbolic character were required: to flog oneself or receive flogging from another Jew’s hand, to sit in icy water, to sit among bees and ants, to wear chains on the body or sackcloth on the body, to whip oneself with the thistles of the wilderness. These kinds of self-mortification went beyond the simple disciplinary character caused by the pain suffered: they had symbolic humiliating character and expressed the chastisement of the animal features in the human being, which come to the surface by committing sin.

¹³⁵⁸ See discussion in II.B.2 and II.C.11.

¹³⁵⁹ See II.B.17, II.C.11 and II.E.1.2.6 and translations in App. II.B.17.

II.E.4.2.2. Murderer – Additional Symbols:

According to these sources, the murderer was required to humiliate herself when entering and leaving the synagogue, to lie down at the entrance of the synagogue so that the congregation should pass above the penitent, to pray with shackles on the hand and body, to tie the hand around the neck with a chain and go about in this way during the whole period of exile.

II.E.4.2.3. Adulteress – Additional Symbols

According to the two *responsa* referred to above (II.E.4.1.3), the adulteress was ordered to sit dressed in the symbolic clothes described in *Sota*, separated from other women in the synagogue of the women. According to a 14th century source, a woman was required to sit outside the synagogue for the sake of humiliation for slander. Similar shame sanctions for women were ordered in case of gossiping or for suspicion of adultery or fornication.

II.E.4.2.4. Deposed Rabbi

The rabbi was deprived of the signs of the rabbi – headdress and crown – for the entire period of his penance, which symbolically meant that he was prohibited from exercising his rights as a rabbi. Sometimes the rabbi was banished from the city.

II.E.4.2.5. Apostate – Additional Symbols

The repentant apostate, besides the mourner-like appearance and rituals performed, was forbidden from taking part in celebrations, was required to bear with patience the humiliating words of his or her fellow Jews – namely, it was not prohibited to mock him — and was strictly prohibited from sitting together with Christians, especially clerics: monks or parish-priests.

II.E.4.2.6. Curser

The curser was obliged to go barefoot to the synagogue and/or to the grave of the cursed person or the graves of his or her parents, and ask for forgiveness publicly, that being in itself a humiliating procedure.

II.E.4.2.7. Ritual Slaughterer

If the ritual slaughterer sold un-kosher food to the community willingly with the purpose of securing financial gain for himself, he was exiled to a place where nobody

knew him. There he had to behave himself in the same way as a mourner or an excommunicated person (*menuddeh*): to let his hair and nails grow, fast, return a lost thing or pay its price to the owner.

II.E.4.3. Rituals of the Outcast and Rituals of Humiliation in Holy Places

II.E.4.3.1. Exile

The murderer was required to go into exile for one, two, three or five years, to publicly confess his sin and humiliate himself in every place.

The ritual slaughterer who sold un-kosher food was also exiled to a place where he was not known, and he had to let his hair and nails grow.

In the Middle Ages, exile was a punishment in itself, since the roads were full of dangers and the exiled person had to sustain for himself; he lived on alms. The exile status and the penitent status were expressed by distinguishing marks: going barefoot, long hair, chains on the body and hands.

In addition to the specific symbolism, which the exiled person had shown, in Jewish context the exile status had also an additional symbolic meaning, since the whole life of the Jews was perceived as exile.

II.E.4.3.2. Pilgrimage

In medieval Ashkenaz, pilgrimage was not as characteristic of Jewry as of Christianity. However, there are examples of going on pilgrimage for the sake of atonement.

The story of the penitent murderer who went on a pilgrimage to the Mount of Olives in order to make atonement is of symbolic significance because the rituals of penance were connected with the belief that only pilgrimage to the Holy Land might bring redemption and the coming or revealing of the Messiah. Therefore – whether true or not – the story emphasized the message that only pilgrimage to the most holy place, the Mount of Olives in Jerusalem, the holy city, could bring atonement for grave sins.

Pilgrimage to the graves of the saints in the Holy Land or in Ashkenaz was also connected with the belief in the atoning power of the holy places.

II.E.4.4. Rituals of Imitation of Execution and Rituals of Public Flogging

II.E.4.4.1. Imitation of the Death Penalty

The penitent murderer who went on pilgrimage to the Mount of Olives on *Hoshanah Rabbah* was buried there alive and beaten until he was close to death. His corporal punishment

had the purpose not only to punish the sinner but also to symbolize the death penalty which had not been carried out on the convicted person. Therefore, it was performed in a ritualized form, by imitating the death penalty, and took place within the frame of the rituals of *Hoshanah Rabbah*. This festival had also an atoning character similar to the Yom Kippur, and in addition, as mentioned, had also messianic significance.

II.E.4.4.2. Public Flogging

Public flogging for almost all the crimes discussed was performed in the synagogue between the *Minḥa* and *Ma'ariv* prayer, before “*Ve-hu-rahum*”. Usually, flogging was followed by public confession and asking for forgiveness. This public flogging is a ritualized form of the punishment of lashes executed by the *bet din*, not publicly. Public flogging in the synagogue is firstly a shame sanction, secondly – like the symbolic imitation of execution – a substitute for graver punishments: *karet*, capital punishments of the *Bet din* and loss of the world to come.

II.E.4.5. Rituals of Reconciliation between Parties: Confession and Begging Pardon

II.E.4.5.1. Synagogue

The reconciliation rituals took place firstly in the synagogue before the Torah scroll, in the presence of the community and the persons involved, with or without flogging. The offender was usually required to go from his seat to the seat of the harmed person in the synagogue, passing before the *bima* where the Torah Scroll placed. For the harmed person, it was a *mizvah* to forgive, except in case of slander.

II.E.4.5.2. Graves

If the harmed person or party died, or if the offender cursed the parents of the offended person by calling him a “bastard”, the reconciliation ritual took place at the graves of the offended person or his parents’. Sometimes the penitent was required to go barefoot to the graves.

II.E.4.6. Rituals of Readmission

During their ritual of readmission into the community – in its more elaborate form described in the examples of the 15th century, discussed earlier –, the repentant apostates used to perform rituals pertaining to three different systems of symbols: (1) the confession of sins in the water of immersion and promise to perform the penances (penitential ritual), (2) the

acceptance of keeping the commandments (the ritual of receiving proselytes), (3) and the general purification character of the ritual immersion (immersion in a *miqveh* in order to attain ritual purity). These three systems altogether made up a new system of symbols, which marked the readmission of the repentant apostate into the community.

In the case of murderers, the end of the exile, returning home and taking a wife marked the end of the penitent status. The end of the penitent status could be indicated by reconciliatory rituals or joyful performances.

It was a general rule that after the period of penance it was prohibited to mock the penitent. From then on, he was equal to all the other members of the community.

PART III. CHRISTIAN ANALOGIES

III.A. Introduction

III.A.1. The Question of the Influence of Christian Penance on the System of Teshuvah of Ḥaside Ashkenaz

The two main innovations in the concept of repentance of *ḥaside Ashkenaz* were the private confession to a sage and the atonement through corporal punishment and self-mortification. Both elements, *mutatis mutandis*, were central also to Christian doctrines of penance in the Middle Ages. In this section we offer a critical survey of the major scholarly theories on the historical background of this similarity.

(1) Baer¹³⁶⁰ maintains that the “measure for measure” concept in the doctrine and practice of atonement of *ḥaside Ashkenaz* has its origin in the Christian concept of “*compositio*”, which originated from Germanic tribal law. This concept, according to him, is alien to Talmudic Judaism and also to early Christianity.¹³⁶¹ Similarly, public confession and flogging are also strange to Talmudic Judaism. Baer’s main argument regarding the thesis of Christian influence refers to the strangeness of the “*compositio*” (“measure for measure”, pain–pleasure–atonement) idea in Talmudic Judaism, and its wide use in the Christian penitentials.

(2) Dan¹³⁶² questions the views of Baer since there is no close correspondence between the known Jewish and Christian penitentials, and no written Christian sources (in Latin, German, or any other language) are known which could have served as a source for the Jewish penitentials. For Dan, apparently, only written sources could serve as a medium for external influence – in this case at least.

(3) Marcus¹³⁶³ argues, that among Jewish penances there are some for which no analogy has been found in the Christian penitential system. Further, he maintains that in Baer’s thesis there is no explanation why the system of Christian penance, practiced for centuries before in all Latin Christendom, was adopted exactly at that time and in that place. However, he admits that theoretically the possibility of non-literary influence – “through living examples”, in his words – can not be excluded. But this is only an unsubstantiated theoretical possibility, while the lack of any explanation for the appearance of the Jewish

¹³⁶⁰ See II.A.1.

¹³⁶¹ According to Baer, the Frankish kingdom created the mixture of religious notions.

¹³⁶² See II.A.1.

¹³⁶³ *Piety and Society*, p. 150, note 54. To Baer’s “יהמגמה הדתית-החברתית” 16–7, 8–9; 18 n. 37; 26–7, 49.

system of penance at the “specific time and space” is a much stronger argument against Baer’s thesis.

(4) A. Rubin¹³⁶⁴, like Baer, relates the penitential system of *ḥaside Ashkenaz* to the Christian penitential system and penitentials. He sees in the radical modes of penance of *ḥaside Ashkenaz* – for example, in sitting in icy water in winter for an hour, or among bees, wasps or ants in summer parallels to Christian monastic practices, i.e. penitential practices of the 6–7th centuries Irish monks, and therefore possible influences. The ideas of Rubin are challenging and were unduly neglected in subsequent scholarship. He has not made a systematic comparison, but discussed some very convincing parallelisms.

(5) Fishman¹³⁶⁵ accepts Marcus’s thesis for the theoretical possibility of the influence on an “un-conscious” (= not literary) level, called by her “osmosis” (called by Marcus: “by example”). Concerning the missing argument with respect to “specific time and space”, she argues that CB grants “new respectability” to penance, which is the main impulse for the influence. A third point made by her is that, according to her, Irish Christian culture has been influenced by ancient Jewish traditions, mediated primarily through the Apocrypha literature (227–9).

(6) M. Saperstein¹³⁶⁶ not only admits the possibility of the Christian influence, but states it as a fact, both with regard to self-mortification and private confession. The first is explained in this way: “The standards set by their Christian neighbors were perceived to be higher, and for Jews to have what appeared to be an easier way to repentance was psychologically intolerable.” The second is explained by the intention to avoid the publicity of confessing the sin¹³⁶⁷, again seeing a higher standard in the Christian practice: “individual confession of sins to a sage who instructs the penitent about the appropriate acts of penance. And this precisely at the time when confession to the priest was being made mandatory for all Roman Catholics (through an ordinance of the Fourth Lateran Council in 1215). A rather dramatic example of openness to the dynamic environment of medieval Christianity.” Saperstein clearly identifies these two major points of innovation in the system of penance of *ḥaside Ashkenaz* (self-mortification and private confession), as well as two major points of analogies with Christian penances; he does not deal with possible channels of influence (apparently, he thinks that Jews were aware of the Christian practices) and with the lack of close literary parallels (it seems that he accepts the model of non-literary influence, influence

¹³⁶⁴ Rubin, “The Concept of Repentance”. See Introduction 1.7b.

¹³⁶⁵ Fishman, “The Penitential System”, 215, 217, 227–9.

¹³⁶⁶ Quoted in Introduction 1.7d.

¹³⁶⁷ On the basis of the statement in the Ber. 34b that he who publicizes his sin is insolent.

“by example”); gives an argument for the “specific time and place” requirement: the mandatory annual confession ordered by the Church in 1215; gives another explanation for the impulse for the emergence of the new doctrine and practice of penance of *ḥaside Ashkenaz* in the theory of contest of pietism and asceticism between Jews and Christians¹³⁶⁸; and in these two points he places the theory of influence into the larger context of Jewish–Christian relations in the Middle Ages, stating that the Jews were open to the medieval Christian culture and to its dynamic changes.

In what follows we offer some reflections and preliminary remarks on the ideas, claims and arguments surveyed above:

(1) Undoubtedly, the most penetrating analysis of the system of penance of *ḥaside Ashkenaz* on the basis of the scholarly examination of the sources was offered by Ivan Marcus in his doctoral dissertation and in his book, *Piety and society*. The main thesis of these works – namely that the system of penance of *ḥaside Ashkenaz* is deeply rooted in their pietistic worldview and in their social concepts – can not be denied, and we wholly accept it.

(2) On the other hand, in the hypothesis of Christian influence we do not see a contradictory, but a complementary theory to Marcus’ thesis. We fully accept I. Marcus’s argument, that the main impulse for the development of the original system of penance was the pietistic, moreover, sectarian pietistic world view of the leaders of *ḥaside Ashkenaz*; but we also accept Marc Saperstein’s thesis about the openness towards Christian culture and his thesis of “competitive cultural attitudes” and “competitive religious values” as hypotheses in our research. This is also an answer to the requirement of the specific time and place factor needed for the theory of influence: in the 12–15th century in Western Europe the Jews not only lived among Christians, but the Christian cultural values became a challenge for their religious values for the first time in history.

(3) We consider it necessary to mark off the two main fields (as Marc Saperstein has delimited them) in which the supposed Christian influence on the system of penance of *ḥaside Ashkenaz* – the private confession to a sage and the atonement through physical pain– can be detected. Then, it is necessary to state that while private confession within the penitential system of *ḥaside Ashkenaz* has disappeared (as I. Marcus has demonstrated and analyzed its causes), physical atonement did not, but survived and made its way by the written penitentials

¹³⁶⁸ This theory, or idea, of the pietistic or religious competition between the two communities, in the medieval Jewish and Christian societies lies in the background of some of the later articles of I. Marcus also, like *Rituals of Childhood*, Id., “A Jewish-Christian Symbiosis”; Schäfer, “Jews and Christians”. For the reversed process: Newman, *Jewish Influence*.

to the mainstream *halakhah* of the 13–15th centuries, as I. Marcus and J. Elbaum have demonstrated.

(4) We accept Baer's thesis that the main idea which lies at the basis of the concept of atonement of *haside Ashkenaz* and of the Christian penitentials is common: it is atonement through pain on the basis of the principles of "measure for measure" and proportionality in atonement. It can be Christian influence (but not necessarily, as Baer has suggested).

(5) We accept that analogies from Christian penitentials may help us to clarify the exact cultural context in which the influence took place, as A. Rubin has done, but we consider it necessary to make a systematic comparison, in order to see the possible points of influence in the penitentials.

(6) Concerning the possible channels of influence in Dan's remark, namely that there are no exact parallel literary sources in Latin or German to the Hebrew penitentials, we state that the influence of a written Christian penitential can not be ruled out; even if the authors of the Hebrew penitentials did not know Latin, someone could tell them the content of such a work or translate it into German, and the translation could be read by the Jewish authors. Alternatively, the parallels which have no roots in Judaism and are strikingly frequent in the sources about the contemporary Christian practice of penance can be explained by assuming that Jewish authors saw many and different examples of the practice of individual penances for individual sins. In this way the imprecise terminology of the theories of influence – "by osmosis", "by example", "on un-conscious level" as formulated by I. Marcus and Talya Fishman – can be concretized. But we can not exclude the possibility of some literary influence, as explained above.

(7) For the influence regarding the confession to a sage in the penitential system of *haside Ashkenaz*, we accept Marc Saperstein's thesis about the specific time and place factor: the introduction of the mandatory annual confession in Latin Christendom and the changes which accompanied it. To the thesis of Talya Fishman about the impact of CB – as for time and place – we must remark that Burchard's "Corrector" was written almost two centuries before the emergence of the *haside Ashkenaz* movement (viz. at about 1012, while *haside Ashkenaz* worked at the end of the 12th century). But it is true that the "Corrector" was popular and in common use in German lands and also that they could witness public penances as prescribed in this penitential and in others in their environment – notably in the cities of Worms, Speyer or Regensburg.

(8) The penitential system, without the requirement of private confession to a sage, entered the *halakhic* mainstream. As J. Elbaum has noted – and we accept his thesis – later the

rabbis used the penitentials as *halakhic* prescriptions, sometimes without the theories of penance of *haside Ashkenaz*.¹³⁶⁹ The rabbis used the penitentials, as shown in the previous part, to restore social peace destroyed or disturbed by the offender. In this process of the restoration of peace and order, communal rituals played a prominent role. Sometimes the rituals were taken from the penitentials of *haside Ashkenaz*, and sometimes developed on the basis of these penitentials into independent rituals. These rituals can be classified, as seen above, into rituals of exclusion, humiliation, exile, rituals of the imitation of the death penalty or rituals of public punishments, rituals of reconciliation, of begging pardon between the parties, and rituals of readmission. All these rituals were also central in the public and ritual (solemn – ecclesiastical or political) penances of the Christian society of the time. Like the private confession to a sage and the practice of the “measure for measure” in self-mortification, the rituals in the Jewish practice of penance (*teshuvah*) in the high and late Middle Ages can be seen as an influence of the ritualized humiliation processes in the contemporary Christian society.

(9) External and internal factors and elements in the development of the penance-doctrines and practices of medieval Ashkenaz could coexist, and in fact complement and strengthen each other. Instead of looking for a general answer to the question of possible Christian influences in these doctrines and practices as a whole, we are interested rather in examining and pondering the possibility of such influences in their specific elements and components.

III.A.2. Developments in Christian Penance in the 12th Century

III.A.2.1. *Forum Internum* and *Summa Confessorum*

Medieval penitentials and manuals had no antecedents in antiquity. First brought to Western Europe by Anglo-Irish missionaries during the 6th–7th centuries, the penitential books introduced modes of retribution borrowed from practices of conflict settlement in contemporary Celtic and Germanic societies. The new type of literature listed sins with fixed tariffs of penance measured in weeks and years of fasting or other mortifications. The penances prescribed by the penitential books could be performed as often as necessary. According to Müller, the formal dichotomy between the penitential and canonical type of literature in early medieval church, before the classical period of canon law apparently shows

¹³⁶⁹ These theories were adopted and developed in ethical writings of Ashkenazi and Sephardi Jews, as J. Elbaum describes it in his book (Elbaum, *תשובת הלב*).

two separate traditions, but this distinction is anachronistic for an age without jurists and jurisprudence.¹³⁷⁰ According to Rob Meens¹³⁷¹, however, there was literary relation between the early penitentials and the early canon law collections. With the emergence of canon law as a scholastic discipline in the 12th century, canon lawyers forged ancient Roman and Anglo-Irish norms and rules into one coherent doctrine.¹³⁷²

In 1215 the Fourth Council of Lateran decreed the mandatory annual confession for each Christian, before the Easter communion, although regular confession preceding reception of the Eucharist one or more times a year was a common practice long before the 13th century. Preparation for the annual confession to the parish priest would begin on Ash Wednesday, at the beginning of the Lenten period of fasting with traditional liturgical ceremonies and often with sermons.¹³⁷³ This general legislation required from the priest to know the soul of his confessants and to be in real contact with them. To aid the priest to carry out their task, from the end of the 12th century until the beginning of the 16th century small compositions were written, called *summae confessorum*¹³⁷⁴. According to Michaud-Quantin,¹³⁷⁵ they formed a new literary genre in the history of theology and canon law, pertaining to the domain of the *iurisprudentia divina*. Contrary to the “tariffed penitentials”, they had a personal character, accentuating the relation between the confessor and confessant and in its character of meting out atonement according to the personal features of the confessant. Their predecessors were earlier penitentials, for example CB from the beginning of the 11th century, the most important of this genre.¹³⁷⁶

Goering presents the context of the new types of penitentials, the “internal” and “external forum”, the procedures in them, and the cultural background and infrastructure

¹³⁷⁰ Müller, “Introduction: Medieval Church Law”. However, Firey places the distinction to the Carolingian period, (8th–9th centuries). Firey. *A Contrite Heart*.

¹³⁷¹ Meens, “The Frequency”, p. 46–47.

¹³⁷² 1100–1300, Müller.

¹³⁷³ E.g. in an anonymous sermon in Oxford, New College Ms. 94, fol. 12v–13r (before 1250). Goering, “The Internal Forum”. See quotation in App. III.A.2.

¹³⁷⁴ Besides this genre others appeared as a consequence of the new legislation, for instance the penitential sermons (Thayer, *Penitence, preaching*) and the genre of “*magistrale*”, theological and canonical teachings on the sacrament of penance, for educational purpose. Michaud-Quantin describes the *summae confessorum* of the 14th and 15th century, until the beginning of the 16th, the authors of which are known or anonymous works published or in manuscript etc

¹³⁷⁵ Michaud-Quantin, “A propos des première Summae confessorum”.

¹³⁷⁶ Burchardi Wormatiensis Episcopi *Decretum* (PL 140, 949–1014). The first *summae confessorum* were written by Bartholomew Iscanus, bishop of Exetere (with the title “*Penitential*”, around 1160–1170), Robert de Saint-Pair (*Liber poenitentialis* around 1200), Alain de Lille, professor of the theology at Paris (*Liber poenitentialis*, the beginning of the 13th century), Robert of Flamborough (or Flamesbury), dean of Salisbury (*Liber poenitentialis* 1210–1215), Thomas of Chobham (*Liber poenitentialis*, 1214–1230), Master Paul (*doctor Decretorum* in Bologna), the brother Paul of Hungary (*Summa de poenitentia*), Raymund de Penyafort (*Summa de casibus poenitentiae*). Confession became a regular act in the life of the Christians. Michaud-Quantin, “Sommes de casuistique”.

(schools and convents).¹³⁷⁷ The place of the external forum was the ecclesiastical court; that of the internal forum was the court of penance (“*forum poenitentiae*”). The bishop, head of the diocesan hierarchy, was the “priest” of everyone in his diocese and had general oversight of the penitential forum. A confessor-general or “penitentiarius” of the diocese was the bishop’s vicar in all matters concerning penitential discipline. In the 13th century, an office of papal penitentiary was established to hear confessions of curial members and of the numerous pilgrims and visitors to the court. Private confessions to a priest generally took place in the church, but not in an enclosure. The most common framework for the directed confession (interrogation) was the seven deadly sins (pride, envy, wrath, sloth, avarice, gluttony, and lust) or transgressions of the Ten Commandments, but many other paradigms were also recommended. There were two categories of sins: venial and mortal. Venial sins were the small sins of which everyone was guilty to some degree and which were forgiven in general confession, in recitations of the “*Pater noster*” (“*dimitte debita nostra...*”) or in the reception of the Eucharist. Mortal or “deadly” sins could only be forgiven after explicit acts of contrition and confession, accompanied by promises of amendment, reparation and penitential satisfaction. A formal ritual absolution was pronounced when the penitent was dismissed.¹³⁷⁸ The priest decided if the sins that had been confessed were within his power and jurisdiction. He decided whether excommunication was needed – by formal sentence (*data sententia*) or by automatic sentence of excommunication (*lata sententia*) – and sent difficult cases to the bishop; bishops and popes could reserve for themselves the absolution of certain grave sins (“reserved cases”). The priest was both judge and physician of the soul.¹³⁷⁹ Confession to a priest in the hour of death (“*in extremis*”), prophylactic confessions (before war, travel, childbirth) and on many other occasions became very popular. Examination of conscience became a spiritual exercise among the clergy and pious laity. “Holy women” (“*mulieres religiosae*”) in the Low Countries and elsewhere began to besiege priests with demands for frequent confession; confraternities of penitents and “*disciplinati*” (flagellants) were founded; popular preachers and members of new mendicant orders exhorted to confession.

III.A.2.2 Public Penance and Punishment

¹³⁷⁷ Goering, “The Internal Forum”.

¹³⁷⁸ The form of the absolution changes during the course of the thirteenth century from the deprecatory “May God forgive you” (*Deus absolve te*) to the declarative “I absolve you” (*Ego te absolvo a peccatis tuis*).

¹³⁷⁹ On the antiquity of these images of physician and judge and on their origins in Roman law see Silano, *Papacy and the Law* 360–361.

There are two scholarly approaches to the study of public penance and ecclesiastical or secular punishment of the high and late Middle Ages in Europe: either (1) to see in the new developments of canon law and scholastic theology beginning with the 12th century the basis for the development of the European criminal law, and to discuss questions such as the relation of the punishments to the penance, or (2) to deal with the evidence of ecclesiastical public penances imposed on offenders for grave sins – *penitentia publica* or *penitentia sollemnis* – and their relation to the punishments of the ecclesiastical and secular courts.

Both approaches conclude that there is a certain lack of clarity regarding the categorization of the notions of public penance and punishment in the high and Late Middle Ages in Europe. This lack of clarity is due to the fact that the separation of ecclesiastical penance and punishments, ecclesiastical and criminal law, was a phenomenon clearly attestable only at the beginning of modern era. According to recent scholarly discussions, in the late Middle Ages a “cooperation” between the ecclesiastical *fora*, between church and secular courts was the basic feature of fighting criminality.

According to Kéry, in the Middle Ages the motivation to punish was a religious one.¹³⁸⁰ In the classical period of canon law (12–13th centuries), however, the concept of *ius publicum* came into the foreground of ecclesiastical jurisdiction, and the church could be regarded as the model of the “institutionalized state-power” who represented the concept of *ius publicum* (public criminal law). The beginnings of a theory of the claim by the ecclesiastical authorities to punish and coerce can be found in the *Decretum* of Gratian (*Quest. 4–5–6, causa 23*), which emphasizes the importance of the punishments (*vindicta*) for prevention, while penance maintains its medicinal character and function (*correctio*). The separation of punishment (*poena*) and penance (*penitentia*), according to Kéry, is the achievement of the decretalist Bernhard of Pavia in his works, *Sicut dignum*¹³⁸¹ and *De causis*¹³⁸². Bernhard of Pavia distinguishes the two on the basis of the process in which penance and punishment is inflicted:¹³⁸³ penance is imposed in the process of *iudicium occultum*, the punishment in that of *iudicium manifestum*. Further, Bernhard of Pavia discusses the solemn penance (*poenitentia sollemnis*), which was imposed for manifest and grave sins. But according to Kéry, the penances listed in the category of *poenitentia sollemnis* were almost the same as the punishments listed as ecclesiastical punishments. Kéry therefore

¹³⁸⁰ Kéry, “Kirchenrechtliche Grundlagen“, ZRG 128–167.

¹³⁸¹ X 5.12.6 = 1Comp.5.10.7, JL 12180.

¹³⁸² lex III X 1.29.4 = 1 Comp.1.21.5, JL 11248.

¹³⁸³ Kéry, *Gottesfurcht und irdische Strafe*, 527–531.

holds that the *poenitentia sollemnis* does not fit into the paradigm of public/occult sins and respective punishments and penances.

A similar conclusion was drawn by Mansfield from the praxis of the public penance in 13th century North-France:¹³⁸⁴ public penance fell into a “gray area” between the authority of the internal and external forum. Neumann also discusses the possible categorization of private and public penance, ecclesiastical and secular punishment.¹³⁸⁵ Her investigations and interpretations of the sources show that public penance was applied for public criminals and crimes, for cases reserved to the bishop or vicar general, while minor cases could be absolved by parish priests.

III.A.3. Comparison – Preliminary Remarks

III.A.3.1. Private Confession

The sage-confession described in II.A.1. has many common features with the developed form of private confession, which became mandatory by the IV. Lateran Council.¹³⁸⁶

(1) The first common feature is that at the basis of the whole process is the secret and voluntary confession of the penitent, and not a compulsory judicial process.

(2) The second common feature is the similarity between the role of the sage and the role of the confessor. Both are “physicians of the soul” who lead the penitent rather than judges who inflict punishments.

(3) The third common feature is in the process of hearing confession by the “physician of the soul”; the whole process has a character resembling a court procedure, but because of its secrecy and voluntary character, differs from it. The penitent plays the roles of the accuser and of the condemned at the same time; the confessor (or the sage in the Jewish procedure) is only a helper in the quasi-judicial process. This fits the idea expressed in the name “internal forum”. The external forum, contrary to the internal one, is compulsory, and results in punishment, not penance; both the ecclesiastical and the secular judge (in external

¹³⁸⁴ Mansfield, *The Humiliation of Sinners*.

¹³⁸⁵ Neumann, *Öffentliche Sünder*.

¹³⁸⁶ Private penance was in practice also for laymen in the previous periods. The innovation of the Lateran Council in 1215 was that it became obligatory for each Christian to confess at least once in a year, and in this way the precondition from this time on for being a Christian – for clerics and laymen, men and women – until the end of the Middle Ages. See: Murray, “Confession”; Id.: “Counselling”; Biller, “Confession”.

ecclesiastical forums and in secular courts) serve in their true roles as judges, and not as “physicians”.

(4) The fourth common feature is that the sage or confessor in the imposition of penance or *teshuvah* is required to apply older penances or ideas of atonement to new situations and to the personality of the penitent.

(5) For this purpose a wide literature of penance – known as *summa confessorum* – is developed.¹³⁸⁷ This has its parallels in the Jewish penitentials, first in the fragmentary remnants of a sage-penitential in the SHP, and in the “personalist” atonement in the HTR, MH, IT of the Rokeaḥ. Jewish as well as Christian penitentials contain instructions for the sage and the confessor as well as for the penitent; they sometimes contain liturgical parts for the confession and prayer, the list of particular sins and their atonement.

The sage-confession is different from the Christian secret confession on the following accounts:

(1) The sage-confession has a “sectarian”¹³⁸⁸ feature. According to Marcus, the sage-confession and private penance – as described by Judah Ḥasid in SHP – were preconditions for the initiation into pietist circles of *ḥaside Ashkenaz*. This thesis can not be demonstrated by direct textual evidence – like clear rules or prescriptions for the obligatory confession for the “initiation” –, but it seems to be a plausible hypothesis for the pietist circle of *ḥaside Ashkenaz* sketched by Judah Hasid. Marcus provides explanations of texts supporting his model: for the whole conception, functioning, ideological development and phases of development of the pietist circle of *ḥaside Ashkenaz* as presented in his book, *Piety and society*. But his model is and will remain hypothetical unless new sources come to the surface. In SHP (II.A.1), we find the requirement to confess before performing penance and a description of hearing confessions; but we do not find indication whether he who wants to become a *ḥasid* must confess to the sage and do penance.

(2) As explained by Marcus, the “secret confession” and penance of *ḥaside Ashkenaz* failed, and has never been accepted by mainstream Judaism – unlike the notion of atonement achieved through physical suffering.

(3) As a doctrine, the sage-confession never empowered a man or earthly institution to “absolve” anybody from sin, that is to say, to ensure the sinner by the act of confession that his guilt (*culpa*) will be forgiven and that the earthly punishment (*poena*) only served to reduce suffering in purgatory. In the high and late Middle Ages, in Catholicism, this doctrine

¹³⁸⁷ Michaud-Quantin, « A propos des première ».

¹³⁸⁸ I. Marcus’s terminology.

was expressed in the practice of indulgences. In Judaism the connection between sin and atonement was maintained.¹³⁸⁹ Private confession and a procedure of confessing to the sage as described in SHP remained a process the aim of which was to receive an appropriate penance and to make atonement according to the concepts of suffering and corporal pain which *ḥaside Ashkenaz* developed.

III.A.3.2. Self-mortification¹³⁹⁰

In the 12–13th centuries, in Latin Christianity¹³⁹¹ asceticism proliferated and was popularized among the laity, first of all by the mendicant orders. The popularity of the ancient idea that the human condition is a sinful one, because the soul is bound to the body (“*soma sema*” – “the body is a cave/prison for the soul”¹³⁹²), led to doctrines of sin and atonement through corporal pain and suffering, expressed by the statement: the body is a sign in the eyes of God; if it is tortured, it means that the soul has repented of its sins.¹³⁹³ In the doctrines of atonement of *ḥaside Ashkenaz* we can detect the roots of the same idea.¹³⁹⁴ However, there are meaningful differences:

(1) Although there are some statements that the human “nature” – also – evil dispositions, (*yezer lev he-adam ra' mi-ne'urav*, Gen. 8,21), the concept of original sin has never become been accepted in Judaism. Sin is what the Torah forbids; but the human condition and bodily existence itself does not imply sin or sinfulness. Illegal, forbidden sexual relationship or even thoughts, in the extreme view of *ḥaside Ashkenaz* are considered grave sins, which must be atoned for, even through great pain and physical self-mortification. There are forbidden things in marital life as well. But sexual intercourse with one’s own wife is not a condemnable thing in itself, on the contrary, it is a duty. In Christianity, even if transgressions are “legally” judged in “internal forum”, and penance is prescribed for illegal acts, in the background the dominant concept of sin is that man is by nature sinful, since he was conceived in sin.

¹³⁸⁹ The connection between sin and atonement did not disappear from the Catholic doctrine of penance, but the theological separation of eternal sin pardoned through confession and guilt atoned by penance caused that atonement had a secondary role in repentance after confession.

¹³⁹⁰ In the – Irish, English, continental – monasticism asceticism was practiced long before. See: Gougard, *Devotional and ascetic practices*.

¹³⁹¹ See III.C.2.

¹³⁹² From Plato, *Phaedo*, Socrates’ view that the earth and body are imperfect, and that therefore the body is a sort of prison for the soul. See also Plotinus *Enneades* IV.8.1–33, IV.8.3.1–7; Aeneas of Gaza, *Theophrastus* 6.5–9.

¹³⁹³ *Science Encyclopedia*. “Western Ascetism. The Middle Ages”. Website: science.jrank.org.

¹³⁹⁴ However, the origin of the idea of *ḥaside Ashkenaz* that suffering atones is the theodicy-concept, and not that of cave/prison concept. See III.C.(1). See notes there (Boyarin, “This We Know to be Carnal Israel”, 491–492).

(2) In the system of atonement of *ḥaside Ashkenaz*, self-mortification plays an important role: through atonement man becomes pure. In Christianity, mortification can “purify” the body fully only after death.

In Judaism, confession never eradicates sin although it plays a role in the penitential process which can lead to complete atonement. But the Jewish doctrine of confession never admits the idea that mere confession absolves from sin on the eternal level, without any relation to physical punishment. Confession serves the purpose of finding an adequate penance for the sinner so that he may atone for his sin. In Christianity, absolution from guilt is received through confession. In the procedure of confession, penance is imposed on the sinner instead of punishment, but it has no relation (or only a very loose one) to guilt. Through penance the sinner avoids only punishment after death.¹³⁹⁵

III.A.3.3. Public Penance

In the 15th century, some traces of private confession can also be detected, in the way in which some sinners appealed to the rabbi for imposition of penance.¹³⁹⁶ These examples are, however, not directly connected to the – “sectarian” – ideas of confession of *ḥaside Ashkenaz*, even if the rabbis were influenced by the *ḥaside Ashkenaz* and even if they imposed the penances prescribed by their penitentials on sinners. The “sectarian” circle of *ḥaside Ashkenaz* already disappeared¹³⁹⁷ shortly after the death of R. Judah Ḥasid, as I. Marcus has shown. The new context of the penitentials was the communal and judicial system, with the institution of the courts, communal organizations and rights, and above all the prominent role of the rabbi concerning all aspects of communal life, among them in the process of penance.

In the system of public penance of medieval Ashkenazi communities the rituals of penance and reconciliation played a central role in dealing with transgressors. In these communities, in the process of penance, public rituals played the role which private confession and self-mortification had in the original sectarian system of penance of *ḥaside Ashkenaz*. Moreover, they often solved questions that belonged to the field of criminal jurisdiction. Like private confession and self-mortification in the system of penance of *ḥaside Ashkenaz* can only be described inadequately with the traditional notions of *teshuvah* of

¹³⁹⁵ For the Christian doctrine of absolution, guilt and sin related to confession and penance (satisfaction): Bossy, *Satisfaction in Early Modern Europe*; Id.: “The Social history of confession”; Champbell, William H.: “Theologies of Reconciliation in Thirteenth-Century England”; Ohst, *Pflichtbeichte*; Wunsch, “Review of the book “Pflichtbeichte””; Tentler, *Sin and Confession*; Thayer, *Penitence, preaching*.

¹³⁹⁶ For example, the adulteress in the *responsum* of Weil 12 and Bruna 225; the adulteress who confessed secretly in a letter in the Mollin 181 etc.

¹³⁹⁷ As I. Marcus” has demonstrated.

Judaism (although they are closely related to Talmudic laws and doctrines of atonement –, the public ritualized forms of *teshuvah* in the following centuries, which applied the penitentials of *haside Ashkenaz* to different cases, can be described properly only with a theory of the rituals, which was rooted in the atmosphere of the time and had its clear analogies in Christian society.

A.3.4. The “Ideology” of Coercion

As explained in the Introduction (4.2.1.1.), in medieval Ashkenaz the use of *teshuvah* in punitive law was based on the idea of self-government of the Jewish communities. However, this is only a partial explanation. In the contemporary ideology of Christian penance the idea of the power of repentance played a central role in demonstrating that values represented by the religious and secular authorities had no alternative. It was highly important to bring “grave” sinners, and first of all heretics, back to the flock, because that was a greater “achievement” for the religious leaders than killing them. The alternative of “excommunication or penance” (i.e. excommunication in case of grave sins could be avoided or lifted only by public penance) was based on an “ideology of coercion” and on the emphasis on the importance of repentance. It is possible that the development of *teshuvah* as a “substitution of punishment” in medieval Ashkenazi society was driven not only by an inner religious-cultural need, but also, to some degree, by Christian values and ideologies related to repentance.

In medieval Judaism we can not find an idea similar to the Christian “theology” or “anthropology” of coercion as defined by the Inquisition, namely, that physical torture can eradicate Evil from the heart of the sinner. Unlike Christianity, medieval Judaism, neither “personalized” evil nor did they develop such a theory of coercion. Medieval Jewish penitential theory and practice aimed at demonstrating the strength and steadfastness of the Jewish community.

III.B. Transgressions

III.B.1. Murder

III.B.1.1. Christianity

Murder is one of the three crimes concerning which the 2nd and 3rd century Christian disciplinarians differed as to whether those who committed them should be readmitted into the

church through penance.¹³⁹⁸ Beginning with the 4th century, penitent murderers were readmitted through severe penance. The Celtic and Germanic societies, in which the penitentials appeared, followed many primitive customs; the penitentials adopted some of them: (1) exile, (2) composition with the relatives of the murdered person, (3) the *tariffed* penance, (4) difficult fasting and long psalmodies. Composition replaced the primitive customs of retaliation or revenge.¹³⁹⁹ Penances contained long periods of exile and fasting for murder. According to *PFin* (circ. 500–550), a penance of ten years in exile is imposed on a cleric who has committed murder.¹⁴⁰⁰ In *PCol* (circ. 600), three years of exile is imposed for murder.¹⁴⁰¹ For murder, *PCum* (circ. 650) prescribes “conversion” (entry) into a monastery¹⁴⁰². In RED (840–915)¹⁴⁰³, for murder, 40 days of penance are prescribed, during which the penitent is forbidden to enter the church; he must also do public penance by going barefoot in the linen shirt of the penitent; he is forbidden to bear arms; is not allowed to sit at the table and eat with other Christians, and is only allowed to eat bread with salt and drink water.¹⁴⁰⁴ Public penitents were required to go on pilgrimage to holy places and bear the outward signs of the penitent status, adopted from secular punishments (for example, the mark of infamy, shaved head, hands tied to a ladder, chains or tires bound around the neck and on the feet.¹⁴⁰⁵ In *CB*, for homicide the penance of fasting for 40 days a year for seven years is imposed; according to the gravity of the murder, the duration of penance varied from 12 years, through 10, 5, 3 years to 1 year of penance, each year for a 40 days period. For killing a high-ranking churchman, excommunication for 5 years and humiliating acts were imposed, e.g. staying outside the church or in a corner, separated from the congregation, or commending oneself as a suppliant by prostrating before those who come in and go out. Further, for homicide, the penitent was prohibited from bearing arms and mounting a horse, from speaking about his own matters in the assembly of the faithful, as well as from going to feasts, from washing oneself in a bath house, from taking a wife. In addition to exile, fasting, humiliation and prohibitions, prayers and vigils were imposed on the penitent murderer.¹⁴⁰⁶ According to Burchard, retiring to a monastery would be the genuine penance for murder.¹⁴⁰⁷ Exile was the penance for political

¹³⁹⁸ McNeill Introduction, p. 5, Tertullian, *De pudicitia ii*, regarded irremissible; Origen *De oratione xxviii* regarded as allowed, brought as basis for permission Acts 15,29. *Pastor of Hermas, Vis. li 2*.

¹³⁹⁹ McNeill Introduction to *MedH* p. 34.

¹⁴⁰⁰ Id. 91.

¹⁴⁰¹ Id. 254.

¹⁴⁰² Id. 107.

¹⁴⁰³ *Libri duo de synodalibus causis et disciplinis ecclesiasticis*. Wassersleben, 216.

¹⁴⁰⁴ Wassersleben, 216. Schreiner, 1999, 264.

¹⁴⁰⁵ Hinschius, *System des katholischen Kirchenrechts*, vol. 5, 97, 117, 105. Schreiner 1999, 264.

¹⁴⁰⁶ PL 40. Book 19 (= CB), cap. V. 951–956.

¹⁴⁰⁷ Hamilton, *The Practice of Penance*, 42–43

murders, for murders that occurred as a consequence of intrigues between the popes, bishops and the lay high representatives (like counts or kings)¹⁴⁰⁸; or for murdering a clergyman.¹⁴⁰⁹

Beginning with the second half of the 12th century, the period of the penance for murder became shorter; reconciliation took the form of a special public penance, murder being a case reserved for the bishop.¹⁴¹⁰ Murder was punished by excommunication or public penance, depending on the willingness of the offender to undergo the humiliating procession. In the 15th century, in the diocese of Konstanz,¹⁴¹¹ violence against clerics was punished by automatic excommunication (that is, without trial). If the murderer was not willing to ask for release from excommunication and absolution by doing public penance, the parish community, or even the whole district was put under interdiction, which meant that no masses and no any other ecclesiastical ritual was allowed to be performed. In 1471, when two brothers murdered a priest, the relatives of the victim appealed to the bishop who immediately excommunicated the murderers and laid the whole parish under an interdict.¹⁴¹² Church and secular punishments were complementary, containing together three elements: (1) spiritual penance (imposed by the church); (2) reconciliation between the murderer and the heirs of the murdered person (with or without the mediation of the secular or church authorities); (3) sanction for breaking the peace (imposed by the secular authorities).¹⁴¹³

III.B.1.2. Comparison

III.B.1.2.1. Exile

There is a Christian penitential schedule that was prescribed for a penitent murderer at about the same time as HTR was composed. The Christian penitential schedule is found in a so called *Formelbuch*, which contains either actually issued documents or samples for writing all types of documents for the use of ecclesiastical administration. The *Hildesheimer Formelbuch* contains two documents from regions of Western Germany and the Netherlands.¹⁴¹⁴ According to the first one, O.¹⁴¹⁵, the bishop of Utrecht sends a repentant

¹⁴⁰⁸ Hamilton, *The Practice*, 1.

¹⁴⁰⁹ Id. 173.

¹⁴¹⁰ “Reserved cases” were the grave sins which only could be absolved by the bishop or pope. The offender either had to undergo public penance (and then he was absolved by the bishop), or was excommunicated.

¹⁴¹¹ Neumann, *Öffentliche Sünder*.

¹⁴¹² Recorded in the document REC Nr. 13817.

¹⁴¹³ Neumann p. 143, n. 447. Willoweit, Programm, p. 11; „Gewalt und Verbrechen, Strafe und Sühne im alten Würzburg.“ In: Willoweit, *Entstehung*, p. 225f., 232.

¹⁴¹⁴ MGH. *Die Briefe der deutschen Kaiserzeit*. Vol. VII. *Die jüngere Hildesheimer Briefsammlung*. München, 1995, p. 77, no. 28. Hildesheimer Formelbuch, p. 6 no. 27; Ms. L fols. 133vb–134ra.

¹⁴¹⁵ In two of the manuscripts here is instead of the bishop of Utrecht the bishop of Orléans, only in one of the manuscripts is the bishop of Utrecht. The bishop of Utrecht was in that time (1178–1196) Balduin of Holland.

murderer and arsonist with a letter to the Pope for fair punishment.¹⁴¹⁶ According to the second one, Pope Clemens III. (1187–1191) imposes on a repentant arsonist and murderer different penances: to go barefoot into exile, to wear the penitent’s clothes and iron rings on his body, to fast on Mondays, Wednesdays and Fridays, to go on pilgrimage to the Holy Sepulcher in Jerusalem and to Santiago.¹⁴¹⁷

III.B.1.2.2. Humiliation

One of two rituals of humiliation described in the penitential schedules for murder in HTR 28 and in Bruna 266¹⁴¹⁸ – prostrating before the synagogue – has its analogies in RED and CB.¹⁴¹⁹ Nearer in time to HTR is *PBE* (1164–84), in which penance is given on the basis of earlier sources for willful homicide.¹⁴²⁰

The other ritual of humiliation is the tying of the hand and body with iron chains, going and praying in this way. Latin sources for the tying iron chains or rings on the hands, neck and body of the penitent, are to be found in three types of contexts:

I. Punishment in prison: “chained in iron shackles”, as penalty for those who committed all kinds of murder¹⁴²¹;

II. (1) Penance for penitents for grave murder (e.g. patricide): “iron chains or rings tied on the hands, neck, and body”; (2) self-mortification of a hermit or monk for the sake of penance¹⁴²²;

III. Penitents were released from the iron chains by the saints’ miracle at their shrines (in a literary genre called *miracula*)¹⁴²³.

III.B.1.2.3. Period of Penance

In the Christian penitentials, in the same way as in the Jewish penitential schedules, the period of penance for murder is measured in days of fasting, coupled with exile. In the course of time, fasting, as well as exile, was reduced from seven years to one year or even forty days. During the time of penance washing was limited to holidays; and it was prohibited

¹⁴¹⁶ See translation in App. III.B.1.

¹⁴¹⁷ MGH. Id., p. 66, nr. 14; Id., p. 5 no. 13; Ms. L fol. 133ra. See translation in App. III.B.1.

¹⁴¹⁸ The title of the paragraph reads: *On Homicide Committed of One’s Own Accord. From the Decretals of Pope Melchisedes and of the Council of Tribur* (fol. 16v, col. I). See II.B.1 for quotation.

¹⁴¹⁹ See above at the beginning of III.B.1 the description of CB.

¹⁴²⁰ McNeill notes that this is a “Forged Decretal”. In the introduction to the translation, the views of the scholars are mentioned who thought that it was not the work of Bartholomew. But the Council of Tribur, 895, can. 55 contains the canons quoted. *MedH* p. 348. See quotation in App. III.B.1.

¹⁴²¹ See sources in App. III.B.1.

¹⁴²² See sources in App. III.B.1.

¹⁴²³ See sources in App. III.B.1.

to cut or shave one's hair. In the Icelandic *PHJLE* (circ. 1267–1341) the period of penance for murder is even shorter than in Bartholomew's penitential.¹⁴²⁴

III.B.1.2.4. Pilgrimage to Holy Places

Similarly to the pilgrimage of the murderer to the Mount of Olives, related in SHP 630, in Latin Christianity pilgrimage to various holy places (Jerusalem, Rome, Santiago, and other places) was a common penance for murderers.

In the 13th century, processions and pilgrimages were imposed for murdering a clergyman, since that kind of offence fell into the category of crimes punishable with automatic excommunication that could only be annulled by public penance. (1) Penitent murderers were sent on pilgrimages to Compostela in Spain and St. Gilles-du-Gard in Provence¹⁴²⁵. Also in the 15th century, murderers had to undertake long pilgrimages within the frame of “contracts” between the murderer and the family of the murdered person, in order to obtain ecclesiastical absolution. The main places were Rome, Aachen¹⁴²⁶ where 13 relics of the Virgin were kept, and the miracle of the bleeding consecrated wafer could be seen; and Wilsnack of Havelberg where the miracle-blood could be seen.¹⁴²⁷ (2) In 1451, a pilgrimage to Rome was required of a murderer for the “salvation of the soul of the murdered person”¹⁴²⁸. (3) In 1464, a murderer was required to go on pilgrimage in order to be recognized as a penitent in Breslau, according to the “atonement agreement”. (4) in 1474, in Breslau as *compositio* from four murderers only one was required to go on pilgrimage to Rome; the others were ordered to go on pilgrimage to nearer places for one year, each Sunday and feast to the churches of St. John, St. Cross, St. Maria, St. Vincent, St. Magdalene, St. Elisabeth, and the church of the St. Corpse; each murderer was required to say the *Pater Noster* and *Ave Maria* five times on every pilgrimage. The murderer was not always required to go personally on pilgrimage: (5) in the contracts between the years 1460–1494, there are examples that the penitent murderer could choose another person to go instead of him if he was too weak for the journey.

Penitent murderers were expected to certify the fulfillment of the pilgrimage obligation for the sake of penance. (6) For example, in 1452 in Neisse, a penitent murderer appeared before the city council with the certificate about his pilgrimage to Rome. (7) In

¹⁴²⁴ Id. 360. See quotation in App. III.B.1.

¹⁴²⁵ Id. 110–112.

¹⁴²⁶ The pilgrimage to Aachen was called “Ochfahrt”.

¹⁴²⁷ Usually, the certificate with which the murderer went on pilgrimage contained these words: *Pro refrigendo animae interfecti, pro expiatione sourum delictorum, pro impetratione benefisie absolutionis super homicidio.*

¹⁴²⁸ *des toten eleczu hulffe und czu troste tun.* Namely, the murdered person died usually without shrift.

1468, for a murderer, the contract included that if he died on the way, all his property would pass to the relatives of the murdered person. (8) In 1471, a murderer was required to go on two pilgrimages, one to Aachen and one to Wisnack.

III.B.1.2.5. Penitential Processions

In the 13–15th centuries, similarly to the processions to the graves of the murdered persons described in Ms. BL 477 pars. 1 and 6, and the procession to the synagogue, public ecclesiastical penitential processions were performed in case of murder: naked, half naked, or in linen shirts, barefoot and bareheaded, sometimes with lighted candles, or with extinguished candles; with the symbolic killing instrument in one hand or/and with a rod in the other: the symbols of the dispossession of arms, and receiving the rod of the wandering, exiled penitent. The processions were held either before the local church or were led to the great churches in the area, or to the grave of the murdered person. Sometimes, public beating was also part of these processions.

(1) In the year 1304 in Switzerland, a noble man and cleric of the cloister in Marienberg attacked the abbot, killed him, and stole the documents of the cloister. His penance was to go to every great church in the area, naked and barefoot¹⁴²⁹, with a rod in his hand, a rope around his neck; before the entrance of the church, he had to undergo public flogging, which was performed by the priest while chanting penitential psalms. After that he had to enter the church and confess his sin. (2) In 1467 in Erfurt, the case of a murderer arrived to the court of the city; he murdered a priest and was also sentenced to ecclesiastical public penance in the same way as the cleric in the previous case: he had to go naked, barefoot, only in trousers, with a rod in his hand, a rope around his neck, to every great church in the area and receive from the hand of the priest flogging before the doors of the church, while the priest was chanting penitential psalms; he was also required to fast, pray, and go on pilgrimage; but no severe punishment was imposed on him, as in a secular court. (3) In 1447, in Oberschwaben in the cloister of the Premonstratensian order, a group of murderers were condemned by the secular and church authorities to ecclesiastical public penance that had twelve requirements.¹⁴³⁰ (4) In Biberach (Oberschwaben) a burgher (1480–1554) wrote in his book about the penance for murder that had seven requirements.¹⁴³¹ (5) In his study, Jänichen

¹⁴²⁹ *nudus et discalceatus*.

¹⁴³⁰ See requirements in App. III.B.1. F. Sauter, „Todtschläger, wie solche in Schussenried vor der Carolina bestraft werden“, in: Württembergische Vierteljahreshefte 3 (1880) p. 271. Schreiner p. 283 n. 58.

¹⁴³¹ See requirements in App. III.B.1. Albert Angele, Biberach (1962, s. 118). Schreiner p. 284 n. 60.

discusses thirteen such cases of reconciliation in Schwaben.¹⁴³² The ritual procession to the graves of the murdered persons mentioned in all the sources of Jänichen, is prescribed to be performed after the mass for the souls of the murdered persons. The murderer or murderers were required to go barefoot, half naked, or dressed in penitent clothing, usually holding things in their hands, such as blown out candles, or candles turned upside down, rods, shearing knives or arms. Afterwards, the penitent (or penitents) had to prostrate himself (or themselves) on the graves until the father(s) of the murdered one(s) or the priest called him or them to stand up. They were required to perform pilgrimages. Four of them were instructed to bring certificates from the places where they went. It is probable that they received absolution in those places.

In EAF HA 17 (on fol. 107v), with respect to a murder the old canonic penance is mentioned¹⁴³³. An *emenda publica*¹⁴³⁴ is described on the fol. 22v of the above mentioned document with the subscription: *Absolutio homicide qui penitere vult.*¹⁴³⁵

On the fol. 107v, there is also a mention of penance for voluntary homicide: the murderer must appear before the main church in Konstanz or in his parish church. Those who have taken part in a war, and have committed murder, arson, and plunder, are condemned to *emenda publica* in the main church of Konstanz (9v). Two descriptions of individual penance are recorded in EAF HA 17, on fol. 54: *absolutio presbytericidii* (absolution for the murder of a clergyman) and on fol. 22v. On fol. 103v, there is also reference to a murderer who has consistently refused to do penance. Finally, he has accepted to do penance. The subscription reads: *absolutio super homicidio voluntario*. The expression means that the murder has been committed in a quarrel, contrary to *homicidium fortuitum*, a murder which happens accidentally. He is required to do penance “*iuxta ritum ecclesiae*” (‘according to the rite of the church’), in the church of Konstanz or in his parish church.

III.B.1.2.6. Rituals of Reconciliation and Asking for Forgiveness

Asking for forgiveness in the synagogue and at the grave of the murdered person, as an act of reconciliation, has its parallels in Latin Christianity.

¹⁴³² Jänichen, „Schwäbische Totschlagsühnen“.

¹⁴³³ “Because according to the canons he who willingly commits murder must do penance for seven years and again and again prostrate himself before the doors of the Catholic Church, and the community may only receive him at the end of his life”.

¹⁴³⁴ Ecclesiastical public penance.

¹⁴³⁵ “Absolution for murder if he is willing to do penance”.

Concerning ecclesiastical penance, if the victim made peace with the criminal¹⁴³⁶, the murderer was not allowed to be molested or mocked¹⁴³⁷. This was in fact the consequence of a type of private contract between the murderer and the family of the murdered person, which came into use in the 13th century in Germany, and lasted until the end 16th century, although it was fought by the land legislation beginning with Carl V.¹⁴³⁸ In this contract also the custom of erection of stone-crosses by the murderer at the place of his penance was included, which custom lasted until the 17th century. The “atonement contract” was not necessarily signed in a court, and was also acknowledged by the church; it had a private character and was invented for the prevention of revenge. It contained not only monetary compensation to the relatives of the murdered person, but also the payment for masses for the soul of the killed person who died without confession; it contained pilgrimages, processions, mostly barefooted with the killing instrument in the hand, sometimes receiving flogging or beating before the church, paying for candles, and erecting a stone cross at the place where the murder happened or where the murderer passed. As Lothar Schott explains¹⁴³⁹, he who killed someone accidentally was not to be beheaded but had to pay a certain amount of money. That monetary compensation is basically the old law of composition discussed above. In Berlin, for example, such a stone cross is to be seen in the St. Marienkirche dating from 1325, erected with the purpose of making atonement for the murder of the provost of Bernau. Usually, the tools of the profession of the murdered person and the killing instrument of the murderer are engraved in the stone. In his study, Daniel Wojtucki investigates the “atonement contracts” and the stone-crosses erected by murderers in Silesia in the 14–16th centuries¹⁴⁴⁰. Such stone crosses can be seen in many places in Germany, first of all in South Germany. The earliest stone-cross in Silesia dates from 1305. In 1494, in Strehlen, a chapel of stone was built by a murderer; in Neumarkt in 1440 and 1494, and in Breslau in 1460, 1461 and 1492, crosses were put at the places where the murders happened¹⁴⁴¹. Not only stone crosses were erected but so called “stones of reproof” were put at the places where criminals performed their penances for crimes like beating, assault, theft, and border-injury¹⁴⁴².

¹⁴³⁶ “*güetlich verainigt vnd vertragen*”.

¹⁴³⁷ “*an seinen Ehren und seinem guetten Leumoth nicht mehr verletzlich*” [sein]. Rieder, *Totschlagsühnen im Hochstift Eichstätt*. 1891, 19; Schreiner p. 285 n. 61.

¹⁴³⁸ After 1530. See also: Frauenstädt, *Blutrache und Totschlagsühne*; Deutsch, *Späte Sühne*.

¹⁴³⁹ Schott, Lothar: *Totschlagsühne und Steinkreuzerrichtung*, 1957.

¹⁴⁴⁰ Wojtucki, „... *ein steynen Crewtze*“. A further study about this type of atonement contract and custom of stone-crosses for murder: Saal, Walter – *Bräuche um das Sühnen von Totschlagen im Mittelalter*, 1975.

¹⁴⁴¹ Sroda Slaska.

¹⁴⁴² *Rügsteine*, falsely also called *Ruhsteine*. *Rüge* means ‘reprehension’, ‘reproof’.

III.B.1.2.7. Compensation

Although the commutation of penance for murder was not allowed in Jewish law, compensating the children or wife of the murdered person was considered a *mizvah*, and giving to charity was also imposed as atonement for the crime of murder.

In Latin Christianity, paying for masses or candles for the soul of the murdered person was especially widespread.¹⁴⁴³

III.B.1.2.8. Prohibitions

The prohibition of bearing weapons was the most prominent sign of a penitent murderer both in Judaism and Christianity between the 12th and 15th centuries.

Two men, for example, who killed a boy in Breslau in 1433¹⁴⁴⁴ were forbidden to have knives with them. In 1452 in Strehlen, murderers were prohibited from bearing a cross-bow. In 1531, a murderer had to avoid all the ways on which he could encounter the relatives of the murdered person. In 1570, two murderers of Ritterswalde had to avoid the city of Ritterswalde for the rest of their lives in order not to encounter the relatives of the murdered person, and were required to fast on bread and water every year on the day of the murder.

III.B.1.2.9. “*Ritualdynamik*”

In Christian penitentials, beginning with the second half of the 12th century, the period of penance for murder became shorter, and reconciliation took the form of a special public penance, during which the murderer was required to bear the symbolic signs of his sin and perform symbolic acts of humiliation and begging pardon. The right of reconciling penitent murderers was reserved for the bishop. In the three examples from later penitentials quoted above (PBE, PTT, PHJLE) one can observe the changes.

The shortening of the periods of penance and the accentuated ritualized public procession before reconciliation are parallel developments in both Christianity and Judaism.

¹⁴⁴³ According to the atonement contracts of Silesia of 1508, one was required to pay for the burial of the murdered person; the same was imposed in Jauer (Jawor) in 1509 and in Seidenberg in 1493 according to the cities' record books¹⁴⁴³. In Breslau, the mendicant orders were in charge of saying masses for the murdered souls, and required of the murderers to pay for 30 masses for the souls of the murdered persons one in the parish churches outside the city. In 1360, a murderer in Brieg (Brzeg) was obliged to pay for 1000 masses for the soul of his victim, as well as for weekly vigils and for wax for candles. In 1465, in Breslau, and in 1452, in Strehlen, murderers had to pay for 18 pounds of wax; in 1459, a murderer was required to give a goblet as gift; in 1466, another murderer was obliged to pay 6 mark *heller*; in 1473, another one was due to give 14 gulden; in 1494, four murderers were fined; in 1474, four other murderers were fined seven gulden; in 1474, in Breslau, four killers were required to pay four marks as charity for the poor.

¹⁴⁴⁴ Wroclaw.

III.B.1.2.10. Infanticide

According to Sarah Hamilton, penances prescribed for infanticide appear as early as in the 8th century.¹⁴⁴⁵ However, we find infanticide in *PCol* (circ. 600)¹⁴⁴⁶ among capital offences. According to the Irish *CH* (circ. 675), the sin of destroying the embryo of a child in the womb is expiated by three and a half years of penance. In *PT* (circ. 668–690) laws are decreed relating to infanticide (XIV.24). Also in the Code of Theodore, in its OEH version (900–1010), the sin of infanticide is to be atoned for through penance. According to *PB* (early 8th century), a mother must do penance for one year if she kills her child before the fortieth day. If she does it after her child comes to life, she shall do penance as a murderess. But it makes a great difference whether a poor woman does it on account of the difficulty of providing for the child, or a prostitute in order to conceal her wickedness.

In EAF HA 17, on fol. 7r, discussed by Neumann, for child neglect (*minus diligens custodia puerorum*), the penitent mother must undergo public penance (*emenda publica*) on a Sunday or on a festival day, when a large number of people are gathered in the church, for the deterrence of the others. In the same source, *emenda occulta* (fasting, charity, prayer) is imposed on a mother who has killed her child in the bed out of negligence (EAF HA 17, fol. 7v, *infanticidum*).

Infanticide, especially the way in which the mother has killed her baby in the bed at night, was judged by the penitentials, both in Christianity and Judaism, more leniently than both killing the embryo in the womb or child neglect. In the 15th century in Judaism, the duration of penance for killing the baby unintentionally in the bed was forty days of fasting (Mollin). In the 15th century in Christianity, secret penance including fasting, charity and prayer was imposed for the same sin. In the 14th and 15th centuries in Judaism, prominent rabbis warned the decisors to punish child neglect severely. In earlier Christian penitentials, one or three years of penance are imposed on penitent mothers for killing the newborn baby or for killing the embryo in the womb; in the 15th century, public penance was imposed for child neglect.

III.B.1.3. Possible Influences

Possible influences are: (1) outer signs of tying the hands with chains around the neck; (2) public flogging or beating before/in the church/synagogue; (3) lying down or standing before the doors of the church/synagogue; (4) shortening of the period of penance;

¹⁴⁴⁵ Id. pp. 190–191:

¹⁴⁴⁶ *MedH* pp. 254–5.

(5) some aspects of the penitent's self-humiliating behavior; (6) reconciliation with the family of the murdered person at the grave of the victim. [It had a developed procedure and well-defined symbols in the Christian practice: (1) throwing the right hand of the murdered person into his grave; (2) shaking the hand over the grave by the murderer and the family members of the victim, (3) paying the price of the injury to the relatives of the victim by the murderer].

III.B.2. Fornication and Adultery

III.B.2.1. Christianity

In continental penitentials, the periods of penance for sexual crimes lasted 7, 10 or 15 years, with one, two or three fasting periods of 40 days every year¹⁴⁴⁷ (RP, RED and CB). CB, for example, prescribes for an unmarried man who has fornicated with a married woman 7 years of penance, with fasting on bread and water during the three 40 day periods every year. If the man is married, and has fornicated with a married woman, 14 years of penance is imposed on him, with two periods of fasting for 40 days every year. If a man has fornicates with the fiancé of another man, 7 years of penance is imposed on him, with one period of 40 days of fasting every year. If a man fornicates with a maidservant or an unmarried woman, 10 days of fasting on bread and water is imposed on him. If a man fornicates with a virgin and then marries her, one year of penance is imposed on him; but if he does not marry her, two years of penance are imposed on him. For incest, fifteen years of penance is imposed. If a man has sexual intercourse with his wife during the forbidden periods (viz. on fasting days – above all, in the Lenten period): 10, 20, or 40 days of fasting on bread and water are imposed.¹⁴⁴⁸ Medieval Church regarded not only adultery and fornication but legal sexual relations as something that made a person ritually unclean.¹⁴⁴⁹ Holiness and ritual purity was connected with sexual abstinence.¹⁴⁵⁰

In the course of the 13th century, penances lasting several years were replaced by shorter fasts, charity, and prayers. The shortening of the penitential period, while maintaining the same rituals, can be observed in the Icelandic PHJLE (circ. 1267–1341), which imposes

¹⁴⁴⁷ These forty days of fasting on bread and water were in the Lenten period, or before Christmas or Pentecost. A fasting day lasted until evening.

¹⁴⁴⁸ *Burchardi Wormaciensi episcopi...* pp. 957–9; 965–8.

¹⁴⁴⁹ See Hamilton, *The Practice*, 196–201:

¹⁴⁵⁰ For example, if a married couple had sexual relation in the time of Lent (which was prohibited), they were not admitted to receive the Eucharist Hamilton, *The Practice*, 196–201. Hamilton analyzes a source from the 11th century in which a couple transgressed the Lenten prohibition related to sexual relations and underwent public penance. She states: “The Church regarded sex as polluting, both physically and spiritually [...] and thus incompatible with the major events of the Christian year.”

severe penances for incest, similar to the early penitentials, but for a short period.¹⁴⁵¹ But beginning with the 13th century, adultery and grave fornication were to be atoned for through public penance, which could only be imposed by the bishop, and not by the parish priest. “Simple” fornication could be commuted by paying a fine. Offenders who were too poor to pay the fine were required to do public penance, even in lighter cases (e.g., gossiping women, quarreling wives, fornicating young women who bore illegitimate children)¹⁴⁵². Public penance was also imposed when adultery had already been judged in the ecclesiastical court. The man or woman who was ready to do public penance and appeared in court was required to perform pilgrimage and/or other kinds of penances. If the adulterer or adulteress refused to appear in court, he/she remained excommunicated.¹⁴⁵³ In the 13th century, public penance was also imposed for clerical concubinage, because it fell into the category of sins punishable by automatic excommunication that could only be lifted after public penance.¹⁴⁵⁴ Therefore, the concubine of a cleric was liable to do public penance, and if she was married, she was required to perform twice the penance of an adulteress. In the 13th century, in London, a decree ordered that infamous laymen who were suspected of fornication should be denounced.¹⁴⁵⁵ Openly committed crimes were punished by excommunication, which could only be lifted by public penance; sometimes prostitution was held as one of these offences, in other cases it was tolerated, and required no excommunication (e.g. at the end of the 12th century, in Paris)¹⁴⁵⁶.

Both ecclesiastical and secular courts had the right to impose public penance on laymen and laywomen who openly committed adultery or fornication, before being readmitted among Christians.¹⁴⁵⁷ In the late Middle Ages, in England, public humiliation and physical punishment (beating) of penitent fornicators, adulterers and adulteresses took place in two public places: before and in the church (or in the courtyard of the church) or on the market place.¹⁴⁵⁸

(1) According to the city law book of Schlettstadt, between 1374 and 1401, bigamists were fined one gulden, and were required to undergo public procession barefoot, bare-headed, wearing only a white shirt, and with a rod in their hands, before the cross of the church on

¹⁴⁵¹ *MedH* p. 359. See quotation in App. III.B.2.

¹⁴⁵² Mansfield, 114.

¹⁴⁵³ *Id.* p.114.

¹⁴⁵⁴ *Id.* p. 114.

¹⁴⁵⁵ *Id.* p. 115.

¹⁴⁵⁶ Haring: “Peter Cantor’s View”, 101.

¹⁴⁵⁷ Helmholz: “Canonical Remedies”.

¹⁴⁵⁸ Postles: “Penance and the Market Place”. See quotation in the App. III.B.2.

three Sundays.¹⁴⁵⁹ (2) According to the official register of Celesy from the year 1326, the city council condemned an adulteress to a Sunday procession, which she was required to perform in a white shirt, barefoot, without head-covering, and without belt, around the church.¹⁴⁶⁰ (3) According to the same document, in 1331, another condemned adulteress was allowed to commute her public penance by paying a certain amount of money. However, because she was not able to pay, she was obliged to undergo public procession with uncovered head, barefoot, in a penitents' shirt, and without belt, on Palm Sunday. (4) According to a document of the diocese of Konstanz, in the 15th century, excommunicated adulterers and adulteresses were readmitted into the community after performing public penance.¹⁴⁶¹ (5) According to another document of the same source, the vicar general of Konstanz, threatened a man with excommunication, because the vicar heard a gossip that the man had sexual intercourse with the daughter of his god-father.¹⁴⁶² (6) In the same source, there are documents about adulterers who were publicly led into the cathedral of Konstanz for readmission on Palm Sunday. (7) According to the same source, public penance for adultery could be commuted by “*emenda occulta*” (‘secret penance’, fasting, charity, and prayer).¹⁴⁶³ (8) According to the same source, an adulterer was fined and separated from her wife.

Secular courts prescribed for adultery harder punishment than the church. Usually, secular public shaming also included beating and mutilation; castration for adulterers¹⁴⁶⁴, cutting off the nose of adulteresses.¹⁴⁶⁵ (9) In 1505, in Erfurt, a woman who committed adultery several times was cited to the city’s court. She was condemned to pillory and public beating; afterwards, she was exiled from the city. The cleric, with whom she committed fornication, was not condemned, due to his status.¹⁴⁶⁶ (10) In 1522, in Soest,¹⁴⁶⁷ a woman was condemned for fornication to a public procession called “stones carrying” through the city.¹⁴⁶⁸ the stones were put near the pillory, she was conducted three times around the pillory, then the

¹⁴⁵⁹ Wolfgang – Hinrich, Studien- und Quellenbuch, vol. 1, Aalen, 1989, 124. Schreiner p. 285 n. 62.

¹⁴⁶⁰ *in tunica, nudis pedibus, incapillata, non cinta; caputio denudata, nuda pedes, in tunica, aliqua corrigia non cincta*. “Le registre de l’officialité de Cérisy 1314–1457”, in: *Mémoires de la Société des Antiquaires de Normandie* 30 (1880) p. 374 and 382. Schreiner p. 286 n. 63–64.

¹⁴⁶¹ *Si et postquam huiusmodi publicam emendam peregerit ipsam absolutum et emendatam teneas et teneri faceas* (EAF HA 17 fol. 8r).

¹⁴⁶² Id. EAF HA 17 fol. 67.

¹⁴⁶³ Id. fol. 22v.

¹⁴⁶⁴ Joachim Bumke, *Hofische Kultur...*, München 1989 Bd 2 s 551f, id. n. 69.

¹⁴⁶⁵ Hermann Conrad u.a. (Hg.) *Die Konstitutionen Friedrichs II. von Hohenstaufen für sein Königreich Sizilien*, Köln–Wien 1973, III. 74, s. 334, Schreiner, n. 70.

¹⁴⁶⁶ The husband of the woman was rather sad than angry because he has lost his wife; he said, “*ir schneidt mir mein Ere und leumont abe*”. Stadtarchiv Erfurt, Urteilsbuch 1483–1513, 1 – 1 XXI.7.23, fol. 131r. Schreiner p. 286 n. 65.

¹⁴⁶⁷ Shame sanction, called “*Steinetragen*” in German.

¹⁴⁶⁸ Lindemann, *Das Soester Strafrecht*, 1939, 38. Schwerhoff p. 167.

stones were tied around her neck with a chain, and she was due to carry them through the city while drums were beaten around her. Stone-carrying was very often imposed on adulteresses, and its form varied: sometimes two women were carrying the stocks through the city, holding each other's stock. During processions, it was forbidden to hide in veils and hats; moreover, it was required to go almost half naked. (11) In the 15th century, in Magdeburg, a member of the city council was accused with having adulterous relation; therefore, he was deposed and required to leave the city.

III.B.2.2. Comparison

III.B.2.2.1. Self-mortification

In the same way as in the penitentials of *ḥaside Ashkenaz*, in the monastic penitentials physical self-mortifications were common penances for sexual transgressions, or for adultery and fornication in penitentials written for laymen and clerics outside the monastic framework. For example, in *Legenda major*, the author, St. Bonaventura, relates that St. Francis mortified himself in winter by lying in the snow at night, and flogged himself frequently, when forbidden thoughts came upon him. .

III.B.2.2.2. Period of Penance

According to the penitentials of *ḥaside Ashkenaz*, penance for adultery and grave fornication lasted several years. The sources of *ḥaside Ashkenaz* exemplify the four modes of penance with the offence of fornication and adultery, which demonstrates the importance of penances for sexual transgressions in their views. The duration of penances for sexual transgressions was measured with the length of the periods of physical self-mortification (fasting and flogging, lying on the naked ground, refraining from shaving and washing oneself) and self-humiliating acts (e.g. wearing mourning clothing, wearing black, abstaining from rejoicing). In Christianity, the practice concerning the period of penance was similar.¹⁴⁶⁹ Later, both in Christianity and in Judaism, the period was shortened.

III.B.2.2.3. Prostitution

In medieval Christian and Jewish societies, men who fornicated with prostitutes were punished less severely than those who committed adultery¹⁴⁷⁰, or rape, or seduced a virgin or

¹⁴⁶⁹ See III.B.2.1.

¹⁴⁷⁰ I.e. a married man fornicated with a woman or virgin and not with a prostitute.

married woman¹⁴⁷¹. Spiritual leaders made efforts to restrict fornication with prostitutes. In Christianity, the prostitutes themselves were condemned to public penance, because they were too poor to commute public penance by money. The stories in SHP show a similar picture about the social status of – probably Gentile – prostitutes.¹⁴⁷² In one of R. Meir b. Baruch of Rothenburg's *responsa*, there is an example of a Jewish married woman who in the absence of her husband behaved herself like a prostitute. However, even in such a case, R. Meir of Rothenburg was not willing to allow her husband to divorce her without paying her the *ketubbah*, for lack of the testimony of two proper witnesses.¹⁴⁷³

III.B.2.2.4. Public Penance

According to two *responsa* from the 15th century, public penitential acts are imposed on two adulteresses: appearing in the synagogue in a shirt tied with a rope, with untied hair, similar to the description of the adulteress in the tractate *Sota*; sitting separated in the synagogue of the women, confessing publicly, taking off her embellishments.¹⁴⁷⁴ These public gestures and performances have their analogies in Christianity in both ecclesiastical and secular public penance for adulteresses from the 13th to the 15th centuries: adulteresses performed similar shame-processions in the courtyard of the church or on the marketplace of the city.¹⁴⁷⁵ These humiliation processions had the same purposes in Christianity and Judaism: to express the idea of social justice for the rest of the community, to emphasize that the penitent adulteress lost her social position and honor because of the offense committed, and to induce the offender herself to repent of her sin.¹⁴⁷⁶

III.B.2.3. Differences

Christianity regarded not only illegal but also legal sexual relations as impure. This is not the case in Judaism: the sexual relation with the wife in a state of purity, as well as taking a wife is a *mizvah*. However, *ḥaside Ashkenaz* thought of seeing and hearing women as sources of transgression for men, as sources of enticement to illegal relations. Therefore, it was prohibited – especially for penitents – to look at foreign women, to hear their voice or see their clothes.

¹⁴⁷¹ I.e. even if the man was unmarried, and fornicated with a woman or virgin, and not with a prostitute, was more severely punished.

¹⁴⁷² See II.B.2.

¹⁴⁷³ See II.B.2.

¹⁴⁷⁴ See II.B.2.

¹⁴⁷⁵ See above III.B.2.1.(1)–(11).

¹⁴⁷⁶ Mollin 181; Neumann, "Ritualdynamik". See II.B.2 and III.B.2.1.(7).

III.B.2.4. Possible Influences

The doctrine of physical self-mortification for expiation of sexual sin is central in Christianity. In the penitential doctrine and practice of *ḥaside Ashkenaz* self-mortification for sexual sins also plays an important role. In the penitential practice of *ḥaside Ashkenaz* self-mortification for the atonement of sexual transgressions could be a possible Christian influence.¹⁴⁷⁷ The public penance prescribed for adulteresses in the *responsa* of the 15th century might be influenced by the widespread practice of the public penance of the church, secular courts, city councils and leadership in the German towns to require of adulterers and adulteresses ritual processions with symbolic acts in the church courtyard, in the church, through the city and on the market place, with the main purpose of humiliating and dishonoring the penitent.

III.B.3. Injury, Assault and Battery

III.B.3.1. Christianity

Commutation in case of injury was common in Celtic and German tribal law¹⁴⁷⁸. In the German penitentials of the 9–10th centuries, composition was completely replaced by the fasting regime; the length of the fasting periods varied according to the gravity of the wound. RED.1.304 prescribes for maiming one year of fasting.¹⁴⁷⁹ According to *CB*, if he fell ill, the offender was due to do penance (fasting) 3 times during the 40 days of fasting on the ordinary fast days.¹⁴⁸⁰

From the 12th century on, lighter battery was not judged so severely, but grave assault was considered an offense, not only against the attacked one but also against public peace. Breaking the peace was punished by the secular authorities with interdictions and fines; by the church with excommunication, which could be released by public penance.¹⁴⁸¹ (1) In 1248, in Northern France, offenders had to undergo public humiliation for attack and robbery.¹⁴⁸² (2) In 1457, in Paderborn, some peasants molested and injured the servants of the prior of a cloister while the servants were cutting wood in the forest. The offenders had to undergo public ecclesiastical penance in the presence of the prior: with lighted candles in their hands,

¹⁴⁷⁷ See: Baumgarten, “‘A separate people’?”, 212–228. Id., “Remember that glorious girl’.

¹⁴⁷⁸ McNeill Introduction to *MedH*, 35–36.

¹⁴⁷⁹ Id. 317.

¹⁴⁸⁰ *Burchardi*, 953.

¹⁴⁸¹ Mansfield, 272.

¹⁴⁸² Id. 126–127.

barefoot and with uncovered heads, they asked for the forgiveness from the prior in a procession before the altar of the church. They were pardoned. According to the author of the chronicle, one of the peasants refused to participate in the procession; he died the day after the public penance.¹⁴⁸³

III.B.3.2. Comparison

III.B.3.2.1. *Talio* and Composition

Talmudic law for injury and German tribal law coincided with respect to the liability of the offender to pay to the injured person. That was called *composition* in Germanic law; in Talmudic law five types of compensation were specified: for damage, pain, shame, cost of cure and stoppage of work.¹⁴⁸⁴ In the Christian penitentials the idea of *compositio* was adopted and combined with other penances, e.g. fasting.

In Christian medieval Europe, *talio* and corporal punishments (e.g. maiming, mutilation, cutting off the hand, ears, nose, and blinding) were applied by the secular authorities for injury, assault and battery. The idea and practice of *composition* in secular law is a development “toward a more human system” than the *talio* law, but the latter was also not abolished in secular law. *Talio* was not adopted in Christian penance, although heavy self-mortification was part of the medieval Christian penitential system. In the medieval Ashkenazi Jewish communities, there are examples for *talio* punishments. As penance, one encounters the *talio* penance in the practice of *ḥaside Ashkenaz*.¹⁴⁸⁵

III.B.3.2.2. Public Penance

From the 13th century on, both Christianity and Judaism combined ritualized public penance and shame sanctions with public corporal punishments (flogging and beating) for injury, assault and beating. Public penance included public confession and asking for forgiveness. Additional case-specific ritual acts and symbols were used in public shaming or processions. In Christianity, both ecclesiastical and secular courts used combined public rituals.

Redemption of both public humiliation and public physical punishment was usually allowed in Christianity and Judaism alike, and was preferred by those who were of higher social status.

¹⁴⁸³ JP Chronicon monasterii Bodecensis, Monachii 1731, 74f. Schreiner n. 90.

¹⁴⁸⁴ See II.B.3. and II.C.14.

¹⁴⁸⁵ See II.C.2 and II.B.3.

III.B.3.3. Possible Influences

The use of public penance in the 13–15th centuries for offenders in case of injury could be parallel development in Christianity and Judaism, without direct influence. These developments are due to the same social and cultural context of the medieval communities in which public shaming was a common sanction. However, influences in both directions are not excluded.

III.B.4. Theft, Usury, Falsification of Documents and Coins

III.B.4.1. Christianity

In the old penitential handbooks concerning *tariffed* penances, the essence of the penance for theft is the restitution of the stolen thing or its value, or the amount of money stolen. Two- or fourfold restitution – an influence of Ex. 21–22 and that of native law, according to McNeill – is frequent.¹⁴⁸⁶ In the continental penitentials, penances became more important than restitution. In the Frankish PStH (circ. 850), deprivation of rank and penances for three, seven or five years are prescribed for usury and falsification.¹⁴⁸⁷ In RP.26–30 (circ. 830), for theft and robbery, heavy, long-term fasting on bread and water is prescribed, and no restitution is mentioned.¹⁴⁸⁸ RP.47 stipulates that if anyone extracts usury from his fellow Christian, shall do penance for three years, one year on bread and water. RED.1.304 (circ. 906) mentions restitution, but the accent is on fasting for different periods of time, in proportion to the gravity and value of the robbery or theft¹⁴⁸⁹. Burchard prescribes fasting for different periods of time for theft and robbery, according to the value of the thing stolen and to the circumstances.

From the 12th century on, robbery attack was considered a grave crime and punished by excommunication or public penance. Smaller thefts were punished by city councils by putting the offender in the pillory. Usury and other types of illegitimate gain were of central importance. Usury was considered a public crime and punished by public penance or excommunication.¹⁴⁹⁰

¹⁴⁸⁶ *MedH*, Introduction, 36.

¹⁴⁸⁷ *Id.* 292.

¹⁴⁸⁸ *Id.* 304.

¹⁴⁸⁹ *MedH*, 317.

¹⁴⁹⁰ Mansfield, 114–115.

Contemporary economics became sophisticated in the 13th century. Consequently, confessors needed a suitable training so that they could identify mortal and venial sins of usury, unjust gain, theft, and robbery.¹⁴⁹¹ Out of the seven deadly sins besides lust, avarice became a characteristic sin of the time.¹⁴⁹² Goering compares the more traditional discussion on theft by Bartholomew of Exetere with that by Robert of Flamborough. The treatise of the first author contains *dicta* from earlier canons, which are general and almost timeless, whereas that of the second one includes practical and contemporary problems, e.g. how the penitent is required to restitute the things stolen.¹⁴⁹³ The *summa confessorum* of the 12–15th centuries used scholastic arguments to prove that usury was a kind of robbery.¹⁴⁹⁴

In the late Middle Ages, in Europe, debtors, who could not pay, were condemned to the pillory. According to the late medieval glossators of the Roman law¹⁴⁹⁵, putting in a pillory meant “*infamia de facto*”, that is, extra-legal, informal declaration made by the guilty person that he renounced his legal rights. Pillory was often accompanied by physical punishments and by exile from the city. (1) In the 14th and 15th centuries, in Milano, Padua and Rome, debtors were required to sit on a specific shame-stone¹⁴⁹⁶ or on a marble lion statue, while bells were chiming, and publicly declare that they renounced their goods.¹⁴⁹⁷ (2) In 1416, in Bamberg, a woman was expelled from the city and forbidden to return, because she had stolen something. (3) In 1426, in Bamberg, three falsifiers¹⁴⁹⁸ were put in the pillory and blinded. (4) In 1435, in Frankfurt, a guest house keeper was put to shame because he had sold beverage made of berries instead of wine; afterwards, he was exiled from the city together with his wife, and both tied on a wagon, with a wreath of berries around their necks.¹⁴⁹⁹ (5) In 1441, in Nördlingen, a falsifier¹⁵⁰⁰ was put in the pillory and expelled from the city. (6) In 1443, the city council of Frankfurt put a man in the pillory for cheating, wickedness, and magical practice; the offender was beaten and expelled from the city.¹⁵⁰¹ (7) In 1462, in Augsburg, the mayor of the city, head of the tax-collection and city-building

¹⁴⁹¹ Goering, ‘The Internal Forum’, p. 380.

¹⁴⁹² Id., ‘The *Summa de penitentia*’; Id., ‘The *Summa* of Master Serlo’, 303–4.

¹⁴⁹³ See quotation in App. III.B.2.

¹⁴⁹⁴ Langhorn, *The Aristotelian analysis; The merchant in the Confessional*. Petrus Lombardus, Thomas Chobam (*Summa confessorum*), Williams of Auxerre (*Summa aurea*) and Raymund of Penafore].

¹⁴⁹⁵ Cynus Pistoriensis, In codicem et aliquot titulos..., Torino 1964, 74a–75: “*quia publice aut in foro aut palatio publico cedit bonis, ter dicendo: cedo bonis*”. In: Schreiner p. 277 n. 43.

¹⁴⁹⁶ “Stone of the shame” “*lapis vituperii et cessionis bonorum*”.

¹⁴⁹⁷ “*Cedo bonis*”.

¹⁴⁹⁸ The source does not mention what kind of falsifiers they were.

¹⁴⁹⁹ R. Kaiser, Wirtschaftsdelikte als Zeichen wirtschaftlichen und sozialen Wandels im Mittelalter in GWU 40 (1989), 282. Schwerhoff, 169–170.

¹⁵⁰⁰ It is not specified in the source what kind of falsifier he was.

¹⁵⁰¹ Schwerhoff p. 165, n. 29. Rau, Frankfurt 175), ‘bosheit, beschissery, zeuberey’.

offices, was condemned because he used the cash of the city for personal needs. Deprivation of rights and office was publicly announced on the marketplace, in the presence of about eight thousand men and women; the mayor was led before the people of his city with a rope around his neck as a thief, and was due to stand on a high stage in order to be seen by all; then the sentence was read: he had no longer the right to be called “mayor”, “building-master”, “guild-master”; he was forbidden to leave the city for the rest of his life; he lost his economical credit, was prohibited to put on silk clothes, camel hair coat, marten furs, embellishments of gold or silver, precious stones; he was forbidden to bear arms, except a broken bread knife. (8) During the 15th century, in Wismar, cheaters, falsifiers of merchandises, and gamblers who cheated were branded on their faces, or their ears were cut off. (9) In 1502, in Basel, a cleric falsified documents in the name of two cardinals and was exposed with a shame-cap on the stairs of the church before the auditory on a wooden ladder. A peasant was also exposed for false testimony, with a shame cap. They stood there about five hours.¹⁵⁰² (10) In 1512, in Vorarlberg, a man was publicly beaten for aid in coin-clipping; then he was forbidden to bear arms, except a broken bread knife; he was prohibited from entering a guesthouse, and was required to stand behind the congregation in the church. (11) In 1518, in Frankfurt, a thief was forbidden to leave the city, except for pilgrimage, and was forbidden to go to a bathhouse.

III.B.4.2. Comparison

III.B.4.2.1. Restitution

In medieval Europe, the two- or fourfold restitution for theft prescribed in Exodus 21–22 was applied in both Christian and Jewish law. In Christian penitentials, this idea was combined with that of composition taken from German tribal law. Among the prescriptions concerning restitution in the penitential practice of *haside Ashkenaz*, we meet two-, three- or fourfold restitution in connection with the requirement of paying for not only the damage but also for all the consequences of the theft.¹⁵⁰³

III.B.4.2.2. Penance for Stealing

In the Christian penitentials as well as in HTR, the penitent thief is also required to make atonement in ways in which other transgressions are atoned for (e.g. fasting, flogging,

¹⁵⁰² Martin Müller, *Kirchenfürsten und Intriganten*. Zürich, 1985, p. 103. Schreiner, 281 and n. 53. According to Schreiner, in the Middle Ages, falsification of documents was usually punished by cutting off the hand.

¹⁵⁰³ See II.B.4.

private or public confession), in addition to monetary restitution. These are necessary requirements for a salutary penance.

III.B.4.2.3. Usury

Usury plays a special role in the penitential system of both religions. Lending at usury to coreligionists is forbidden in both religions. The rules concerning the restitution and penance are fixed according to complex principles.

At the turn of the 12–13th centuries, economic life became more complicated; usury became a central topic in the *summa confessores*. According to SHP, there are many factors which are to be taken into consideration when the sage imposes penance for stealing or usury. These factors depend on circumstances, economic factors and subjective characteristics. The growing sophistication of the system of rules regarding restitution in Jewish as well as Christian penitential practice can be an internal development in both religions, a response to changes in economic life (a process which began with the period of the crusades in Europe), and not necessarily an influence. But the possibility of mutual influence is not excluded.

III.B.4.2.4. Shame Sanctions

From the 13th century on, theft was regarded as a “public crime”¹⁵⁰⁴ by the secular and ecclesiastical authorities. Thieves of low social status were condemned to public ecclesiastical penance, public beating, pillory, and exile from the city. Secular law also punished Jewish thieves.

In medieval Ashkenazi Jewish communities, decrees were enacted under threat of excommunication for stealing and cheating in tax-paying. If the thief was unknown, a ban was imposed on the community because of those who hid the thief. Differently from secular law, this system not only sanctioned offenders but also controlled misappropriation and secured honesty in the Jewish communities. Charity giving, fasting, and flogging were imposed as penances, besides restitution. The publication of the identity of the thief meant public shame. In medieval Ashkenaz, public humiliation of the thief could be a natural development in the community, but also an influence of the environment, in which putting in the pillory of ordinary thieves was a frequent shame sanction.

¹⁵⁰⁴ According to the canon law, “public criminal” (*peccator manifestus*, öffentlicher Sünder) is a Catholic who committed a mortal sin, which is objectively known, and being unrepentant, was not absolved. The “public criminal” is forbidden to receive communion, Anointing of the sick and ecclesiastical burial.

III.B.4.3. Possible Influences

The additional penances for theft (beyond restitution), the complicated laws of restitution developed in the penances for theft and the public shaming of the thief can be independent developments, but also an influence of the Christian environment.

III.B.5. Cursing and Slandering

III.B.5.1. Christianity

In the early penitential books, cursing, slander, gossip, and harming honor are connected with the vice of anger. For cursing, *OIP* (circ. 800, V.12–16) prescribes asking for forgiveness and fasting.¹⁵⁰⁵ According to *PS* (circ. 800), cursing one's parents (V.102) must be atoned for through a period of penance equal to the time of impiety.¹⁵⁰⁶ For cursing one's parents, *CB* prescribes forty days of fasting every year, for seven years.

Cursing, just as blasphemy, appeared as a criminal offence in the 13th century.¹⁵⁰⁷ The offender was fined; if he/she could not pay, he/she was required to do public penance. Both ecclesiastical officials and secular courts applied the pillory for cursing, sometimes combined it with putting in stocks, public flogging or beating. King Louis IX punished blasphemers by putting them in the pillory and then in prison.¹⁵⁰⁸ In his jurisprudential work “*Rechtsbuch*” (1338) the Dominican theologian Berthold explains that as God and the saints are to be honored, and dishonoring them or disgrace must be punished, so the parents and the fellow Jew are to be honored, since social relations must reflect the relation to God.¹⁵⁰⁹ The conflicts resulting from injured honor were to be settled by punishing with the “measured” or “mirror” sanction: the loss of honor. To call someone a *latro* (thief, robber), *proditor* (betrayed), *adulter* (son of a bitch), *strabo* (squinter), *illegitimus* (bastard), as it is explained in the *Summa theologica* of Antoninus of Florenz¹⁵¹⁰, are forms of dishonoring someone (*dehonoratio*, *dehonestare*), dishonoring someone. In his definition, the notion *detractio* is a dishonoring act, in the course of which some crime or sin is attributed to another man in a false way, either by words, or by mocking songs or by a letter (*verbum*, *cantilena*, *famosus libellus*). Berthold

¹⁵⁰⁵ Id. 167.

¹⁵⁰⁶ I.e. the time until regretted and began the penance. Id. 287.

¹⁵⁰⁷ See Schwerhoff, *Gott und die Welt herausfordern*.

¹⁵⁰⁸ Mansfield, 278 ; Jean de Joinville, *Histoire de Saint Louis*, cxxxviii, 289–290.) ; Mansfield, 85.

¹⁵⁰⁹ Schreiner, „Verletzte Ehre“, 266 n. 5: „Rechtssumme“ Bruder Bertholds, a German version of Johannes of Freiburg's „*Summa Confessorum*“, ed. Geors Steer, vol. 2, Tübingen 1987, 950. Schwerhoff, “Verordnete Schande?” 158–188; Id. *Gott und die Welt herausfordern*. See III.B14, III.C10.

¹⁵¹⁰ 1389–1459.

considers cursing (*schelten*) a mortal sin (*totsund*). The recovery of honor and reputation (*restitutio famae*) is defined by the scholastic theologians Albertus Magnus, Thomas Aquinas, and Duns Scotus as public revocation of the words of abuse (*reparatio famae*) and public or secret penance for the sin committed (*opera satisfactoria*, alms, fasts, and prayers).

In secular law, the obligation to revoke the words of abuse or slander was borrowed from canon law. From 1346 on, in the county law of Beyer, withdrawal was defined as an act by which the harmed person regained his renown. From 1321 on, in the city law of *Saarbrücken*, it is stated that if someone calls another one a “murderer”, “falsifier”, or “perjurer”, either on the market place or in another public place, he/she must retract his words at that place. In the first half of the 14th century, in the city and county constitutions (“*Stadt- und Landrechte*”) cursing and slander was fined.¹⁵¹¹

(1) In the “high court” (“*Oberhof*”) of Kleve, a burgher harmed the honor of a juror; the burgher was required to do public church penance for his insult: to go barefoot, wearing only a white shirt, with lightened wax candles of two pounds in his hands, to a cross in the cemetery. Then he was obliged to sit in the church before the image of Virgin Mary and retract loudly his words of abuse.¹⁵¹² (2) In the same town, a man of higher rank citizens harmed the honor of a cleric, a Franciscan guardian. The jurors decided that he was bound to ask for forgiveness on a festival day: he was required to stand on a bench near the pulpit in the church and retract his words; then to place a lightened candle on the communion table.¹⁵¹³ (3) In 1505, in Basel, a burgher, a guildsman, was obliged to retract his words of abuse at the open doors of the town hall, in the presence of six members of the guild, and do public church penance. Additionally, he lost his office: he could no longer be a member of the council and judge.¹⁵¹⁴ (4) In 1530, in Basel, a burgher was required to do public penance in the cathedral, to ask for forgiveness and retract his words. He was required to stand at the pillars of the church, near the priest, during Sunday mass; then the priest explained the reason of his standing there to the congregation; then he was required to retract his words of abuse. He was also obliged to swear that he would fulfill the penance prescribed for him by the church.¹⁵¹⁵ (5) In 1477, in Reval, the wife of a pig farmer was condemned to carry the shame-stone (“*Lasterstein*”) for calling the wife of a shoemaker a “prostitute”, and could not prove that the

¹⁵¹¹ Schreiner, „Verletzte Ehre“, 270 ns. 23–24.

¹⁵¹² Bernhard Diestelkamp – Klaus Flink (Hg.), *Der Oberhof Kleve und seine Schöffensprüche. Untersuchungen zum Klever Stadtrecht*, Kleve 1994, 113. Schreiner, „Verletzte“, 271 n. 25. See quotation in App. III.B.5.

¹⁵¹³ See translation in App. III.B.5.

¹⁵¹⁴ Both examples are from Basel. See Karl Metzger: *Die Verbrechen und ihre Straffolgen im Basler Recht des späten Mittelalters*, Basel 1931, vol. 1, 109. Schreiner, „Verletzte“, 271 n. 28.

¹⁵¹⁵ See quotation in App. III.B.2.

woman was indeed a prostitute.¹⁵¹⁶ (6) In the 15th century, in Köln, stone-carrying and candle-carrying were shame sanctions for fornicators of both sexes. They were often applied together with expulsion from the city and interdiction to come back.¹⁵¹⁷

III.B.5.2. Comparison

III.B.5.2.1. Harmed Honor

In medieval Europe, in Christianity as well as in Judaism, harming the honor of the fellow man was considered an offense punishable by law.

III.B.5.2.2. Fines

In medieval Judaism, according to Talmudic law, the offender was liable to pay compensation. From the 13th century on, the practice of paying a sum of money as compensation for the harmed honor was introduced in Latin Christianity (both in ecclesiastical and secular law). In both religions, the amount of money to be paid was somehow related to the content of the words said. In addition, other penances, such as fasting and flogging, were required of the penitent offender.

III.B.5.2.3. Public Penance

In Christianity, public penance was required of offenders who could not afford to pay compensation for cursing, slander, and gossip. Public penance was combined with public beating or flogging. In Judaism, public penance combined with public flogging was imposed on offenders for cursing, with or without fines. Fines prescribed in the Talmud could not be collected outside *Eretz Israel*. Other fines and flogging were imposed on the basis of local or general community enactments, on the basis of the principle of “emergency enactment” (*hora' at sha' ah*), or of “making a fence” (*le-migdar milta'*).

III.B.5.2.4. Asking Publicly for Forgiveness and Retraction of Abusive Statements

In Christianity, ecclesiastical or secular public penance was combined with public confession, asking for forgiveness, and the retraction of slanderous and abusive statements. In Judaism, public penance was combined with public confession, asking for forgiveness, and

¹⁵¹⁶ E. V. Nottbeck, *Die alte Criminalchronik Revals* (1884), 112. Schwerhoff, 171.

¹⁵¹⁷ Schwerhoff, *Gott und die Welt herausfordern*, chapters „Blasphemische Schwüre“; „Gotteslästerliche Fluche“; „Verletzung der göttlichen Ehre: Formen und Adressanten“; „Blasphemische Worte und Taten“; „Gotteslästerung als Ausdruck von Zweifel und Unglauben“; „Predigtwesen und Bettelorden“.

the retraction of the abusive statements in the courtyard of the synagogue, in the synagogue or at the graves of the offended persons, sometimes in the presence of the Torah scroll.

III.B.5.3. Possible Influences

In the 13–15th centuries, in Judaism as well as in Christianity, there are analogies in public rituals connected to confession, retraction of abusive statements and asking for forgiveness. Asking for forgiveness at the graves of the defamed persons or their parents are also analogous. They can be regarded as parallel developments or mutual influences.

III.B.6. Arson

III.B.6.1. Christianity

In the high Middle Ages, arson was punished by capital punishment, also in those laws not influenced by Roman Law.¹⁵¹⁸ The early penitential books require not only penances but also restitution. For example, *SM* (circ. 445) imposes for arson penance and monetary compensation for damages¹⁵¹⁹. In *BP.40* (circ. 700–725), three years of penance is prescribed for arson.¹⁵²⁰ According to *CB* (V.136), arson was to be atoned for through fifteen years of penance.

Since the turn of the 12th and 13th centuries, arson has been one of the major offences that were punished by automatic excommunication or public penance.¹⁵²¹ In the 15th century in the diocese of Konstanz, those who committed murder, arson, plunder, or robbery, were required to perform public penance (*emenda publica*) before the cathedral, in order to receive absolution.¹⁵²²

¹⁵¹⁸ In German law, arson was punished by decapitation, by breaking the offender on the wheel, or by burning (*Sachsenspiegel*). There is a clear differentiation between cases when there is danger of life and cases when there is only material loss (*Sachsenspiegel*). According to English law, at the end of the Anglo-Saxon period, and at the beginning of the Norman period, arson was one of the felonies that could only be expiated by the death penalty (burning at the stake or hanging).

¹⁵¹⁹ *MedH* p. 370–371.

¹⁵²⁰ Royal Library of Brussels, Codex Burgund. 8780–8789, now Brussels 2493. *MedH*, 277.

¹⁵²¹ Mansfield, 114.

¹⁵²² Neumann, 52.

III.B.6.2. Comparison

The special status of the Jews among the Christians and the gravity of the crime of arson in medieval Christian Europe society are the reasons for the severity with which Jewish courts punished false accusation of arson, as well for the permission, and even duty of desecrating the Sabbath in time of fire.

III.B.7. Contempt of Court

III.B.7.1. Christianity

According to the WeC (circ. 550–650), if a man is summoned in appear in court and refuses to go, the fact is to be established by witnesses and the man compelled is to pay a silver pound.¹⁵²³ According to the *PCum* (circ. 650), the disobedient person must remain outside the congregation without food and humbly knock until he is received.

From the 13th century on, excommunication could only be lifted by performing public penance. Contempt of court was a crime for which either excommunication or public penance was necessary. Bishops applied excommunication in cases that had already been judged in ecclesiastical courts, for those who refused to do public penance. Automatic excommunication was imposed on those who did not appear at all in court when summoned, and also on those who committed a crime that entailed automatic excommunication.¹⁵²⁴ Only the contumacious person was to be excommunicated.¹⁵²⁵ At that time, many moral and public offences were defined as “contumacy” and entailed automatic excommunication, with the purpose of pushing the offender into a state of major excommunication. This was known as excommunication *latae sententiae*, “concealed verdict”, caused by the sinner by his/her own actions.¹⁵²⁶ It was used by the medieval Church to remove “spiritual offenders”¹⁵²⁷ from the “community of the faithful” by forcing the excommunicated person to appear in court.¹⁵²⁸

Excommunication was pronounced for a litigant who was not willing to appear in court or accept the decision of the court. Disobedient adulterers were excommunicated. Public usurers, if they did not pay back the interest, were excommunicated. Excommunicated persons

¹⁵²³ *MedH*, 377.

¹⁵²⁴ Mansfield, 114 –115, 123–124.

¹⁵²⁵ Helmholz, “Excommunication as a legal sanction”,

¹⁵²⁶ Vodola, *Excommunication*, 35–6, 45.

¹⁵²⁷ I.e. heretics.

¹⁵²⁸ Forrest, “William Swinderby”, 256.

were not absolved and were denied ecclesiastical burial until they obeyed.¹⁵²⁹ All these were called *excommunicatio sententiae* or *pro contumacia*, that is to say, excommunication for disobedience to court decision and to a decree of a high church official.

III.B.7.2. Comparison

III.B.7.2.1. Contempt of Court and Automatic Excommunication

Contempt of court was legally punished by excommunication in both religions. From the 12–13th centuries on, in Christianity, excommunication for contumacy could be lifted by public penance. In medieval Ashkenazi Judaism, greater excommunication (*herem*) could also be released by public penance and by fulfilling the requirements of the court (in monetary, social, criminal matters). In both legal systems, the deadline to appear in court was thirty days.

III.B.7.2.2. Contempt of Court and “Public Enemies”

The use (or misuse) of the power of the courts to excommunicate disobedient persons who failed to appear in court or refused to accept the decision of the court was a powerful tool in the hands of the leadership of both religious communities. The church used this power to fight heresy: representatives of the church could summon, for example, a heretic to court to recant his views, and if he was not willing to obey, they could legally excommunicate him. In Judaism, rabbis misused their right to excommunicate persons for the sake of monetary gain; rabbis misused their position to summon the litigant to their own court, who in this way had little chances to win the suit and did not appear in court.

III.B.7.3. Possible Influence

In the late medieval Europe, automatic excommunication in case of disobedience and its lifting by public penance, could be either independent developments in Christian and Jewish societies, or can be results of mutual influences.

III.B.8. Perjury

III.B.8.1. Christianity

¹⁵²⁹ Neumann, 123.

The offence of perjury was severely punished by Irish and German tribal laws, and the early penitential books reflect severity. In *DE* (circ. 750), false testimony and perjury are listed among criminal offences that prevent a man from becoming a priest.¹⁵³⁰ RP prescribes for different types of perjury seven years, twelve years or life-long penance.¹⁵³¹ According to RED, seven or three years of penance are imposed for perjury.¹⁵³² According to CB, if someone commits perjury consciously and deliberately, he/she is required to do penance for forty days every year, for seven years. If he/she is forced, he/she is required to do penance for one year, and fast for forty days on bread and water every year. For taking a vain oath, seven days, fifteen days, or forty days of fasting are imposed. In CT (OE version, B76. 04.01), for perjury, forty days of fasting are prescribed for eleven or three years. PBE (1161–84) considers perjury a grave sin.¹⁵³³

From the 13th century on, perjury was punished by putting in a pillory. The status of the person condemned to the pillory was specified as “*infamia*” or “*laesa dignitatis status*”.¹⁵³⁴ In the late 13th century, an Italian judge maintained that with the loss of renown, the condemned person lost also his legal rights. (1) In 1287, in Perugia, a burgher was condemned for perjury. In the document certifying his conviction it is stated that his *testimonium* will not be accepted in court, and he can no longer fulfill an *officium civitatis*. (2) In 1378, in Rothenburg, a man was exiled and chased out from the city for perjury.

III.B.8.2. Comparison

III.B.8.2.1. Trustworthiness and Social Status

In medieval Europe, in both Christian and Jewish societies, trustworthiness was connected to social status. In medieval Christian society, the testimony of slaves and Jews was not accepted. In medieval Jewish society, the testimony of Gentiles, of Jewish women, apostates and disqualified persons was not accepted.

On the other hand, social status was connected to trustworthiness. False oath was punished in both Christian and Jewish legal systems by disqualification from taking an oath, therefore, by losing the rights and position in society.

Beyond these facts, perjury was not a simple transgression as, for example, theft, by which the offender caused only damage to his fellow man. Perjury always involved the

¹⁵³⁰ Id. 239.

¹⁵³¹ Id. 304.

¹⁵³² Id. 317.

¹⁵³³ Id. 349.

¹⁵³⁴ Hermann Kantorowicz, *Albertus Gandinus und das Strafrecht der Scholastik*, vol. 2, 1926, 55. Quoted in Schreiner 277–8 n. 44–46.

desecration of God's Name. Therefore, the social and religious consequences of perjury were more severe. The threat of excommunication was always connected with perjury.

III.B.8.2.2. Private Penance

For perjury, in both Christianity and Judaism, fasting, private flogging, private confession to God, and prayer were imposed on the penitent.

III.B.8.2.3. Public Penance

From the 13th century on, in Christianity as well as in Judaism, the perjurer was required to perform public rituals (e.g. to sit on a shame-stone, stand on a ladder or in the pillory; ask for forgiveness, retract publicly his false oath in the church or synagogue; public beating or flogging was also applied).

III.B.8.3. Possible Influences

In medieval Ashkenazi Jewish communities, both private and public penances for perjury could be independent developments; but they could also be influenced by the Christian penances for perjury.

III.B.9. Transgression of a Vow

III.B.9.1. Christianity

In Medieval Latin Christianity, there were two types of vows: one of them could be released, the other one could not. Special vows of abstinence, clerical, monastic, celibacy, and virginity vows could not be released. For example, CPII.17 prescribes that a virgin who makes a vow of virginity to God, but afterwards marries a man shall be excommunicated until she converts into a monastery.¹⁵³⁵ Vows of pilgrimage, of fasting, and charity could be released. Penance was connected with both types of vows: (1) According to the old penitentials, sometimes monastic vow was required in case of a grave crime, though usually with an alternative.¹⁵³⁶ (2) The ways of the redemption of vows influenced the commutation of penances. (3) Redemption of vows was influenced by the ways of commutation of penances. It is worth mentioning that according to the OE Scriftbok (par. 94a X15.07.01) a woman is not allowed to take a vow without the consent of her husband.

¹⁵³⁵ Id. 78.

¹⁵³⁶ *MedH* 34.

From the 12–13th centuries on, the *summa confessores* treated the redemption of vows and the commutation of penances together. (1) In his treatise, “*Summa Ne transgrediatis*”, Pope Alexander III argues for the possibility of the annulment of a vow of pilgrimage, maintaining that commutations of penances are also possible. (2) Raymund of Penafort also argues that the a priest can commute penances for his own parishioners, if commutation is done discretely and if there is a reason for it. Nevertheless, he states, “I do not extend this to vows in which one must proceed more strictly”.¹⁵³⁷ (3) At the end of his treatise, Magister Serlo juxtaposes the problems of the redemption of vows and redemption of penances, which indicates that according to his view, the commutation of penances and the annulment of vows have common features.¹⁵³⁸ According to Serlo’s penitential, there are special vows of abstinence, clerical and monastic vows, and vows of virginity, which can never be annulled. Vows of pilgrimage can be annulled by the bishop if there is reason for the annulment. If pilgrimage is vowed for “the reinforcement of the Holy Land”¹⁵³⁹, it can only be annulled by the pope or his legate. Annulment of vows of pilgrimage requires commutation by alms-giving, praying, and fasting. Vows of fasting can be annulled by the parish priest, by commutation into alms-giving and prayers.

III.B.9.2. Comparison: Similarities

III.B.9.2.1. Release of Vows by Alms-giving, Praying and Fasting

In medieval Christianity and Judaism alike, vows to perform something (e.g. to go on a pilgrimage, to give money to charity) or to abstain from something (food and drink, sexual intercourse) were common. Vows (in Christianity those that can be released) were usually released by performing private penances (giving alms, prayers, and fasting). The release or annulment of vows in Judaism has well defined laws in the Talmud, especially for married women, but, according to Talmudic law, the release of a vow needs no penance. However, in the Middle Ages, vows were also released by doing penance (giving to charity, praying and going into exile).¹⁵⁴⁰

III.B.9.2.2. Authority for the Release of Vows

¹⁵³⁷ Goering. “The *Summa de penitentia*” , Id. “The Summa of Master Serlo”, 310. and n. 73. Raymund *Summa* 3.34.66, 498.

¹⁵³⁸ Master Serlo, *Summa de penitentia*, chapter 29, “*De redemptione penitentiarum*” and chapter 30, “*De redemptione votorum*”.

¹⁵³⁹ E.g. for crusade or for military service in the Holy Land.

¹⁵⁴⁰ See II.B.10 and II.C.8.

In medieval Judaism, vows could be released by three laymen or by an ordained rabbi. In medieval Christianity, vows of fasting and alms-giving could be released by the parish priest, vows of pilgrimage by the bishop, vows of crusade by the pope. Clerical and virginity vows could not be released.

III.B.9.2.3. Release of Vows of Pilgrimage

In medieval Judaism and Christianity alike, the release of a vow of pilgrimage, especially to the Holy Land, or to a far away place, constituted a problem. In Christianity, the authority for the release of such vows was the bishop or the pope. In Judaism, the rabbis hesitated whether it was allowed to release a vow of pilgrimage to the Holy Land. If released, these vows required in both religious communities more difficult penances than vows of fasting and alms. In Judaism, exile was a possible penance for the release of a vow to go on pilgrimage.

III.B.9.2.4. Failing to Fulfill the Vow in Due Time

In Judaism as well as in Christianity, if someone did not fulfill the vow in due time, could not fulfill it later, and was required to do penance for which the rules were established by the religious authorities and imposed by them.

III.B.9.3. Differences

III.B.9.3.1. Special Vows in Christianity

The special clerical and virginity vows of medieval Latin Christianity have no analogies in medieval European Judaism. In medieval Judaism, there are vows in connection with sexual abstinence that can be released. These kinds of vows also exist in medieval Latin Christianity, and they can also be released.

III.B.9.3.2. Special Vows in Judaism

In medieval European Judaism, special traditional vows, like the vow to be a *nazir*, were common. Also the special conditions of the vows of a married woman and of their release (namely the fact that if the husband of a married woman did not consent with the vow of his wife, her vow was annulled) remained the same in the Middle Ages.¹⁵⁴¹ There is a

¹⁵⁴¹ The vows of *nazirut* and the vow of a woman are traditional vows in Judaism, absent from Christianity. Although they have parallels in Christianity, an influence is excluded.

similar ruling in a Christian source, which prescribes that a woman can only vow with the consent of her husband.¹⁵⁴²

III.B.9.4. Possible Influences

In medieval Latin Christianity, the widespread custom of vowing, especially taking vows of pilgrimage and fasting, may have influenced the Jewish customs. Particularly the release of vows by penance could be a Christian influence to a certain extent. This possible influence, however, is to be understood in the context of “religious competition”. Vowing and fulfilling vows or doing penance for the sake of release of vows was connected with the notion of holiness. The aim of this religious competition was “to be holier” and “to be the holiest”.¹⁵⁴³

III.B.10. Transgressions in Eating and Drinking

III.B.10.1. Christianity

III.B.10.1.1. Gluttony and Drunkenness

Gluttony is one of the eight principal vices or deadly sins distinguished by John Cassian.¹⁵⁴⁴ According to the 6th century Irish *PG*, if a monk fills his stomach so much that he vomits or if he becomes drunken, he shall do penance with “special fasts”.¹⁵⁴⁵ According to the Frankish penitential *JC* (circ. 700–750), for transgressions in eating, and drinking “special fasts” are imposed.¹⁵⁴⁶ According to *CB*, eating prohibited (i.e. unclean) foods, offences of both gluttony and excessive austerity, breaking the fast or fasting excessively must be expiated by a penance of fasting for 10, 20 or 40 days.

III.B.10.1.2. Unclean Foods

The author of *PT* lists the animals the eating of which is forbidden.¹⁵⁴⁷ According to the OECT B64.03.03, the four prohibitions of the *Acts of the Apostles* are of special

¹⁵⁴² See above, III.B.9.1.

¹⁵⁴³ See III.A.4.

¹⁵⁴⁴ 4th century. He devotes books V–XII of his *Institutes* to the treatment of these vices

¹⁵⁴⁵ *Superpositio*, see *MedH* 31. According to some scholars (e.g. McNeill), it was the extension of a fast; originally it was a Saturday fast, a preparation for the communion on Sunday.

¹⁵⁴⁶ *MedH*, 271–3.

¹⁵⁴⁷ Chapter VIII. *Of the Use or Rejection of Animals*. E.g. “animals which are torn by wolves or dogs are not to be eaten, nor a stag or goat if found dead, unless killed by man, if not, they are to be given to the swine and dogs”; “birds and animals strangled are not to be eaten, fish [found dead – from the *CE*] may be eaten”; “the

importance: “man must restrain himself from fornication, from strangled animals, from blood and from idolatry”.¹⁵⁴⁸ *CB* also deals with unclean foods.¹⁵⁴⁹

Rob Meens is of the opinion that the purpose of these prescriptions is not only hygiene and health, but they also reflect a system of ritual purity introduced and required by the clergy.¹⁵⁵⁰

III.B.10.2. Comparison

III.B.10.2.1. Unclean Foods

In Christianity, dietary laws and the penance for their transgression are not so central as in Judaism. Therefore, the penance of the ritual slaughterer is severe in Judaism.

III.B.10.2.2. Intemperance in Eating and Drinking

This is a typical Christian topic, absent from the Jewish sources, since the main concern of Jewish penance regarding dietary laws is *kashrut*.

III.B.10.2.3. Transgressions of Communal Fasting and of Vows Concerning Food, Drink, and Fast

Transgression of communal fasting or vows concerning fasting is usually to be atoned for by fasting, according to both Christian and Jewish customs. Usually, if community fasting or vows are not fulfilled in due time, they can not be fulfilled later, and must be atoned for.

III.B.10.3. Differences

In Medieval Latin Christianity, transgressions in eating and drinking are connected with “irreligious”, “improper” behavior or with the transgression of a vow. In medieval Ashkenazi Judaism, a part of the transgressions of the laws of *kashrut* are connected with idolatry. The profession of the ritual slaughterer, and therefore penances related to it, has no analogies in Christianity.

III.B.10.4. Possible Influences

flesh of the horse is not forbidden, however it is not the custom to eat it”; “the hare may be eaten and it is good for dysentery”; “the swine may be eaten”; “those animals which tear the corpses may not be eaten.”

¹⁵⁴⁸ Acts 15:20, 29; 21:25.

¹⁵⁴⁹ Chapter V. nos. 127–31

¹⁵⁵⁰ Meens, “A Penitential Diet”.

The possibility that in Judaism penances related to the transgression of a vow, and some aspects of the ritualized public penance of the ritual slaughterer were influenced by the Christian environment, can not be excluded.

III.B.11. Irreligious Behavior

III.B.11.1. Christianity

In Christianity, irreligious behavior could refer to many aspects of life. Usually, penance and punishment for irreligious behavior was separation and humiliation. For example, in WeC (circ. 550–650), an early collection of Welsh laws, the following regulation is given in connection with pagan hair-fashion¹⁵⁵¹:

'70. If any Catholic lets his hair grow in the fashion of the barbarians, he shall be considered an alien to God's Church and to the table of every Christian until he mends his ways.'

In 1417, in Basel, "light-minded" men were condemned to go around in a yellow hat for fourteen days which was an allusion to the Jewish shame-clothing (i.e. shame-hat and yellow sign on the clothing).¹⁵⁵²

III.B.11.2. Comparison

III.B.11.2.1. Harming Communal Morals and Acculturation in Christianity and in Judaism

In medieval Ashkenazi Jewish communities, particular attention was paid not only to the fulfillment of the commandments related to proper appearance (e.g. clothing, hair-dress), but the difference from Christians was to be emphasized by all means. In Christianity, similar fears of acculturation and similar requirements as responses to such fears were only present in a time when the danger of returning to the ways of the pagans was a real one. Later, the behavior that harmed the morals of the community – as a deviance from the community's standards – was condemned to penance and/or punished by shame sanction.

III.B.11.2.2. Penance by Fasting

¹⁵⁵¹ *MedH* p. 382.

¹⁵⁵² Schwerhoff, p. 167.

In Christianity, as well as in Judaism, the infringement of the norms of the religious community required atonement through private penance. Private penance was imposed in both grave and light cases.

III.B.11.2.3. Shame Sanction

If the irreligious behavior was graver, public shaming was imposed on the offender in both religions.

III.B.11.3. Possible Influence

Similarities in the definition of “irreligious behavior”, and analogies in the public and private atonement of these transgressions in medieval European Christianity and Judaism can be explained by the common fear from relapse to paganism. Mutual influences can not be excluded.

III.B.12. Blasphemy

III.B.12.1. Christianity

Blasphemy was above all considered a transgression committed in words. According to *PCum*, a monk who speaks blasphemous words must remain outside the monastery, without food, for as much as he has behaved blasphemously; and he must humbly knock at door of the monastery until he is readmitted.¹⁵⁵³ But the desecration of holy times and spaces is also considered blasphemy. According to CB V.145, ten days of fasting are imposed on an offender for speaking in the church. According to OECT B63.01.01, seven days of fasting are prescribed for an offender for working on Sunday.

From the 13th century on, the church punished blasphemy in the same way as curse, slander, malicious gossip and as the secular courts and authorities did: by putting in a pillory or by other shame-sanctions¹⁵⁵⁴.

(1) The *Decretals* of Pope Gregory IX¹⁵⁵⁵ prescribes as penance for blasphemy against God, the saints or Virgin Mary that the penitent should be forbidden to enter a

¹⁵⁵³ *MedH* par. VIII.5.

¹⁵⁵⁴ Mansfield, p. 85.

¹⁵⁵⁵ (1227–1234), chapter *De maledicis*.

church; the penitent must instead stand before the doors of the church seven Sundays. In the last week, he is required to fast six weekdays on bread and water, and feed one or two poor men for three days; if he can not do that, he is allowed to change the alms-giving to another penance. On the last Sunday he is obliged to stand before the doors of the church without a cloak and shoes, with the shoelaces tied around his neck. If he refuses to undergo public penance, he is not allowed to enter the church, and is denied the ecclesiastical burial. He must also give money to the bishop in proportion to his property; if it is necessary, he can be forced by the secular power to obey. About the same time, the German emperor Friedrich II, the French king Louis the Pious (1226–70), Alfonso IX of Castile (d. 1284), and Leopold VI of Austria (1221) introduced punishments for blasphemy into secular law.¹⁵⁵⁶

In the 13th century, the canonists explained the shared role of the ecclesiastical and secular power in the sanction of blasphemy. (2) At the beginning of the 1250s, in his work, Hostiensis (d. 1271) explained that the blasphemer was bound to do penance publicly, because his crime was public. The penitent blasphemer was required to appear before the doors of the church in “*signum maioris humilitatis atque contritionis*”, without a cloak and shoes, the shoelaces tied around his neck *ad modum latronis*. Nobles could commute both ecclesiastical and secular shame sanction into a fine; but some of the nobles were more afraid of fines than of corporal punishments or excommunication. (3) In 1374, the ecclesiastical council of Narbonne dealt with the different kinds of blasphemy, required the denunciation of the offender, and threatened disobedient people with same punishment as that imposed on the blasphemer. (4) In 1447, the council of Eichstatt also prescribed the denunciation of the blasphemer in 3 days. People were required to bring the blasphemer to the capital of the district, and announce the offence to the bishop.

(5) In the 1280s, the cities of Italy began to issue punishments against blasphemers: monetary fines (shared by the denunciators and the community), and other punishments (e.g. beating, flogging, public shaming in chains, Florence 1285, Bologna 1288); (6) immersion in the river three times (Verona 1327, Rovereto 1425); (7) cutting off the tongue (Siena 1309/10, Imola 1334); (8) incarceration (Piacenza 1391).

(9) In the city statutes of Inlau, the following public penance was prescribed for blasphemers: the penitent blasphemer was bound to go at the head of the procession around the church on seven Sundays; before the last Sunday, he was required to fast on bread and water on the six weekdays; during his penance, he was not allowed to enter a church. If he

¹⁵⁵⁶ Schwerhoff: *Gott und die Welt herausfordern*. 1996.

was not willing to do public penance, the ecclesiastical burial was denied him. The public penance was supplemented by a fine imposed by the secular court. (10) In Luzern, blasphemy was punished by iron collar or was fined. (11) In 1314, in Speyer by five pounds; if the offender could not pay, by iron collar; in 1354, in Frankfurt and in 1363, in Konstanz by pillory or fine. (12) During the 15th century, in Zürich, Würzburg, Regensburg, and Köln the same punishment – fine or pillory – was imposed on blasphemers. (13) In the course of the 14–15th centuries, in Zürich, Basel, Speyer, Augsburg, Berlin, and Rothenburg, cutting off the tongue of the blasphemer, pillory, and exile from the city were combined. (14) In the 15th century, in Zürich, Regensburg, Pfaffhaus, Speyer, and Konstanz, grave blasphemy was punished by death. (15) In 1390, in Rufach, women who committed blasphemy were due to go carrying the shame-stones, and with candles in their hands, before the shame procession. (16) In 1435, in Soest, a man who committed blasphemy against God and the sacraments was required to go barefoot, with candles in both hands, with his clothes around his neck, before the shame procession; then he was banished from the city. (17) In the 15th century, in Schlettstadt, a blasphemer was condemned to the pillory and stocks, and fined four pounds for the wax candles before the cross. (18) In 1472, in Freiberg, three men were condemned by the city council for blasphemy, and were required to pay for the wax candles in the church and to fast.

(19) According to a certificate of absolution for blasphemy from the 15th century, in the diocese of Konstanz, the penitent blasphemer was required to stand before the doors of the church during the mass on seven Sundays in the time of the mass; he was also required to fast on the six Fridays before; on the last Sunday he was obliged to stand before the doors of the church barefoot, without upper clothes, and with a rope tied around his neck.¹⁵⁵⁷ Prostrating before the doors of the church for a period of seven years, mentioned in the old canons, here was reduced to seven weeks of standing before the doors of the church. This ritual symbolized, both in old and in new canons, excommunication. According to this source, public penance for blasphemy was sometimes transformed into *emenda occulta* (fasting, charity, prayer).

III.B.12.2. Comparison

III.B.12.2.1. Different Meanings of “Blasphemy” in Medieval Christianity and Judaism

¹⁵⁵⁷ Neumann, EAF HA 17 fol. 59r

In the 13th century, in Christianity, blasphemy was considered a crime; it meant speaking evil of God, Jesus, Virgin Mary, the saints, the pope or clerics; it had the character of an act; and was classified as *leasa majestatis* (high treason). In medieval Judaism, speaking blasphemously was not a frequent offence (as one of the Christian sources mentions about the Jews¹⁵⁵⁸). Probably, this was due to the prohibitions connected to the pronouncement of God's Name. In medieval Judaism, blasphemy was rather connected to "the desecration of God's Name" (*hillul ha-Shem*) by desecration of a holy place, of a holy time, by public transgression of a commandment or by perjury, false testimony or transgression of a vow, during which the Name of God was misused or abused.

III.B.12.2.2. Public Penance

In medieval Christianity and Judaism alike, blasphemy was considered a transgression of publicly "harming the holiness". Therefore, blasphemers were required to publicly ask for forgiveness from God, in the church or synagogue. Blasphemers were also condemned by secular law to the pillory due to the public character of the sin.

III.B.12.2.3. Fines

Fines for blasphemy were independent from public penance in Christianity and Judaism alike. Fines could also be required of the blasphemer by force, even in cases when the blasphemer refused to do penance. There were monetary penances (alms-giving, feeding the poor, paying for the study of poor children) within the frame of the penitential schedule. Blasphemers of higher social status could redeem public penance by money.

III.B.12.2.4. Private Penances

Beside public penance, private penitential schedule was prescribed for the blasphemer in both medieval Christianity and Judaism.

III.B.12.3. Differences

Blasphemy is considered a grave offense in medieval Christianity and Judaism alike. The type of the offence is different.¹⁵⁵⁹

III.B.12.4. Possible Influences

¹⁵⁵⁸ See Schwerhoff, *Gott und die Welt*.

¹⁵⁵⁹ See B.12.2.1.

In medieval Christian and Jewish public penitential rituals for blasphemy mutual influences can not be excluded.

III.B.13. Political Crimes

III.B.13.1. Christianity

Continental penitentials from the 8th century impose heavy penances on offenders who commit political crimes. CB imposes for denunciation resulting in murder penance of fasting for forty days (*carina*) once a year, for seven years.

In the high Middle Ages, public penance was applied in case of high treason (*laesa majestatis*), different kinds of political offences, and rebellion. Public penance for political crimes mixed the forms of *harmschar* and the forms of ecclesiastical public penance. (1) In 1155, in Worms, the German emperor, Friedrich Barbarossa, condemned on a court day two counts to ecclesiastical penance for murder, plunder, arson (*sacrilegi*) and affront to the rights of a bishop: they were required to prostrate themselves in penitent clothes, with ash on their heads before the bishop of Mainz, and ask him to lift the sentence of excommunication pronounced against them.¹⁵⁶⁰ (2) In 1222, in Paderborn, the burghers closed the gates of the city and resorted to violence against the bishop. 50 burghers were required to pay 100 marks and go barefoot, in penitent clothes to the bishop to ask for forgiveness on behalf of the people of the city.¹⁵⁶¹ (3) In 1227, in Paderborn, a bishop excommunicated two counts who affronted the rights of the bishop, and wounded him physically. Together with 100 knights, barefoot, they were obliged to humiliate themselves before the bishop and ask him to lift the sentence of excommunication pronounced against them.¹⁵⁶² (4) In 1352, in Prague, the emperor Karl IV. wanted to punish women who asked for the release of a man condemned to death by the emperor. He wanted to condemn the women to stay day-long on the bridge between the old and the new city of Prague, with untied hair, wearing nothing but a white shirt. At the request of the family members of the women, the emperor pardoned the women and changed the sentence to a fifteen days house arrest.¹⁵⁶³ (5) In 1380, in Lübeck, public penance was performed by the delegates of the *hansa* cities Hamburg, Rostock, Lüneburg,

¹⁵⁶⁰ “Vita Arnoldi archiepiscopi Moguntini”, in: *Monumenta Moguntina*, ed. Philipp Jaffe, Aalen 1964 s. 614f. Schreiner p. 288 n. 71.

¹⁵⁶¹ Schreiner 290.

¹⁵⁶² *Westfälisches Urkundenbuch*, V. Roger Wilmans, Osnabruck, 1973 Bd. 4, s. 102f. and 69; Diether Poppel, *Das Hochstift Paderborn* 1996, 85. Schreiner, 290 n. 81 and 83.

¹⁵⁶³ In the study of Schreiner, further examples of ecclesiastical public penances or begging for pardon as remedy for curse are dealt with in the chapters concerning curse and legal disqualification.

Wismar, Stralsund, Bremen, and Lübeck in order to be readmitted into the economic and trade community of the *hansa* cities from which they have been excluded in 1374. On the stairs of the dome in Lübeck, in woolen penitent clothes, bare-headed and barefoot, with lightened wax candles, the eight delegates prostrated themselves, presenting a letter of supplication in which they obliged themselves to build a stone chapel.¹⁵⁶⁴ (6) In 1462, in Augsburg, the mayor was publicly humiliated before eight thousand citizens, because he had stolen the cash of the city. His theft was considered political crime.¹⁵⁶⁵ (7) In 1484, in Rostock, a bishop and some counts wanted to transform a church into a collage for the economic needs of the university. The burghers disagreed, so the bishop proclaimed a ban and then interdict against them. Firstly, excommunication was imposed on the mayor, the members of the council, and all the community, while the bells were chiming, candles were extinguished, and the judges of the Pope sprinkled consecrated water on the people in order that the demons should leave the congregation. The congregation continued to disobey; therefore, the city was put under an interdict. The ecclesiastical excommunication lasted until 1491.¹⁵⁶⁶

III.B.13.2. Comparison

III.B.13.2.1. Major Offense

The crime of betraying the king, the ruler or rebelling against the sovereign was called *laesa majestatis*, and was the gravest sin in secular political life. Harming high ecclesiastical persons was also regarded as a crime of this category. In Judaism, betraying the community, informing the Gentile courts, or litigating in Gentile courts against the will of the adversary or without the permission of the community, were also regarded as major sins and considered offenses against the whole community.

III.B.13.2.2. Death Penalty

In medieval Latin Christian society, the crime of treason was punished by death if public humiliation was not performed. In medieval Judaism, as an exceptional measure, it was allowed to kill him in order to prevent betrayal.

III.B.13.2.3. Humiliation

¹⁵⁶⁴ Bernd-Ulrich Hergemoller, „Pfaffenkriege“ im spätmittelalterlichen Hanseraum. Köln – Wien 1988, vol 1, 210; 261. Schreiner n. 84.

¹⁵⁶⁵ See III.B.4.

¹⁵⁶⁶ Schreiner 291.

Harmschar or *deditio* in the secular process of humiliation as the recognition of defeat or submission was highly significant for the representatives of power in medieval Christian society.

In medieval Judaism, the informer was required to perform public penance. A kind of ritual of submission was adapted to the religious context and the sacred space of the synagogue, in which the informer had to perform his public penance by begging pardon, confession, and flogging.

Additional private penances were added to the public rituals both in Christianity and Judaism (e.g. daily private flogging and confession, fasting, charity, praying).

III.B.13.3. Differences

The status of the Jewish communities was different from that of the secular kingdoms. The crimes of treason and rebellion in the secular kingdoms or city communities have their analogy in the betrayal of the community (*mesirah*). The Jewish communities paid taxes to the secular and ecclesiastical authorities on the basis of agreements between Gentile authorities and community leaders. Beyond that, the Jewish communities developed a complex system of laws to defend the integrity of the whole community against informers. In Medieval Latin Christianity, such acute problems connected to treason came to the fore in time of war, or in extraordinary situations, e.g. foreign invasion. For medieval Judaism, the *mesirah* was a permanent danger.

III.B.13.4. Possible Influences

It is possible that in addition to Talmudic laws concerning the informer, the death penalty inflicted on the betrayer for high treason and the public rituals of submission of the Christian kingdoms had an impact on the modes of punishment and penance prescribed for the informer in the Jewish communities.

III.B.14. Heresy

III.B.14.1. Christianity

According to *PCol.25* (circ. 600), a layman who communicates with Bonosiacs or Adoptionists¹⁵⁶⁷ must be separated, and is required to do penance for forty days. *PCum* (circ.

¹⁵⁶⁷ Heretics who flourished in Burgundy in Columban's time.

650) prescribes that heretics who repent must publicly condemn their heretic views, besides fasting and other penitential acts.¹⁵⁶⁸

According to Edward Peters, in 1177, the reconciliation between the German emperor Frederick Barbarossa and Pope Innocent III led to the Third Lateran Council (1179).¹⁵⁶⁹ Its canons condemned heretics, excommunicated them and denied them the Christian burial; those who fought heretics received privileges comparable to those of the crusaders. In 1199, Pope Innocent III (1198–1216) in the bull “*Vergentis in senium*” decreed the persecution of heresy, identifying it for the first time as treason (*laesa majestatis*) as defined by Roman law: the properties of the heretics must be confiscated and their children shall suffer perpetual deprivation for the sins of their parents. In 1215, the 3rd canon of the IV. Lateran Council condemned heresy. Pope Gregory IX in the *Liber extra* (1234) formulated: “There is no doubt that all heretics and schismatics will burn in eternal fire with the devil and his angels’. In 1252, heretics who refused to confess were subjected to torture; those who confessed and did not do penance, were returned to the authorities for execution.

Consequently, from the 13th century on, heresy was one of the offences punishable by automatic excommunication.¹⁵⁷⁰ During the 12–15th centuries, heretics who were not ready to repent and retract publicly their erroneous beliefs were sentenced to death by burning. The Inquisition combined old penances and punishments and used them against heretics as legitimate tools of coercion.¹⁵⁷¹ The treatment of heretics included the following elements: (1) firstly, the church punished heresy by excommunication, degradation, dispossession, military persecution; (2) all these could be avoided by penance (e.g. pilgrimage, feeding the poor, wearing crosses) and by public retraction of heretical beliefs;¹⁵⁷² (3) the punishment for unrepentant heretics, however, remained the same: death by burning. All the penalties of repentant heretics were classed as penances, and – in theory, at least – they were done voluntarily.¹⁵⁷³

In late medieval England, the most spectacular processions on the market place were the processions of heretics (the Lollards): they were required to perambulate the four corners of the marketplace, nude, except for a white shirt, barelegged and barefoot, carrying a candle, bearing the symbol of the faggot or a bundle of sticks on their back, preceded by the apparitor

¹⁵⁶⁸ MedH 109. See quotation in App. III.B.17

¹⁵⁶⁹ Peters, *Inquisition*.

¹⁵⁷⁰ Mansfield, *Humiliation*.

¹⁵⁷¹ Roach, “Penance”, 414.

¹⁵⁷² Id. 416:

¹⁵⁷³ Id. 415.

and followed by the curate who wore a surplice and carried a rod pointing at the penitent. They were whipped at each station while perambulating the market.¹⁵⁷⁴

III.B.14.2. Comparison

III.B.14.2.1. Heresy in Christianity and Apostasy in Judaism

Although theoretically¹⁵⁷⁵ Christianity as well as Judaism knows both heresy¹⁵⁷⁶ and apostasy¹⁵⁷⁷, in medieval Europe apostasy from Christianity and heresy in Judaism was rather irrelevant, whereas heresy in Christianity and apostasy from Judaism constituted central problems. The phenomenon of heresy in medieval Latin Christianity and apostasy in medieval Ashkenaz had many common features. From a sociological point of view, Christian heretics as well as apostate Jews left their original religious community (in the latter case, usually for another religious community). From theological point of view, in Christianity as well as in Judaism there are legal-religious principles which state that an individual cannot leave his faith.¹⁵⁷⁸ From a practical point of view, in medieval European societies Christian heretics and apostate Jews who did not repent were regarded as dead persons by the religious community. In Latin Christendom, that often meant the death penalty; in medieval Ashkenaz, excommunication. For the reasons mentioned above, in the following we will compare heresy in medieval Latin Christendom with apostasy from Judaism in medieval Ashkenaz.

In the high and late Middle Ages, in Latin Christendom heresy was considered a *laesa majestatis*, and punished accordingly: by the death penalty (burning at the stake). Repentant heretics were required to perform severe penances (public shame processions, pilgrimage) and publicly retract their heretical beliefs. In Medieval Latin Christendom, practically all major deviances from the institutionalized Christian faith were considered heresy, not only the holders of “erroneous Christian views”.¹⁵⁷⁹

In Judaism, apostasy could not be punished in the same manner, i.e. with the death penalty or excommunication, for two reasons: (1) the secular powers did not allow the Jews to sentence to death or excommunicate a Jew who converted to Christianity, besides, it would have been dangerous for the community; (2) according to the *halakhah*, in some respects, a Jew could never leave Judaism. They could excommunicate and hand an apostate Jew over to Gentile authorities for betrayal, or for transgressing all the commandments, or for “rebellious

¹⁵⁷⁴ Postles, “Penance and the Market Place”.

¹⁵⁷⁵ Or: theologically, speaking in religious terms.

¹⁵⁷⁶ Holding unorthodox religious beliefs.

¹⁵⁷⁷ Abandonment of one’s religious faith.

¹⁵⁷⁸ Baptism can not be annulled by heresy or apostasy; a born Jew remains a Jew even if he sins.

¹⁵⁷⁹ E.g. apostate Jews who returned to Judaism, or Judaizers, magicians and witches etc.

behavior”, but – at least according to the *halakhah* – baptism itself did not affect the status of a born Jew, for example if he was forcibly converted. But if he leaved voluntarily Judaism, without coercion, he was regarded a sinner, and he himself “excommunicated” himself. However, in medieval Ashkenazi Jewish communities, in many instances, the apostate was not considered a Jew unless he repented, regardless whether he was forcibly converted or not.¹⁵⁸⁰ The process of repentance had both the components of penance (confession before a rabbi or three laymen, fasting, flogging, daily private confession to God, and charity) and some components which resembled the process of conversion (*giyyur*), expressing the fact that by apostasy the person lost his status as a Jew in the community.

III.B.14.2.2. Public Aspects

In Christianity, repentance was performed within the frame of a humiliating public penitential procession, in a public place. In Judaism, the penitential ritual was performed before three laymen or a rabbi, sometimes before a *bet-din*. The process and its rituals differed. Both in Christianity and Judaism, the words said by the repentant were the most important moments of the ritual: in Christianity the retraction of heretical beliefs, in Judaism the words of confession, repentance, asking for forgiveness, promise to complete the penance prescribed, and sometimes promise to fulfill the commandments. In Judaism, during penance, the repentant apostate was required to have the look of a penitent when he appeared in public. In Christianity, repentant heretics were required to wear the yellow cross in the city or on penitential pilgrimages.

III.B.14.2.3. Private Aspects

Public and ritualized aspects of the repentance were accompanied by private penance in both religions. Fasting, private confession and flogging, praying, and above all, charity were the components of the private penance in both religions.

III.B.14.2.4. Rituals

In both religions, the rituals of repentance and penance for repentant heretics or apostates played a central role. These rituals expressed that the repentant accepted the beliefs, commandments of his religion, and that he would remain faithful to his religion. On the part of the religious community, in Christianity the stress was laid on the humiliation of the sinner

¹⁵⁸⁰ See II.B.17 and III.E.1.

before readmitting him/her; in Judaism the stress was laid his/her readmission as a sort of convert, and not so much as a sinner.

III.B.14.3. Possible Influences

The fact that in some cases apostate Jews were regarded by the Jewish communities as non-Jews was possibly due to Christian legislation. If apostate Jews returned to Judaism, they were punished by the Christian authorities as heretics.¹⁵⁸¹

III.B.15. Magic

III.B.15.1. Christianity

According to McNeill, the attitude of the church towards pagan elements in, and the supernaturalism of, folk religion was hostile.¹⁵⁸² The penitential books condemned superstitions. CB contains several penances connected to primitive folklore and pagan superstitions.¹⁵⁸³

From the 13th century on, believers in magic were persecuted groups, and considered criminals who transgressed against some basic religious precepts of the Christian society. In the 13th century, sorcery was also among offenses about which inquiries were executed in the parish churches.¹⁵⁸⁴ The punishment of magicians was excommunication or public penance. In 1489, in Nürnberg, a woman accused of witchcraft was put in the pillory; she wore a paper belt on her forehead with a devil drawn on it. Then she was expelled from the city.¹⁵⁸⁵

III.B.15.2. Comparison

¹⁵⁸¹ About the impact of the Christian legislation concerning Jewish apostates on the medieval Ashkenazi *halakhah* concerning the treatment of Jewish apostates by the Jewish law as non-Jews, as one factor among others, I will publish an article in Hebrew.

¹⁵⁸² *MedH*, 38–43.

¹⁵⁸³ Chapter V. of CB contains 194 paragraphs, 60 of which have to do with superstitious beliefs and practices. *CP* and *CPII* condemn or anathematizes those Christians who practice pagan customs, calling them “gentilis homo” (gentiles), “believers in wizards” or “magi”. The *OIP* regards “the making of a bogey” as a magical way of causing death. *PT* lists penances for offenses of magical practices (e.g. sacrificing to demons, placing the child on a roof or in an oven to cure the fever). The *PB* includes a section on auguries and divinations, and mentions an oracular book including parts of Scripture used for supernatural guidance (*Sortes sanctorum*, similar to *Sortes Virgilianae*). Various classes of persons are condemned: the fortune teller, the soothsayer, one who makes death-dealing concoctions of herbs. An 8th century list of superstitions enumerates the forbidden pagan rites and customs (*MedH*, 419–421). The *RP* makes reference to those who attend festivals in the abominable places of pagans.

¹⁵⁸⁴ Murder, adultery, usury were among offences about which a bishop asked the priests when he visited his bishopric.

¹⁵⁸⁵ Schwerhoff: „Verordnete Schande?” 165, n. 20. Künßberg, *Rechtsgeschichte*, 44.

of *ḥaside Ashkenaz*, namely that merits do not redeem sins, only suffering atones.¹⁵⁹¹ In Medieval Latin Christianity, the centrality of suffering in atonement was based on the idea that the body is a prison for the soul (*soma sema*).¹⁵⁹² In the teaching of *ḥaside Ashkenaz*, the centrality of suffering in atonement was based on their theodicy concept: suffering in this world is rewarded in the world to come; therefore, sins can be counter-balanced by suffering, and not by merits.¹⁵⁹³

(2) “Physician of the Soul”

The analogy between penance and medicine appeared in the ancient church.¹⁵⁹⁴ The idea that the confessor is a “physician of the soul” was developed in the penitential books. Penitential books adopted also the medical principle that “contraries are cured by their contraries” originating in the Methodist school of physicians.¹⁵⁹⁵ Clement, Origen, Tertullian, and Jerome, were familiar with this medical view, but Cassian (circ. 420–35) integrated it into the “penitential medicine”, stating (*Coll.* XIX. 14,15) that the cure of vices must be performed by virtues. The Irish abbot Finnian¹⁵⁹⁶, then Columban, Cummean, Pseudo-RP and others applied the principle. According to *PCol* (circ. 600), the confessor is physician of the soul who must heal different diseases in different ways.¹⁵⁹⁷ *PCum* (circ. 650) compares the task of the confessor to that of the physician, and refers to the “old proverb”, “contraries are cured by contraries”.¹⁵⁹⁸ *PCum* uses also the metaphor of the “celestial medicine” for the Eucharist.¹⁵⁹⁹

¹⁵⁹¹ See II.C.(1).

¹⁵⁹² About the “*soma sema*” (the body is a cave/prison for the soul) doctrine and the concept that the “suffering body is the sign of a repentant soul in the eyes of God”, see III.A.3.2.

¹⁵⁹³ About the different attitude of Christianity and Judaism towards the body, in connection with the different interpretations of circumcision by Paul and the Rabbis, see Boyarin, “This We Know”, 491–492: “[...] Some of the Rabbis [...] read circumcision as a necessary preparation for seeing God, the *summum bonum* of late antique religious life. This is of course, an entirely different hermeneutic structure from Platonic allegorizing because, although a spiritual meaning is assigned to the corporeal act, the corporeal act is not the signifier of that meaning but its very constitution. That is, circumcision here is not the sign of something happening in the spirit of the Jews, but it is the very event itself – and it is, of course in his body. [...]”.

¹⁵⁹⁴ *MedH* pp. 44–46.

¹⁵⁹⁵ Themison of Laodicea (Rome, circ. 50 B.C.E) was the founder of the school; another representative, Sornaus (Rome, 2nd century C.E.) is referred to by Tertullian and by Augustine; Alexander of Tralles (525–605) formulated the role of the physician: “The duty of a physician is to cool what is hot to warm what is cold, to dry what is moist and to moisten what is dry.”

¹⁵⁹⁶ *PFin* (circ. 525–550) pars. 28–29.

¹⁵⁹⁷ See quotation in App. III.C.2.

¹⁵⁹⁸ *MedH* 99–100. See quotation in App. III.C.2.

¹⁵⁹⁹ In a gloss, in the context of penance. *MedH* 103. See the quotation in App. III.C.2. The metaphor of Eucharist as “medicine for immortality” is coined by Ignatius of Antioch (circ. 35/50–98/117; Letter to the Ephesians 20.2). He applied the metaphor a “physician” also for Christ (Letter to the Ephesians chapter 7).

PBE (1161–84) uses the metaphor of the “physician for sin” to demonstrate that the confessor must be severe in the administration of penance.¹⁶⁰⁰

The analogy between penance and medicine, and the metaphor of the “physician of the soul” are explicitly stated in SHP.¹⁶⁰¹ The idea that “contraries are cured by contraries”, although not explicitly stated, is a basic principle in the concepts of *ḥaside Ashkenaz* related to fighting the *yezer*. Fornication must be fought by avoiding women, violent deeds by patience, theft by generosity.¹⁶⁰² Whether the *ḥaside Ashkenaz* were influenced by the contemporary Christian penitentials regarding these two medicinal analogies is difficult to answer.

(3) Rules Regarding Life and Death in Penance

The confessor is responsible for the fate of the sick person. According to *PS.VI.103* (circ. 800), if a priest denies forgiveness to those penitents who are dying, he is responsible for their souls. If any priest gives a penance to a sick man without his consent, and the person dies before doing penance, the priest shall do penance. According to *RP.81–82* (circ. 830), if a sick person is not able to fulfill the penance, he is allowed to receive Communion without penance. For those who die excommunicated, having already confessed¹⁶⁰³, the relatives must give something for the altar, or for the redemption of captives, or for the commemoration of their souls.

In SHP, one can also find the principle that the sage who imposes penance must take into consideration the physical health of the penitent.¹⁶⁰⁴ In the concept of *ḥaside Ashkenaz*, death atones. However, confession before death is advisable,¹⁶⁰⁵ and praying for the souls of dead persons is salutary.¹⁶⁰⁶ A special theme in the writings of *ḥaside Ashkenaz* is suicide for the sake of atonement.¹⁶⁰⁷ This has apparently no analogies in Christian sources.¹⁶⁰⁸

(4) Proportionality

In *PB.IX* (8th century), the following instruction is given to the priest regarding the measures of penance:

¹⁶⁰⁰ MedH 347. See quotation in App. III.C.2.

¹⁶⁰¹ SHP 17. See II.A.1.

¹⁶⁰² See II.B.1.1, II.B.2.1, II.B.3.1, II.B.4.1.

¹⁶⁰³ Those who were excommunicated for a grave sin, repented, but their excommunication was not yet lifted and

¹⁶⁰⁴ SHP 17. See II.A.1.

¹⁶⁰⁵ II.C.13.2.(j) and note there.

¹⁶⁰⁶ SHP 286. See II.C.4.1.1.

¹⁶⁰⁷ That is, not only in connection to martyrdom, see II.C.1.1.

¹⁶⁰⁸ At least, I did not find any parallel in Christian sources exactly to this question.

“Discretion is becoming to the priest in all decisions and measures of penance to exercise foresight and consideration with regard to the remedies of souls [...]”¹⁶⁰⁹

The idea of “subjectivity” in God’s judgment is stated in *PsCum* (8th century): “God who knows the heart of every man and has bestowed diverse natures will not compute the weights of sins with an exact scale of penance.”¹⁶¹⁰ In this penitential another important principle is formulated: the duration of penance is to be measured with the duration of sin. However, commutation is possible.¹⁶¹¹

Subjectivity and proportionality in the imposition of penance were central principles in the atonement system of *ḥaside Ashkenaz* as well. These principles were explicitly formulated.¹⁶¹² It is uncertain whether *ḥaside Ashkenaz* were influenced by the contemporary Christian penitentials regarding these principles.

(5) Composition, Commutation

Christian penitentials adopted from Celtic and Germanic law the customs of composition (monetary compensation to the relatives of the murdered person) and commutation (the redemption of severe punishments (in the penitentials: penances) by giving money (in the penitentials: by giving money to charity; and by praying).

Jewish law rejected the idea of composition for murder.¹⁶¹³ Commutation was practiced.

(6) Purity Reached by Affliction

St. Bartholomew of Farne (d. 1193) states, “We must inflict our body with all kinds of adversity if we want to deliver it to perfect purity of soul.”¹⁶¹⁴ This idea is also based on the *soma sema* doctrine.¹⁶¹⁵

We have argued that in three initiation rituals¹⁶¹⁶ of the 13th century the atonement system of *ḥaside Ashkenaz* was used to attain ritual purity for the sake of ritual initiation.¹⁶¹⁷ We have also explained that the idea of the connection of atonement and ritual purity has Talmudic roots (bAZ 20b), in the saying of R. Pinḥas ben Yair (Saint’s progress).

¹⁶⁰⁹ MedH.

¹⁶¹⁰ Viz. God has different scales in judging individuals. Therefore, also penance is to be imposed according to the person of the penitent. This is understood by the term “subjectivity”.

¹⁶¹¹ MedH, 267. See quotation in App. III.C.4. Both principles are to be found in the writings of *ḥaside Ashkenaz*.

¹⁶¹² SHP 43, and SHP 37. See II.A.1 and II.C.(2).

¹⁶¹³ See II.C.1.

¹⁶¹⁴ *Science Encyclopedia*. “Western Ascetism. The Middle Ages”: science.jrank.org.

¹⁶¹⁵ Like the “suffering atones” doctrine. See above no. 1. and III.A.3.2.

¹⁶¹⁶ True initiation rituals in the course of which atonement was used for attaining ritual purity.

¹⁶¹⁷ II.A.4 and II.C.(3).

Moreover, in biblical Hebrew the root *le-kapper* besides atonement means also purification.¹⁶¹⁸

III.C.1. Death Penalty

III.C.1.1. Christianity

During the entire Middle Ages, the death penalty was inflicted on criminals by secular law. One rarely encounters it in the old penitentials. According to *LA* (circ. 697), a woman who kills a man or woman must be put into a boat upon the ocean to go with the wind; a vessel of food and water must be given to her.¹⁶¹⁹

During the entire Middle Ages, the idea of the commutation of the death penalty into penance can also be attested: its symbolic expression can be found in ecclesiastical public penances and secular shame sanctions: the public penitent had to bear the symbolic signs of the death penalty which he deserved (e.g. a rope around his neck).

Execution also had its public rituals: in the 13–15th centuries, heretics were punished by public burning.¹⁶²⁰ Others by public hanging and decapitation. Public executions harmed the honor of family members and descendants of the executed person.¹⁶²¹ Execution by sword was a great mercy for the children of the executed person.¹⁶²² The counts and knights were regularly executed by decapitation. Others, who were not of noble origin, were hung. Condemned people were carried to the place of execution in different ways: in a closed wagon or on their feet, accompanied by a priest or not. Being hung in an upside down manner was more humiliating than in a normal manner.

III.C.1.2. Comparison

In both religions, penances imposed for offenses punishable by death were severe. Penance in these cases usually meant several years of fasting, self-mortification, and exile.

¹⁶¹⁸ The idea behind the Christian concept of “purity achieved through self-mortification” was the *soma sema* doctrine. The idea behind the concept of *haside Ashkenaz* concerning “purity attained through atonement” was the interdependence of atonement and ritual purity in the biblical atonement system. However, this is a more elaborate problem, and there is not place here to discuss it.

¹⁶¹⁹ Which is practically ordeal.

¹⁶²⁰ Roach, “Penance”, 415.

¹⁶²¹ “Verordnete Schande?”, 158–188.

¹⁶²² Execution by sword was an “honest” mode of capital punishment and was not connected with shaming processions.

III.C.2. Mutilation, Maiming, Harsh Self-mortification

III.C.2.1. Christianity

According to CCH.XXIX.7 (circ. 700–725), three alternative possibilities are offered to a penitent as penance for theft from a church. One of them is the cutting off the hand.¹⁶²³ In OEHD55.03.02 (MsX), various punishments are listed within the frame of penitential processes: chain, bowls, scourging, the darkness of prison, spiders, balks¹⁶²⁴, mutilation, and loss of life.

In the 13th century, maiming, mutilation and hanging were punishments used in secular courts, but not in the ecclesiastical penance system. The harsh corporal punishments applied in penances imitated the monastic ascetic voluntary disciplines and not the punishments of secular courts. They were inherited from the old *tariffed* penances.¹⁶²⁵

Shame sanctions (e.g. the pillory) were often connected with mutilation (e.g. cutting off of the ears, hands, nose, blinding and branding).¹⁶²⁶ The marks of infamy were applied to offenders who committed crimes secretly. These marks (*nota infamiae*) were branded on the forehead, on the face or on the back, and were harmful to the self-support of the offender: he could not hold office, and his social status as a whole was damaged. In 1389, a citizen in the court of a German city asked for a certificate in order to prove that he lost his ear in a battery and it was not cut off as punishment; without the certificate he would be disadvantaged in his craft. Marks of infamy were also put on those condemned to death, first of all to hanging.

III.C.2.2. Asceticism

In Irish monasticism, there were unusual modes of self-mortification (e.g. sleeping in water, on nettles, on nutshells, with a corpse in a grave, in a cold church and in a secret chamber, remaining in water all night).¹⁶²⁷ Most common practices, besides self-flagellation, were waking and hunger. RED prescribes vigils and frequent prayers combined with fasting for commutation of lengthy, three year periods of penances.¹⁶²⁸ PTT (1178–93) also prescribes vigils and other ascetic practices as commutations for long periods of fasting of the

¹⁶²³ *MedH*, 141.

¹⁶²⁴ An instrument of punishment (See Dictionary of Old English).

¹⁶²⁵ Mansfield, 127; 88–89.

¹⁶²⁶ Schwerhoff, 166.

¹⁶²⁷ *MedH*, 32. See quotation in App. III.C.2.

¹⁶²⁸ RED CCCCLIII.

old penitentials.¹⁶²⁹ Penitential robes (*cilicium*) and girdles (*cingulum, catena*) were often worn even under everyday clothing.

III.C.2.3. Comparison

Maiming and mutilation applied by secular law had their analogies in medieval Jewish punishment. Possibly, they were borrowed from secular practice. Apparently, in this respect, the ascetic penances of *ḥaside Ashkenaz* were a consequence of their atonement doctrine, and especially of the “measure for measure” principle in the process of atonement and the “suffering atones” principle. In this respect, the same¹⁶³⁰ is true for Christian penances: the widespread practice of self-mortification in penance in the 13th century was an influence of monastic practice and not of the corporal secular punishment.¹⁶³¹

III.C.3. Flogging, Beating, Self-flagellation

III.C.3.1. Christianity

In medieval Latin Christendom, the word “*disciplina*” usually referred to the use of rod or lash. Flagellation played a prominent role in certain penitentials, chiefly in Irish documents (e.g. “one hundred lively blows”, “one hundred blows with a thong”, “seven hundred with a lash”).¹⁶³² Flogging was also a mode of commutation of lengthy fasting periods. RED allowed fasting to be commuted into physical punishment: a day’s fasting was worth twelve strokes.¹⁶³³ Both secret flogging by others (*disciplina*) and self-flagellation were wide-spread monastic customs.¹⁶³⁴ From the *Rule of St Benedict* onwards, orders (e.g. the Clunians and Cistercians) prescribed flogging as disciplinary means. They spread among laymen with the teachings of Peter Damiani (1007–1072): he recommended that one should

¹⁶²⁹ *MedH*, 354. See quotation in App. III.C.4.

¹⁶³⁰ The self-mortification among laity was a consequence of ascetical ideals and not an imitation of secular or ecclesiastical punishments.

¹⁶³¹ See III.C.3.1. and Henderson, 147–148.

¹⁶³² *MedH*, 33.

¹⁶³³ Hamilton, *The Practice of Penance*, 90.

¹⁶³⁴ Hamilton, *The Practice*, 202–203.

flagellate oneself for the duration of forty psalms daily. His treatise *De laude flagellorum* maintains that participation in Christ's sufferings promises redemption.¹⁶³⁵

As a punishment of the Episcopal courts, flagellation was used from the earliest times in the process of public reconciliation of sinners. Corporal chastisement also played a role within the frame of a public penitential process. According to the Fulda-Trier customary, excommunication and banishment started with public flogging.¹⁶³⁶ Even after the introduction of private confession, it continued to be important to the church (e.g. 13th century conciliar edicts ordered "*disciplina*" for "voluntary" conversion of heretics).

At the beginning of the 13th century, both public flogging and self-flagellation as penances had the purpose to remove temporal penalty (*pena* – of the purgatory), after absolution removed eternal guilt (*culpa*).¹⁶³⁷

In the second half of the 13th century, a popular movement emerged which had in its centre self-flagellation (*battuti*, 1260, 1348).¹⁶³⁸ As a collective practice, self-flagellation was institutionalized in convents (e.g. the Dominicans in southern Germany). The origin of this type of penance among *battuti* was not the ecclesiastical public penance or punishment of flogging, but the ascetic monastic practice of self-flagellation¹⁶³⁹.

Public shame sanctions (e.g. the pillory) were used together with physical punishments (e.g. beating and flogging).¹⁶⁴⁰ In the Late Middle Ages, the performance of ritual processions in public, both in a parish church and on a market place, involved bodily discipline.¹⁶⁴¹

III.C.3.2. Comparison

III.C.3.2.1. Public Flogging and Beating

Since early times, in Christianity, public flogging and beating have been applied as ecclesiastical punishment and secular punishment. In the 13th and 15th centuries, public flogging within the frame of ecclesiastical public penance performed in the courtyard of the church, or within the frame of secular shame procession performed on the market place or in the town hall square, gained a central role. Its character of public shaming came to the fore. In the 13th and 15th centuries, in Judaism, public flogging developed in a similar way: public flogging between the afternoon and the evening prayers in the synagogue, combined with

¹⁶³⁵ "In praise of flagellation", letter 161, 1069, PL 144, 1017.

¹⁶³⁶ Hamilton, *The Pactice*, 90:

¹⁶³⁷ Mansfield, 88–89.

¹⁶³⁸ Henderson. "The Flagellation Movement", 147.

¹⁶³⁹ Id. 147–148.

¹⁶⁴⁰ Mansfield 269, 275. Schwerhoff 165.

¹⁶⁴¹ Postles, "Penance and the Market Place".

public confession and asking for forgiveness, played a central role. In Judaism, the synagogue was regarded as the biggest public space due to the fact that Christians were in majority in every medieval European city. Therefore, the synagogue fulfilled not only the function of the place of prayer but also other functions which required publicity.

III.C.3.2.1. Private Flogging

Private flogging combined with private confession was originally the secret penance of the monks. From the 11th century on, it also became popular among the laity. It also remained a widespread mode of satisfaction after the introduction of the yearly mandatory secret confession. As self-mortification, it was prescribed by the penitentials of *ḥaside Ashkenaz*, and later by the penitential schedules which used the penitentials of *ḥaside Ashkenaz* within the frame of para-judicial procedures.

III.C.3.3. Possible Influences

Possibly, the private flogging practiced by the monastic orders which became a custom among the laity in the 11th century had an impact on the private penance of *ḥaside Ashkenaz*. Very likely, the ritualized form of public flogging/beating developed in the Ashkenazi communities could have been influenced by the ritual of public beating and flogging in Latin Christianity as an important component of public penance, in ecclesiastical and secular penance alike.

III.C.4. Fasting

III.C.4.1. Christianity

Fasting is the most common ascetic practice. It has extreme forms in the early penitentials, within the frame of monastic ascetism.¹⁶⁴² But the three forty-day periods of fasting in a year are the “legitimate fasts” for every Christian as early as the 7th century. According to PT (circ. 668–690), there are three legitimate fasts: forty days before Easter, when the annual tithe is paid, forty days before the Nativity, forty days after Pentecost.¹⁶⁴³ During these days the fast lasted until evening, and in the evening it was allowed to eat and drink other foods and drinks than bread and water. The three forty-day periods were also the

¹⁶⁴² Introduction to the *MedH*, 30–31. McNeill brings evidence from an early Irish penitential (Rev. celt., XL, 330 ff) that penitents died because of severe fasting.

¹⁶⁴³ *MedH* 212. II.XIV.1.

periods of fasting for penitents, but they were not allowed to eat and drink other foods and drinks than bread and water in the evening. According to *RP* (circ. 830), one or three forty-day periods are imposed on offenders during one, three, five, seven, twelve or fifteen years for theft, magic, sacrilege, adultery, fornication, and homicide; according to *RED*, the fasts are imposed for sacrilege, murder, perjury, and mutilation; according to *CB*, for murder, adultery, magic, perjury, and theft. *CB* calls the forty-day periods *carina* or *carena*. The word comes from the Latin “*quarantena*” or “*quadragesima*” (“forty times”).¹⁶⁴⁴ *Superpositio* was the extension of a fast.¹⁶⁴⁵ At the end of the 12th century, these long periods of the old penitentials were still in use. *PTT* (1178–93) prescribes fasting for grave sins (e.g. incest and murder) according to the old penitentials. However, since these periods would be too long, they can be commuted into flogging, beating, vigils, genuflections, prayers, and psalm singing are. In this way, the periods became much shorter.¹⁶⁴⁶

From the 13th century on, fasting on bread and water during the the Lenten period was one of the basic penances imposed in secret confession. Public penances were also combined with fasts.¹⁶⁴⁷

III.C.4.2. Comparison

III.C.4.2.1. Length of Fasting Period

In both religions, the period of penance was measured by days of fasting. The most common period was that of forty days. In Christianity, it was performed once or thrice a year; the multiplication of the years in which the penitent had to fast one or three times for forty days totaled up to the length of a certain penance for graver sins. In Judaism, the penitential schedules used the forty-day unit; however, in case of grave sins one year of continuous fasting was more frequent; or fasting for one, two, three, five, eight, several years, or lifelong fasting, on certain days (e.g. every Monday and Thursday; three days a week etc.).

¹⁶⁴⁴ In Latin Christian penitentials, the forty days of fasting is connected with the forty days that Jesus spent fasting in the desert. The fasting of Jesus is connected with the forty days that Moses spent fasting on Mount Sinai before receiving the Torah for the second time. According to Austin (*Shaping Church Law. Vita Burchardi* 19, 62), *Vita Burchardi* contains a discussion between bishop Burchard of Worms (950–1025) and one of his students. The student asked Burchard how to interpret the fasting of Moses and Elijah in the Hebrew Scriptures. The bishop answered that they were fed spiritually. The work *Vita Burchardi* contains descriptions about the extremely ascetic life of bishop Burchard of Worms (e.g. wearing chains under his clothes all the time, daily severe secret floggings, and extremely severe fasts).

¹⁶⁴⁵ *MedH* 120 n. 29.

¹⁶⁴⁶ *MedH* 358. See Quotation in the App. III.C.4.

¹⁶⁴⁷ Mansfield, 88–89.

III.C.4.2.2. Fasting Days

In Judaism, the regular fasting days were Monday and Thursday. Very frequently, if the penitent was not able to perform the forty days of continuous fasting, he was allowed to fast on Monday and Thursday, thus the period lasting 140 days (e.g. from the 10th of Iyyar to Rosh ha-Shanah). In Christianity, the regular fasting days were Friday, Wednesday and Saturday. During the 13–15th centuries, with the shortening of the penitential period and the emergence of the ritualized public processions performed in group before reconciliation, either on Palm Sunday or on the occasion of the granting of an indulgence, fasting on six Fridays before reconciliation came into use. The forty days of continuous fasting could not be commuted into discontinuous fasting. Shorter periods were thirty, twenty, ten and five days of continuous fasting.

III.C.4.2.3. An Ordinary Fasting Day

In Judaism, an ordinary fast-day lasted from sunrise until the appearance of the stars. In Christianity, it also lasted until evening; sometimes it could be broken earlier. In both religions, in case of penitential fasting, eating meat and drinking wine in the evening of the fast-day was prohibited. In the severer penitential schedules, only bread and water were allowed in the evening. Two or three days of continuous fasting day and night was known in both religions in ascetic/sectarian/monastic context: in Judaism, in the practice of *ḥaside Ashkenaz*; in Christianity, in Irish monasticism (“special fast”).

III.C.4.3. Possible Influences

The forty days of fasting, as an ascetic practice to achieve ritual purity, for performing magical practices appears before the penitentials of *ḥaside Ashkenaz* in some manuscripts of the *Hekhalot* literature. However, in these manuscripts, this period appears in later additions, and not in the *Hekhalot* text itself. In medieval sources, the date of the content of the addition can not be determined.¹⁶⁴⁸ The forty days of fasting is connected with the forty days of fasting of Moses on the Mount Sinai (e.g. *Kol Bo* 65, SMT 69).

In the penitential schedules of *ḥaside Ashkenaz*, the period of forty days of fasting is the basis for many penances for graver and lighter sins. The period of forty days of fasting is

¹⁶⁴⁸ *Synopse zur Hekhalot-Literatur*, 2, Tübingen, 1981: §§ 313–314 (*Hekhalot Rabbati*). Further parallels: *Synopse* § 565; §§ 560–570 (*Ma’ase Merkava*); §§ 278–280; 308–312 (*Hekhalot Rabbati*); §§ 675–684 (*Merkava Rabba*). See Ra’anán S. Boustán: *From Martyr to Mystic*, 2005, Tübingen, 118; Swartz, Michael: *Scholastic magic*, Princeton, 1996, 70.

probably a derivation from Jewish sources, but its widespread use may also be due to the Christian environment.

III.C.5. Incarceration

III.C.5.1. Christianity

In the early penitential books, in monastic discipline, confinement for penitents is frequent. CCH.XXIX,7 (circ. 700–725) prescribes as penance for theft from a church three alternatives, one of which is the prison¹⁶⁴⁹. According to the Law of Ludwig II (845–850)¹⁶⁵⁰, if somebody does not respect the festivals, the priests must imprison him.¹⁶⁵¹

In the earlier penitential practice, those who were to undergo public penance during the Lenten period, after being excommunicated, either were supervised by their parish priest in their home parish or were incarcerated in the cathedral town. However, in the 13th century, in Northern France, “Lenten incarceration” was no longer in use¹⁶⁵².

From the 13th century on, the Inquisition made incarceration a legitimate form of punishment, in the name of the church, and used death threat and tortures in prisons to force the heretics to do penance.¹⁶⁵³ The pretext for the incarceration of heretics was that co-religionists were to be defended from being corrupted.¹⁶⁵⁴

Incarceration was a secular punishment for common offenders. Pillory was sometimes considered a heavier punishment than imprisonment. However, the pillory had a disadvantage: the offender could escape. In 1508, in Nürnberg, a nailer condemned to the pillory escaped when the guardians wanted to put the rings around his neck, fled to the cloister and asked for refuge. From there, he negotiated with the council of the city to change his sanction to captivity in the tower.¹⁶⁵⁵

III.C.5.2. Comparison

III.C.5.2.1. Incarceration of the Penitent by Religious Authorities

¹⁶⁴⁹ *MedH* 141.

¹⁶⁵⁰ M. G. H., *Leges* II, ii, 83

¹⁶⁵¹ *MedH* 391. See quotation in App. III.C.5.

¹⁶⁵² Mansfield, 104–105.

¹⁶⁵³ Roach, *Penance*, 429.

¹⁶⁵⁴ *Id.* 427.

¹⁶⁵⁵ Schwerhoff. „Verordnete Schande?“, 158–188.

In Christianity, Lenten incarceration was mainly imposed on public penitents by the bishop during the forty days of the solemn penance. This has no analogy in Judaism. The incarceration of penitent heretics has also no parallel.

III.C.5.2.2. Incarceration by Secular Authorities

Incarceration was a punishment used by the secular authorities for both Gentiles and Jews. Apparently, the Jews used incarceration not as a regular means.¹⁶⁵⁶ But probably, in some places, there were houses of arrest or prisons held by Jews already in the late Middle Ages.

III.C.5.2.3. Incarceration-Like Excommunication and Symbolic Fettering

In both religions, lesser excommunication (*excommunicatio minor* in Christianity, *niddui* in Judaism) sometimes resembled house arrest, incarceration, or detainment. Therefore, lesser excommunication sometimes functioned as an extrajudicial punishment. Since the type of exile connected with fettering was an extrajudicial punishment in the Middle Ages, the symbolic fettering of the exiled murderer or of the public penitent symbolized incarceration..

III.C.5.3. Possible Influences

In Judaism, the symbolic fettering of the exiled penitent murderer is probably an influence of the customs practiced in the German lands. Prohibiting the offender from leaving home could be an influence of the incarceration methods of the secular authority, but could be an independent development.

III.C. 6. Excommunication

III.C.6.1. Christianity

Christian excommunication had biblical roots. In early Christianity, the practice was derived from the contemporary Jewish synagogue ban proclaimed against heretics and other offenders, and its legal consequences from the Roman diminution of legal status, known as *infamia*.¹⁶⁵⁷ Excommunication was the main tool of the ancient church to bring the repentant

¹⁶⁵⁶ See II.C.5.

¹⁶⁵⁷ Vodola, 4–5.

members back to the Christian community through humiliating public penance.¹⁶⁵⁸ According to the Fulda-Trier customary (10–11th centuries)¹⁶⁵⁹, the offender was first flogged, and then banished from the community during the rite of excommunication. He was forbidden to eat, sleep, speak, pray with the community, participate in the divine office, but had to attend, standing outside the doors of the church, and when the brothers went out, he had to prostrate himself fully on the ground. By the rite of restoration, he was reintroduced into the community as if he had been a novice; he prostrated himself before the abbot, begged forgiveness, promised that he would mend his ways; finally he was told to sit at the last place. In the works of the “decretists”, excommunication was decreed against those who had relations with an excommunicated person (RP, CB).¹⁶⁶⁰ RP.83 prescribes that if one dies excommunicated but confessed beforehand, the relatives shall give money for the redemption of captives, for the altar or for saying a mass for his soul.

In the 11th century, excommunication became a tool of control in the hands of the church and Pope, not only against ordinary people, criminals or sinners, but also against high worldly officials, leaders, and even monarchs. The excommunicated persons were deprived of legal rights.¹⁶⁶¹ Peter Cantor (d. 1197)¹⁶⁶² was of the opinion that not only public usurers, prostitutes and those who set fire to a public building should be excommunicated – as the ecclesiastical law prescribed –, but also mimes, jongleurs, magicians, dicers, certain tailors, manufacturers, operators of large military engines called ballistae, pugilists.

From the 12th century on, in the Latin Church, excommunication was divided into two separate forms, called “minor and “major”¹⁶⁶³. It became a judicial sanction reserved for bishops or his delegates as part of a judicial procedure and inflicted only if the procedure had been observed, and only by judicial authority.¹⁶⁶⁴ As a consequence: (1) It was the most serious sanction of canon law; it was not lightly imposed. No weightier sentence was at the disposal of ecclesiastical judges.¹⁶⁶⁵ (2) It was a medical rather than a punitive sanction; this

¹⁶⁵⁸ *MedH* 20. Watkins. *Penance* I.465.

¹⁶⁵⁹ Hamilton, *The Practice*, 90.

¹⁶⁶⁰ RP.59; CB V.139.

¹⁶⁶¹ Evans. *Law and Theology*, 26.

¹⁶⁶² A professor of theology in Paris in the last quarter of the 12th century, *Summa de sacramentis et de anima consiliis*, which was written down apparently by scribes in Cantor’s class-room. Haring, “Peter Cantor”, 100–112.

¹⁶⁶³ See also Mansfield: “The twelfth-century sacramental theologians had established a theoretical foundation for the progressive separation of the church’s judicial and penitential forums, a split resulting from academic specialization. (45).

¹⁶⁶⁴ Helmholz. *The Spirit*, Chap. 14: “Canonical Sanctions: The Law of Excommunication.” (366ff.)

¹⁶⁶⁵ Helmholz, *The Spirit*, chap. “Excommunication as *Maxima Poena*”: in the *Decretum* is stated that no penalty in the church was greater (C.24q.3c.17); in the *Glossa ordinaria* to the Decretals “the eternal separation of

fact had its consequences.¹⁶⁶⁶ (3) Provisions had to be made to prevent unjust sentences of excommunication.¹⁶⁶⁷ (4) Excommunication had the potential to upset the order of civil society.

In the 13th century, the main role of public penance became to lift excommunication or to impede its pronouncement.¹⁶⁶⁸ In some cases, excommunication could be pronounced by the priest, and then non-solemn public penance was required.¹⁶⁶⁹ Both from the internal and external forum one could arrive to public penance in consequence of public sin, accusation, notoriety or rumor.¹⁶⁷⁰ It was used to exclude not only public criminals, but also heretics from the church, in cases in which they could not be condemned directly. Ian Forest discusses the forms and functions of the excommunication used against Wycliffites, and excommunication as the main object of criticism of the Wycliffites against the abuses of the church.¹⁶⁷¹ According to Forest, there were two main written compositions for common priests that taught them about cases in which automatic excommunication could be applied.¹⁶⁷²

Neumann describes the way in which excommunication was pronounced by the priest in the 15th century.¹⁶⁷³ According to the documents¹⁶⁷⁴, in case of a criminal charge, if the offender refuses to appear in court, the bishop instructs the parish priest to pronounce solemnly the sentence of excommunication in the church; then, if the excommunicated person shows no signs of willingness to mend his ways, the priest must declare his family excommunicated and excluded from the Holy Communion, and prohibited from communicating with other Christians; this decision must be proclaimed in the church on every Sunday and festival day during the Holy Mass, in the presence of the entire congregation, while the bells are chiming and candles are being lit. The decision must be announced once again while chanting special songs. Then, if the accused person refuses to obey, a warning of

death". The 15th century English canonist, William Lynwood, styled the excommunicated person "limb of the Devil".

¹⁶⁶⁶ The medicinal quality of excommunication is expressed at the beginning of the first decretal of the chapter dealing with the subject of excommunication in *Liber sextus*: "Because excommunication is medicinal and not mortal... excommunication is medicine for the person excommunicated, not the right of any [other] person."

¹⁶⁶⁷ "To hedge the imposition of excommunication round with procedural safeguards in order to keep it from being used unadvisedly." (Helmholz, *The Spirit*, chap. "Excommunication as *Maxima Poena*").

¹⁶⁶⁸ Mansfield, 114.

¹⁶⁶⁹ Id. 114–115.

¹⁶⁷⁰ Id. 123–124.

¹⁶⁷¹ Forrest, "William Swinderby".

¹⁶⁷² Id. 258.

¹⁶⁷³ Neumann, *Öffentliche Sünder*, 51–58. She has studied as sources the *libri conceptorum* (*Konzept- und Kopialbücher*), certain kinds of notebooks, collections of draft versions or copies of legal documents issued by the diocese, by the bishop himself; *Formelbuch*, also a kind of draft or model version of documents (EAF HA 17 in the Freiburg Archiv) and *Protocollum absolutionum* for the years 1533–1551.

¹⁶⁷⁴ E.g. decisions of bishop Marquard of Randegg of Konstanz (1398–1406), letters addressed to the local priests (52, n. 141).

interdict against the entire community is to be announced in the church. Consequently, no holy ceremony can be held in the congregation until the amendment is executed in the form of punishment. If the procedure succeeds, and the accused person receives absolution (by the bishop, who is the only instance to grant it), then the absolution must also be announced publicly in the church, during the Mass.¹⁶⁷⁵ According to the book of a 12th century decretist, Johannes Faventius, there are three kinds of excommunications: (1) *excommunicatio conscientiae*, for the deadly sins; (2) *excommunicatio poenitentiae*, for grave sins, for which public penance has not been performed yet; (3) *excommunicatio sententiae – pro contumacia*, for disobedience to the decision of the court and to the decree of a high church official.

Excommunication was mostly pronounced in cases of litigation between two when one was not willing to appear in court or to accept the decision of the court; but also in the case of public criminals. The penitent usually arrived to the “vicar general” of his own free will, rarely after he was excommunicated. In REC Nr. 13817, there is a ritual of public proclamation of the excommunication of two murderers during the Holy Mass: the bells were chiming, candles were quenched and trodden with the feet, processions led to the gates of the church, three stones were thrown in the direction of the residents of the excommunicated ones, as a sign of everlasting damnation. On the back of the document there is a note that in Ulm, Stein, Rottweil the decree was carried out. Anyone who committed a crime against a cleric (injured, captured or murdered him), was automatically (*ipso facto*) excommunicated, by the fact itself, without judicial condemnation. In this case, the interdict also was pronounced against the congregation.¹⁶⁷⁶ In case of adultery, the statutes of the synods instructed the parish priests to warn adulterers to separate in fifteen days, and to give them to do this. If they did not obey, the priest was required to pronounce excommunication against them and deny them a Christian burial. If they still refused to obey, the task of the parish priest was also to report them to the vicar general. Public usurers were excommunicated until they restored the the interest taken, which had been decreed as a caution against them.

If he was absolved, the criminal was readmitted wholly, even in grave cases. There was a difference in excommunication because of contumacy and offense. In the former case, reintegration was more difficult than in the latter. Restitution was to be fully performed, even if the *emenda publica* was transformed into an occult *emenda* by the vicar general.

¹⁶⁷⁵ Theodor Gottlob, Gerichts- und Kanzleiordnung, 207–214; 212: „*Ipsum, quem ab excommunicaitonis cum subsecutarum aggravationum sentenciis absoluimus hiis in scriptis, si late sint pro contumacia, publicetis absolutum.*“

¹⁶⁷⁶ Kehrberger, 94f., CG, 5.467.

III.C.6.2. Comparison

III.C.6.2.1. Curse and Legal Sanction

In earlier times, in both religions, excommunication had the fearful character of eternal damnation, since it was decreed by biblical curses. Later, it was applied rather as a legal sanction, but its fearful character remained. The ritual of its pronouncement was accompanied by curses and symbolic acts which suggested damnation (e.g. the extinguishing of candles in ritual processions).

III.C.6.2.2. Greater Excommunication

The greater excommunication was imposed on the offender for an indefinite period; it meant total separation from the community in every respect. It was decreed for major transgressions and for transgression of a communal decree enacted under threat of excommunication.

III.C.6.2.3. Lesser Excommunication

In both religions, the lesser excommunication lasted thirty days and was applied either as a sanction for itself – for contempt of court, or for offences which automatically entailed lesser excommunication –, or as a warning before the infliction of the greater excommunication.

III.C.6.3. Possible Influences

A possible influence of the Christian *excommunicatio major* and *minor* can be (1) the specialization of the Jewish lesser and greater excommunication (*niddui* and *herem*) as legal sanctions to certain kinds of transgressions and their connection to special court procedures; (2) the increasing role of the threat of greater excommunication (*herem*) in the legal procedure, in community government, and in “politics” of the community; as well as (3) the application of the lesser excommunication (*niddui*) as both punishment and threat for the greater excommunication. These developments in the Jewish penal system can be, however, inner developments.

III.C.7. Exile

III.C.7.1. Christianity

III.C.7.1.1 Exile from the Country

Exile and pilgrimage originated in Celtic customs. Exile was a typical penance for murder. Theft and fornication were also often expiated by exile. *SNB* (circ. 500–525) prescribes exile for theft, fornication and murder, *PCol* (circ. 600) for murder and fornication, *PCum* (circ. 650) for theft, fornication and murder. Around 1160, Peter Comestor describes a custom, identified as Italian, which prescribes seven-year exile for murder and recalls the multiyear public punishment described in certain 11th century penitentials, and recopied in the new manuals. An anonymous penitential of the later 12th century, prescribes exile, with the important difference that the penitent should be partially reconciled before the whole seven years were out. During Lent, the priest was to see that the penitent stayed in a “safe place”; on Maundy Thursday the penitent would be reintroduced to the church but only after seven years would the penance be completed.¹⁶⁷⁷

III.C.7.1.2. Exile from the City

(1) Vagabonds were expelled from the cities, but often they returned to the city despite the punishments applied against them (the pillory, mutilation and branding; e.g. in Augsburg, a woman, called the “*ohrlose Ell*”. In 1369, “St-Gallus-people”, who were considered dangerous for the entire county, were expelled from Augsburg and interdicted by the council of the city to return for six years. The “Gallus-people” who returned were put in the pillory. The woman who returned was put in the pillory and expelled from the city for ever.¹⁶⁷⁸ The pillory was often used together with exile from the city.¹⁶⁷⁹ (2) In 1378, in Rothenburg, a perjurer was exiled and chased out of the city in a shirt.¹⁶⁸⁰ (3) In 1415, in Zürich, the mayor of the city, the guild masters and the city council threatened those men and women who divorced their wives or husbands and lived together with someone else, to leave the city, and prohibited them from coming nearer than half a mile to the city.¹⁶⁸¹ (4) In 1417, in Zürich, three persons were in danger to be banned from the city by the parish priest because of adultery. (5) In 1435, in Frankfurt, a guest house keeper and his wife were punished with exile and pillory because they substituted berries for the wine. Tied on a wagon, with a wreath of berries around their necks, they were exiled from the city.¹⁶⁸² (6) In 1441, in Nördlingen,

¹⁶⁷⁷ Mansfield, 104–105.

¹⁶⁷⁸ Schwerhoff, 185.

¹⁶⁷⁹ Schwerhoff, 165.

¹⁶⁸⁰ Id. 168.

¹⁶⁸¹ Neumann, 139.

¹⁶⁸² R. Kaiser. „Wirtschaftsdelikte als Zeichen wirtschaftlichen und soziales Wandel im Mittelalter“, in *GWU* 40 (1989), 282. Schwerhoff, 169–170.

some falsifiers were put in the pillory and expelled from the city. (7) In 1489, in Nürnberg, a woman accused of witchcraft was put in the pillory with a paper belt on her forehead, with a devil drawn on it, and expelled from the city.¹⁶⁸³ (8) In Köln, fornicators were punished by carrying shame stones and candles, and exile. (9) In 1505, in Erfurt, the secular courts condemned an adulteress to the pillory, public beating, and exile from the city.¹⁶⁸⁴

III.C.7.2. Comparison

III.C.7.2.1. Exile from the Country

The exile of Aaron of Babylonia to Italy (867), described in the Scroll of Ahimaaz (1054, Italy)¹⁶⁸⁵ lacks the description of humiliation processes, but fits into the context of medieval exile and pilgrimage-ideals shaped in Latin Christendom.

Exile prescribed for murder in the Jewish penitentials has clear analogies in Christian exile as penance prescribed for murder.¹⁶⁸⁶

III.C.7.2.2. Banishment from the City

The exile of the murderer and his wandering from one town to another have also analogies in Christianity; they are similar to the banishment of offenders of lower status from the city. The penance of the murderer, as described in OZ.I.112, resembles also a kind of high and late medieval banishment from the town.

The case of R. Eliezer of Passau, who was required to leave the city of Prague for a far away place, has clear parallels in the late medieval interdictions in the Christian town societies for certain transgressors to enter a city.

III.C.7.2.3. “Ritualdynamik”

Shortening of the period of exile was characteristic of both religions.¹⁶⁸⁷ In Christianity, long exile was replaced by a public penitential procession which took place in

¹⁶⁸³ Schwerhoff, „Verordnete Schande?“, 165, n. 20. There: Künßberg: Rechtsgeschichte, 44.

¹⁶⁸⁴ *Stadtarchiv Erfurt, Urteilsbuch* 1483–1513, 1–1 XXI.7.23, fol. 131r. Schreiner, 286 n. 65.

¹⁶⁸⁵ Bonfil, “History and Folklore”, 379, n. 303. See II.B.1. and II.C.7.

¹⁶⁸⁶ See II.B.1, II.C.7, III.B.1.

¹⁶⁸⁷ See II.B.1 and II.C.7.

the great cathedral cities, regularly on Palm Sunday, led by the bishop or archbishop, and in which hundreds and thousands of offenders took part wearing the special signs of their sin.¹⁶⁸⁸

III.C.7.3. Possible Influences

Probably, in the medieval Ashkenazi Jewish exile for grave sins (above all murder) and the rituals connected to it as well as “exile from the city” were much influenced by the Christian penance of exile prescribed for grave sins (above all murder) and exile from the city. The first type of exile, as explained¹⁶⁸⁹ was not known in Judaism, and all the rituals connected with it are common in Christianity and Judaism.

III.C.8. Pilgrimage

III.C.8.1. Christianity

In early sources, exile also means pilgrimage.¹⁶⁹⁰ According to *SM* (circ. 445) and *ALI* 59, pilgrimage is imposed on bishops for grave sins¹⁶⁹¹. According to *PCum* (circ. 650), “perpetual pilgrimage” is imposed as penance for grave sins (e.g. theft, fornication, and murder). In the 8–11th centuries, on the Continent, penitents were sent on pilgrimage for political reasons, heinous crimes (e.g. murder, treason, and incest).¹⁶⁹² Pilgrimage had disadvantages that were deplored by bishops (e.g. Burchard), because bishops and priests lost control over exiled penitents, and also because pilgrims appealed to the pope in Rome and were absolved from sins which would not be pardoned by bishops except through severe penance.¹⁶⁹³ Penitent pilgrims had special outward appearances.¹⁶⁹⁴

From the 13th century on, pilgrimage was imposed within the frame of public penance for murder, incest, adultery, robbery, political crimes, and heresy.¹⁶⁹⁵ Disadvantages remained: pilgrims were often exposed to dangers; therefore, some bishops sent penitents only on crusades.¹⁶⁹⁶ Processions, pilgrimages to churches, cathedrals and holy places were performed in ritualized form¹⁶⁹⁷. Ecclesiastical public and solemn penances, ecclesiastical public

¹⁶⁸⁸ See above Neumann.

¹⁶⁸⁹ See II.B.1, II.C.7 and III.B.1.

¹⁶⁹⁰ *MedH*, 34. See V. and E. Turner: *Image and Pilgrimage*.

¹⁶⁹¹ Id. 370.

¹⁶⁹² Hamilton, *The Practice*, 173–174.

¹⁶⁹³ Id. 42.

¹⁶⁹⁴ See III.B.1.

¹⁶⁹⁵ Mansfield, 118–120.

¹⁶⁹⁶ Id. 124.

¹⁶⁹⁷ Id. 126–127.

punishments, as well as secular public punishments were similar.¹⁶⁹⁸ Pilgrimage was the typical penance for heretics¹⁶⁹⁹; they were especially sent to the Holy Land; they wore a yellow cross, differently from the crusaders who wore a red cross¹⁷⁰⁰. The sincerity of the pilgrims could not be controlled.¹⁷⁰¹ Cloisters obtained privileges for absolution of penitent offenders.¹⁷⁰² On certain penitential or festival days of the year, pilgrimages were performed by sinners to these cloisters, to obtain either penance or absolution. In the diocese of Konstanz, for example, these cloisters were the benedict cloister of St. Trudpert, the cathedral church of the city Freiburg, the choir-men's cloister of Denkendorf, the cloister of Einsiedeln and Rheinau. In the high and late Middle Ages, pilgrimages were prescribed within the frame of the ecclesiastical public penance (e.g. in 1304 in der Schweiz for murderers; in Biberach for a murderer to the churches and graves of St. Paul and St. Peter in Rome; to St. Jacob's grave in St. Compostella; to the churches of St. Mary in Achen, and Einsiedlen).¹⁷⁰³

III.C.8.2. Comparison

III.C.8.2.1. Holy Land and Holy Places

Going on pilgrimage to the Holy Land and to holy places was a widespread custom, also for the sake of penance and atonement (in Judaism, to the graves of the fathers and the graves of medieval holy Jewish men in Europe; in Christianity, to holy places in Europe).

III.C.8.2.2. Graves

Ritual processions and pilgrimages to the graves of the harmed or murdered persons played an important role in the process of penance and reconciliation in both religions.

III.C.8.3. Possible Influences

The possibility can not be excluded that in Judaism the pilgrimage to the grave of the murdered or injured person was also influenced by the customs of the German lands connected to reconciliation between disputing parties (besides the unquestionable Jewish roots of the custom). The Christian religious fervor of visiting holy places in the Middle Ages for the sake of atonement could have an impact on the similar customs in Judaism.

¹⁶⁹⁸ Id. 127–128.

¹⁶⁹⁹ Roach, *Penance*, 416.

¹⁷⁰⁰ Id. 418.

¹⁷⁰¹ Id. 419.

¹⁷⁰² Neumann.

¹⁷⁰³ See III.B.1, Schreiner.

III.C.9. Public Humiliation and Shame Sanctions

III.C.9.1. Christianity

In medieval Europe, rituals of humiliation played important role not only in the religious realm but also in the secular one. Self-humiliation rituals of kings can be explained by the ideology of legitimization of kingship and power. Rituals of going barefoot, wearing penitents' clothing, and prostrating belonged to the ideal of a king whose model to be followed was Christ himself.¹⁷⁰⁴ According to Althoff,¹⁷⁰⁵ three main characteristics can be distinguished in medieval rituals¹⁷⁰⁶: (1) rituals were “made”¹⁷⁰⁷; (2) they have a history as other phenomena; (3) political power itself is connected to rituals.

III.C.9.1.1. Political Rituals of Submission

Ritual submission for political crimes was called *harmiscara*¹⁷⁰⁸. According to Jean Marie Moeglin¹⁷⁰⁹, *deditio/receptio in misericordiam* or *harmiscara* has four characteristics: (1) its aim is to stir mercy; (2) it is a ritual with specific sequence of gestures; (3) as a ritual, and unlike a ceremony, it brings forth change; (4) it is a paradoxical phenomenon: though it has a previously fixed sequence of gestures, it must be presented as a happening “perchance”, in order to attain its goal. It was used by the church in the following cases: (1) a laymen committed a crime or violent act against a cleric or the church; (2) the church intervened to make peace between two quarreling laymen; (3) explicitly political cases, between high-ranking officials of the church, noblemen, kings, and counts. In the course of the ritual, the humiliated party brought a dog or a saddle in a “shame procession”. It was first attested in 829, then in 866 in secular context; in the 12th century it was used both by the church and the secular power for humiliation; the forms were combined with other forms of public penance.¹⁷¹⁰ Jean Marie Moeglin brings more than seventy examples of all kinds, mainly from France and Germany. According to him, this type of ritual was a para-judicial procedure with the aim of making peace between parties in cases of grave crimes or in politics. According to Hamilton, too, in the episcopal jurisdiction of the 10th century North-Italian dioceses, for

¹⁷⁰⁴ Hamilton, “The unique favor”, 237.

¹⁷⁰⁵ Althoff: *Die Macht*, 188, 199.

¹⁷⁰⁶ Althoff refers generally to all medieval rituals, secular, royal, ecclesiastical etc.

¹⁷⁰⁷ Althoff's term. It means: rituals were artificially prepared in order to solve conflicts or express basic social, political relations which could not be resolved in other ways.

¹⁷⁰⁸ Mansfield, 114–127. The etymology of the word is not certain, but the ritual is precisely attested.

¹⁷⁰⁹ Moeglin, « Edouard III ». Id. « Harmiscara ». Id. « Pénitence publique ». The four characteristics are listed in the latter article.

¹⁷¹⁰ See definition in Grimm, *Deutsche Rechtsaltertümer* (Leipzig 1922, p. 305).

grave crimes (e.g. homicide, bloodshed, perjury, adultery, treason, incest, rape, and political intrigues) bishops applied excommunication against the criminal parties, which could be released by public penance performed through a ritual similar to *harmschar*.¹⁷¹¹

III.C.9.1.2. Ecclesiastical Public Penance

Humiliation rituals were required of penitents in monasteries: after being flogged, they were suspended from prayer, common table, and had to prostrate themselves before the doors of the church.¹⁷¹² According to the descriptions of the *ordos* (festival liturgies) of the 8–11th centuries, entrance into solemn penance for penitent sinners on Ash Wednesday had a ritual which symbolically expressed humiliation, disgrace, deprivation of rights. The penitent put on sackcloth and ashes, and put down his arms.¹⁷¹³ Royal penance also had well defined rituals.¹⁷¹⁴ In the 13th century, the solemn ritual of entry into the Lenten period for penitents was still in practice.¹⁷¹⁵ The other type of public (non-solemn) penance was also ritualized: public penance was performed in the form of public procession with humiliating requirements.¹⁷¹⁶ There are common formal and functional features in the legal shame sanctions of the secular courts for murder, adultery, and political guilt.¹⁷¹⁷ The difference between the secular and ecclesiastical public penance was that the aim of the latter was to reconcile the penitent with God and the Church, while the former was not appropriate for reconciliation¹⁷¹⁸. In the 13th century, the yellow cross was used to mark penitent heretics.¹⁷¹⁹ In the 15th century, there were many mixed forms of private, public, and solemn penances¹⁷²⁰. *Poenitentia salutaris* (private penance: fasts, payers, and charity) was also part of public or solemn penances.

In the 15th century, in the diocese of Konstanz, the ecclesiastical public ritual of reconciliation was performed as follows¹⁷²¹: the penitents lie before the church on the ground,

¹⁷¹¹ Hamilton, “Inquiring”.

¹⁷¹² Hamilton, *The Practice*, 100.

¹⁷¹³ Id., “The unique favor”, 239.

¹⁷¹⁴ Id., *The Practice*, 205–206: (1) in 390, the penance of Emperor Theodosius at the behest of Ambrose, archbishop of Milan, for his involvement in the massacre of the citizens of *Thessaloniki* by imperial troops; (2) two penances of the Carolingian Emperor Louis the Pious (3) in 997, in Rome, the penitential pilgrimage of Otto III for his involvement in the bloody suppression of a revolt; (4) in 1077, the barefoot vigil in the snow of Henry IV outside the castle of *Canossa*, before Pope Gregory VII; (5) in 1174, in Canterbury, the penance of Henry II of England for his involvement in the murder of Thomas Becket.

¹⁷¹⁵ Mansfield, 171–172.

¹⁷¹⁶ Id. 126–127.

¹⁷¹⁷ Schreiner: „Verletzte Ehre“, 263–335. See III.B.1, III.B.2, III.B.13

¹⁷¹⁸ Mansfield, 127–128.

¹⁷¹⁹ Roach, *Penance*, 422 and 424.

¹⁷²⁰ Neumann, 120.

¹⁷²¹ Id. 121.

where a cleric announces with *Adest venerabilis pontifex* the arrival of the bishop. The bishop says a confession of sins, together with a supplication for God's forgiveness; then a cleric says a supplication for readmission of the penitents. Then the bishop chants quietly the *Venite*, the invitation for the penitents to come nearer. He repeats the invitation louder three times. These invitations are interrupted by the call of the two deacons two times, first *Flectamus genua* ("bow the knees"), and *Levate*, ("stand up"). Prostrations and invitations to come nearer are repeated until the bishop leads the penitents with his own hand into the church. There, the penitents prostrate themselves again, while the clerics are chanting the antiphon *Cor mundum* and the penitential psalm *Miserere*. Then two absolutions are said: the first to the penitents (*Nos absolvimus vos*), in indicative, the second one to the clerics (*Ipse vos absolvat per ministerium nostrum*), in imperative. Finally, the bishop sprinkles the penitents with the consecrated water and incense. Then he touches them with a rod, and says: *Exurge qui dormis, exurge a mortuis et illuminavit te Christus*. Then the penitents are allowed to stand up. The pontifical of Mainz contains also "*ordo ad reconciliandum penitents non in die cene sed alia quacumque die*" ("not only for Palm Sunday but also any other day").¹⁷²² The introduction of penitents was performed in the same manner in the bishopric of Trier. The public penitents had to appear in penitents' clothing and with untied hair.¹⁷²³ The ritual exclusion of penitents on Ash Wednesday is absent from these descriptions. The long public penances of the early and high Middle Ages are also absent. Only *emenda publica* performed once is mentioned. The penitents are to be seen as penitents only for a relatively short time, before the introduction to the church. The performance is to be defined as a ritual and not as a ceremony, because change is brought forth. Unlike public penitential rituals performed in the parish churches, group ritual in the cathedral church protected the anonymity of the penitents. In parish churches, the *emenda publica* exposed them to their smaller community.

III.C.9.1.3. Secular Shame Sanctions

In the late medieval city, the pillory before the city hall or on the market place was a symbol of political power.¹⁷²⁴ It was a type of punishment in the lower justice (*niedere Gerichtsbarkeit*), a social as well as legal a sanction, but not in the modern sense of the notion: the publicity was the executer of the penalty. It was first attested in the 13th century,

¹⁷²² Fol. CXXVII.

¹⁷²³ On the basis of the Trier pontifical, written by Aegidius of Bitburg (d. 1442), bishop of the dioceses of Strassourg, Trier, and Mainz. J. N. Hontheim: *Historia Trevirensis diplomatica et pragmatic*, vol. 3, Würzburg 1750, 989. Neumann ns. 370 and 372.

¹⁷²⁴ „Verordnete Schande?“, 158–188.

and it was similar to the carrying of shame stones (*Steinetragen*), and carrying of a dog (*Hundetragen*).¹⁷²⁵

The pillory as a shame sanction is a prototypical punishment for secret theft, for “dishonest” crime (as opposed to “honest” murder). It had many types, depending on the material and form of the pillory, the place in which it was put, the elements of the ritual connected to it, the duration of time for which the offender was put to shame, the inscriptions and symbolic things which he/she was due to hold as an indication for his/her sin (“cheater”, “blasphemer”, “curser”, drunkard”, “chief-thief”, “whore of the city and land”). It was frequently combined with public physical punishments (beating, flogging, branding, and mutilation).

Some forms of execution had also the character of shaming. The disgracing execution was hanging (sometimes upside-down, which was a form of execution for Jews and heretics; sometimes a dog was also hung together with the executed person: the condemned died because of the biting of the dog). Other forms of execution (sword, decapitation) had not this disgracing character.¹⁷²⁶

III.C.9.2. Comparison

III.C.9.2.1. Mourning-Like Customs

In both religions, in the earlier forms of public penance, the period of penance was longer, during which the penitent had to behave himself in the same way as a mourner. This referred to the public and private sphere alike, but in public the penitent was required to emphasize the mourning-like character (by going barefoot, sitting on the ground, putting dust and ashes on his/her head, wearing sack-cloth, refraining oneself from shaving his hair and beard, washing oneself only once a month).

III.C.9.2.2. Shame as Sanction

The infliction of shame sanctions was not only additional requirement for an offender. Public processions, public shaming by symbolic acts and things, which served as public confessions with or without words, were themselves penances. Shame sanctions were substituted for lengthy penances in case of murder and adultery. The period of penance was

¹⁷²⁵ E.g. ordered by Friedrich of Barbarossa, 1155; from about the same time there is a legend about burghers of Milan who mocked the empress by putting her on the back of a donkey looking backwards and led her through the city.

¹⁷²⁶ Schwerhoff, „Verordnete Schande?“, Schreiner „Verletzte Ehre“. For further examples of shame sanctions see III.B.1, III.B.2, III.B.3, III.B.4, III.B.5, III.B.9, III.B.12, III.B.13.

shortened from several years to one year or forty days; then an ecclesiastical, or a secular, or a synagogal ritual was performed for readmission.

III.C.9.2.3. Public Humiliation Processes

The humiliation processes or acts took place in public places; in Christianity on the streets of the city, in the royal or Episcopal court, in the church, in the courtyard of the church, on the market place, in the city hall square. The Jewish public process took place in the synagogue or in its courtyard; or at the grave of the harmed person within the frame of ritual begging pardon and reconciliation acts. That was also the case with Christian penance.

III.C.9.3. Possible Influences

Jewish public penance resembles ecclesiastical public penance more than secular shame sanction. However, some Jewish public rituals have also secular analogies. For example, the informer's asking for forgiveness in the synagogue has some common features with the political rituals of submission (*deditio* or *harmschar*).

(1) The humiliation of Simelin of Ulm can be well compared to the humiliation of the mayor of Augsburg. The latter stole from the community, therefore was deposed and publicly shamed before the whole city in the main square of the city while standing on a high building made by himself and listening to his own sentence. Simelin was publicly shamed for betrayal and disobedience in tax-matters before the whole community in the synagogue, while hearing his own sentence. The sentence for both contained social and economic interdictions and house arrest (for Simelin for 30 days, on condition that he would fulfill the requirements; if not, he would be excommunicated for an indefinite period; for the mayor for an indefinite period). Both of these cases contained elements of secular public humiliation.¹⁷²⁷

(2) In medieval Jewish penance, some elements of public rituals prescribed for murderers could be influenced by or borrowed from Christian ecclesiastical penance for murderers (having Jewish roots, but also influenced by Christian penance: going barefoot, receiving flogging in or outside the church/synagogue; borrowings: standing at the door of the church/synagogue, prostrating at the door of the church/synagogue while the congregation passed by; tying the hands with chains around the neck).

(3) Two public rituals for penitent adulteresses in two 15th century *responsa* include shaming processes that remind us both the ecclesiastical and secular public shame processions

¹⁷²⁷ II.B.8 and III.B.3.

for adulteresses in Christian public penance of the 13th and 15th centuries. The Christian processions took place in the courtyard of the church, in the church or on the market place, the penitents carried (sometimes lighted, sometimes extinguished) candles or a shame-stone, barefoot, wearing white shirts. In the Jewish public shaming, the outward appearance of the penitent adulteress was similar to that described in the *Sota*: white shirt, tied with a rope, barefoot, with untied hair; she was required to sit apart from the rest of the women and confess publicly her sin. The public confession took place in the synagogue; in the Christian procession in the church or on the market place. In the latter case, the public confession was sometimes performed by carrying symbolic things, and not by words.

III.C.10. Infamia

III.C.10.1. Christianity

In the early penitentials, deposition of clerics was a consequence of grave sins. According to CP.2 (5th century), a cleric can not regain his status after penance for grave sins.¹⁷²⁸ According to CE (circ. 950–1000), the deposition of a cleric lasts until the end of his life.¹⁷²⁹ According to the synodical constitutions of Odo, bishop of Paris (circ. 1197), a priest who reveals the secret confession of a penitent must be deposed.¹⁷³⁰ The 21. canon of the Fourth Lateran Council (1215) prescribes that he shall not only be deposed from his priestly office, but also confined to a strict monastery to do perpetual penance.

For penitent laymen who committed grave sins, the loss of status is symbolized by deprivation of arms and bearing the rod of exile (e.g. OEH¹⁷³¹). This is also expressed in the ritual of dispossession of arms on entering public penance on Ash Wednesday.¹⁷³²

Prohibition from bearing arms during penance for penitents and for those who were condemned to shame-sanctions continued to be widespread in the 13th century.¹⁷³³ From the 13th century on, ill fame was a reason for legally disqualifying someone, starting legal proceedings against him, and considering him a criminal, without the testimony of a single witness. The technical term was *infamatus* or *diffamatus*. Bishops during their visitations

¹⁷²⁸ *MedH*, 82, par. 9.

¹⁷²⁹ *Id.* 245.

¹⁷³⁰ *Id.* 412.

¹⁷³¹ Franzen, *Cultural Database*, fol. 124, D56.01.01–02.01.

¹⁷³² Hamilton, *The Practice*, 205–206; “The unique favor”, 239.

¹⁷³³ Schwerhoff, 168.

inquired about infamous people (usurers, prostitutes, adulterers, and perjurers).¹⁷³⁴ Legal disqualification, loss of the right to hold an office, loss of certain higher or lower positions as a consequence of committing a particular crime were better defined punishments than the “shame sanctions”.¹⁷³⁵ But the boundaries between *infamia* and the shame sanction was not always clear.¹⁷³⁶ *Infamis* in *mittelhochdeutsch*¹⁷³⁷ means both “*ehrenlos*” (without honor) and “*rechtlos*” (without rights). Canonists defined the *infamis* as someone who by his illegal behavior lost his reputation (*fama*) and his honor (*Ehre*); he did not have the right to fulfill a church or secular duty, to be a witness or plaintiff in a judicial process; he was not trustworthy any more and could not receive church consecrations. If someone was suspected of a crime, and there was no evidence for it, ordeal was applied to decide on the *infamia* (e.g. ordeal was used for women suspected of adultery). Debtors who could not pay, perjurers, falsifiers were declared infamous.¹⁷³⁸

III.C.10.2. Comparison

III.C.10.2.1. Legal Disqualification

In both religions, the legal disqualification of the penitent in most of the grave cases has its roots in the legal system of Talmudic, respectively Roman law, in which some offences automatically entail disqualification in court. The status of the penitent implied legal disqualification in court. This must be emphasized, since the status of the penitent differed from that of the excommunicated person: the latter lost was no longer regarded as a member of the “holy community”. The former only lost his right to testify, judge, and take an oath in the court. After completion of penance, he regained his rights. In medieval Jewish penance, in lighter cases, and sometimes also in graver ones, the penitent regained his rights before completing the penance, after confession and after accepting to do penance.

III.C.10.2.2. Loss of Social Status and Profession

In both religions, the loss of functions, office, social status in the community were serious consequences for a member of the community. In most cases, social status could be regained after penance. In Christianity, it could not be regained by clerics or high secular officials who committed grave sins; in Judaism, high officials who betrayed the community or

¹⁷³⁴ Mansfield, 118–120.

¹⁷³⁵ *Ehrenstrafe*; Schwerhoff, „Verordnete Schande?“, 158–188.

¹⁷³⁶ Schreiner, „Verletzte Ehre.“ 263–335.

¹⁷³⁷ Circ. 1300.

¹⁷³⁸ See III.B.4 and III.B.9 about infamous perjurers, falsifiers, and debtors.

fulfilled prominent religious functions in the community and committed grave sins could not return to their position.

III.C.10.3. Possible Influences

In both religions, the legal and social consequences of the status of the penitent were natural developments in the legal and social system. The clear definition of the status of the penitent in the community was demanded by two factors in medieval society: (1) the characteristics of the whole medieval social order (2) the characteristics of the system social orders of the cities. In the latter respect, Jewish and Christian public penances could mutually influence each other in medieval European town life.

III.C.11. Prayer

III.C.11.1. Christianity

Some Frankish and German continental penitential books contain texts of prayers said by the priest alone or together with the penitent [e.g. PBob (circ. 700–725), the StG (circ. 800), the penitential of Halitgar (PR) and of Burchard (CB)]. Saying of psalms was required from the earliest times. According to McNeill,¹⁷³⁹ the saying of Psalms was also used as a commutation. The commutation of lengthy fasts for recitation of Psalms, almsgiving or corporal punishment was possible (Regino, Burchard).

Prayer and recitation of Psalms were, however, not common penances or commutations among the laity when the general confession was introduced by the Fourth Lateran Council. Instead, long fasting periods and other corporal mortifications were applied. In the course of the 13th century, difficult fasts and floggings were replaced by prayer, psalm singing and alms-giving¹⁷⁴⁰.

III.C.11.2. Comparison

III.C.11.2.1. Private Prayer and Confession

In both religions, private prayer and everyday confession were important elements of private penance. In Judaism, private confession to God was prescribed for three times, in daily prayer. Besides a simple confession, additional prayers were composed for penitents. In Christianity, daily private confession was also included in daily prayers, one or more times

¹⁷³⁹ *MedH*, 30–31.

¹⁷⁴⁰ Mansfield, 88–89.

daily. The saying of a fixed number of penitential or common prayers and penitential psalms was also a frequent prescription in both monastic and lay penance.

From the 13th century on, in both religions, the possibility to commute difficult and lengthy penances (fasting, flogging) into saying prayers was possible.

In Christianity, the first private confession of the specific sin was of special importance, and took the form of a quasi court procedure in the internal forum, after which the penitent received adequate penance from the confessor. In Judaism, a similar institution had a very short life-time (the sage-confession of R. Judah Ḥasid); as institution, it was replaced by the regular courts, rabbinic authorities, city/community councils, leadership.

III.C.11.2.2. Public Prayer and Confession

In both religions, public confession and asking for forgiveness from the fellow man within the frame of a ritual were central elements in ecclesiastical, secular and synagogal reconciliation. Usually, the text of confession and asking for forgiveness was fixed. The ritual took place in the presence of the community, at the cross in the church, on the market place, before the city hall, before the Torah scroll in the synagogue.

III.C.11.3. Possible Influences

There are common features in the private daily penitential prayers/confession, in the public confession and its rituals, and in the custom to commute severer penances into prayers. These can be internal developments in Judaism, or partly influences of the Christian practice.

III.C.12. Fines and Charity

III.C.12.1. Christianity

The 7th and 8th century penitential books connect almsgiving to the vice of avarice. Fines were often accepted instead of corporal penances.¹⁷⁴¹ Alms for the poor and charity for the priest who administered penance were also accepted.¹⁷⁴² According to RP.105 (circ. 830) and RED.340, the penance for breaking the Lenten abstinence is almsgiving.¹⁷⁴³ In the 10–11th centuries, almsgiving was both commutation (of lengthy fasting, RED) and an independent

¹⁷⁴¹ *MedH* 37.

¹⁷⁴² *Id.*, 34.

¹⁷⁴³ *Id.* 314, 318.

penance.¹⁷⁴⁴ Sometimes, commutation of penances could only be made after almsgiving.¹⁷⁴⁵ According to Regino of Prüm, a fasting day is equal with a meal for two or three poor men, or with one *denarius* given to charity; or with the recital of the whole Psalter in summer, or with fifty psalms in winter, spring and autumn; or with twelve strokes.¹⁷⁴⁶ Commutation of penances into almsgiving was a privilege of the rich, since the poor could not afford to commute fasts into monetary compensations.¹⁷⁴⁷ According to PBE (1161–84), almsgiving is also among those penances which can be either remitted or relaxed¹⁷⁴⁸.

From the 13th century on, commutation of public penance into monetary compensation was allowed, and was frequent in cases when the offender had high status and was rich.¹⁷⁴⁹ Sometimes, paying was required by the ecclesiastical courts in the same way as by the secular courts. If the offender or party was not able to pay, public penance was applied.¹⁷⁵⁰ Sometimes both fine and public penance were required from the penitent by the ecclesiastical court.¹⁷⁵¹ Restitution also was a requirement in cases of secret confession, when public penance was not applied.¹⁷⁵² Fine and charity were required in addition to public penance, procession, and pilgrimage in the case of an adulterer who had an incestuous relationship.¹⁷⁵³ The Inquisition often instructed heretics to support the poor or priests, for one or two years, or while they lived.¹⁷⁵⁴

Shame sanctions imposed by secular courts could be commuted into fines: in 1498, two men who stole the chickens of a priest were allowed to commute the punishment of the pillory for monetary compensation of three marks; but vagabonds could not afford to pay since they were very poor.¹⁷⁵⁵

III.C.12.2. Comparison

III.C.12.2.1. *Compositio* for Murder and Fine for Injury

From the 5th century on, *compositio* (monetary compensation instead of *talio*) for murder and injury, a central element in the German and Celtic tribal law, was adopted by

¹⁷⁴⁴ Hamilton, *The Practice* 110.

¹⁷⁴⁵ Id. 64.

¹⁷⁴⁶ Id. 42.

¹⁷⁴⁷ Id. 203.

¹⁷⁴⁸ *MedH*, 347.

¹⁷⁴⁹ Mansfield, 275 about the Reims rebellion.

¹⁷⁵⁰ Id. 113.

¹⁷⁵¹ Id. 278, 121.

¹⁷⁵² Id. 88–89.

¹⁷⁵³ Mansfield 112–113:

¹⁷⁵⁴ Roach, *Penance*. 419–421.

¹⁷⁵⁵ Schwerhoff, “Verordnete Schande”. See III.B.5, III.C.10.

Christian penitentials and combined with other penances. But in the Christian penitentials, composition was less and less applied for murder; instead heavy penances of fasting days, blows or lashes were prescribed. However, money also remained a possibility for composition.

Biblical and Talmudic law rejected the possibility of composition for murder and in medieval Ashkenazi tradition we do not find it either. However, paying to the relatives or orphans of the murdered person combined with punishments and penances was required. Thus there was a certain convergence in the development, Christian and Jewish penance for murder: monetary restitution was an addition to other penances.

In both penitential systems, for harming the fellow man – corporally, financially, or his honor –, paying was not only a possibility but also a requirement and precondition for other acts of penance (e.g. fasting and flogging). The rules of paying were established (in the same way as by secular law) on the basis of the kind of harm, the person of the injured and injurer, and their status. The restitution for theft falls also into this category.

III.C.12.2.2. Charity

In both religions, giving to charity as penance for all kinds of light and grave transgressions was always the most common salutary penance.

III.C.12.2.3. Commutation

Commutation of difficult penances or shame sanctions into monetary compensation was possible for penitents of higher status, but it was not accepted in every case. Sometimes, a penitent could commute a part of his penance into monetary compensation. In Judaism, the penance for murder could never be commuted into monetary compensation. In some cases, public humiliation could not be commuted into monetary compensation (Simelin of Ulm), but flogging could be. In ecclesiastical penance, composition for murder was applied together with penances and exile, and not as a commutation (like in secular law). Commutation of physical penances into monetary compensation was also restricted, and not always accepted.

III.C.12.3. Possible Influence

(1) The precondition for penance to pay fines and make restitution, (2) almsgiving as most common salutary penance, and (3) commutation of difficult penances into charity or fines can be internal developments in the medieval Ashkenazi penitential practice, but the possibility of influence can not be excluded.

III.D. The Process of Penance

III.D.1. Christianity

III.D.1.1. Public Penance

Public penance was developed in Late Antiquity, and although it declined in the 5th century, it never disappeared. Liturgical documents, like the Gelasian Sacramentary¹⁷⁵⁶ and the Roman-German Pontifical,¹⁷⁵⁷ contain instructions concerning a “two-step process” of public penance: (1) exclusion of penitents from the Church on Ash Wednesday and (2) readmission on Maundy Thursday. The procedure was also described by Regino of Prüm (RED), (copied by Burchard, CB).¹⁷⁵⁸

In the 13th century, three types of penance were established by scholastic theology and canon law. All earlier penitential practices, including *tariffed* penances, were classified into these three types: private, public, and solemn penance.¹⁷⁵⁹ The solemn penance was practically the former public penance. In 13th century France, the ritual was similar to that described by Regino for Ash Wednesday.¹⁷⁶⁰

Public penance was performed by penitents through public procession, sometimes followed by pilgrimage that was imposed by bishops on criminals who were already judged by ecclesiastical or secular courts, or came to them through the internal forum. Besides criminal offenders, minor sinners were required to undergo public penance if they could not afford to pay.¹⁷⁶¹ Sometimes, an inquiry procedure was initiated in order to find criminals about whom ill fame or rumor circulated in the parish. Non-solemn public penance and excommunication, could be imposed by the parish priest, although ultimately these were under control the control of the bishop,. Automatic excommunication, imposed for crimes that needed no formal legal procedure, could also be lifted only by public penance.¹⁷⁶²

¹⁷⁵⁶ Circ. 750. It is a mixture of the Roman and Gallian practice.

¹⁷⁵⁷ A collection of rites for the use of the high priest or bishop. It was composed circ. 950 in the monastery of St Alban in Mainz, and it was used in Germany.

¹⁷⁵⁸ RED (circ. 906). *MedH* p. 315. It was also copied by Gratian. Hamilton, “The unique favor”, 237.

¹⁷⁵⁹ For example Flamsbury (1207–12).

¹⁷⁶⁰ Mansfield, 171–172.

¹⁷⁶¹ Id. 112–113:

¹⁷⁶² Id. 114–115, 118–120, 123 –124.

Public processions were performed barefoot, to nearby or distant cathedrals or churches, combined with corporal punishments (public beating) or pilgrimages to far away places.¹⁷⁶³

The political, secular form of public penance was called *harmiscara*, performed by the rebellious or defeated party before his lord or adversary. Royal penance can be classified into this category.¹⁷⁶⁴ In the 13th century, besides these two forms (ecclesiastical and political public penance), city authorities imposed on offenders public shame sanctions.¹⁷⁶⁵

D1.2. Private Penance

Already Origen recommended that a Christian should ask a “skilled and merciful physician” to decide whether public confession was necessary.¹⁷⁶⁶ In the fifth century, in the Celtic church, a new type of penance emerged, the essence of which was that a soul guide advised the penitent how to do penance. Penance was to be administered privately at every stage. The Irish penitential books began to circulate on the Continent; they met with strong opposition from bishops. In the Carolingian age, both tendencies existed: (1) adaptation of the penitential books and their system, and (2) intention to reestablish the old public penance. It was set down as rule in the synodal decrees of the time (9th century) that secret offences required secret penance and public crimes public penance.¹⁷⁶⁷

In the year 1215, the Western Church adopted the law for the mandatory confession of all Christians at least once a year, during the Lenten period. In 13th century, private penance did not repress public and solemn penances; “publicity” was a characteristic of the 13th century private penance, in contrast to the modern meaning of “secret penance”.¹⁷⁶⁸

III.D.1.3. Confession – Public and Private

Public confession of sins was never a requirement in the Middle Ages, as in the ancient Church. Probably in the time of the “dichotomy”, the 9–12th centuries, private confession was also required of offenders who during confession were condemned as criminals to perform public penance. In the 13th century, after private confession became mandatory, public penitents came either from the internal forum or from ecclesiastical and

¹⁷⁶³ Id. 124–128. See examples there.

¹⁷⁶⁴ See III.C.9.

¹⁷⁶⁵ See III.C.9.

¹⁷⁶⁶ McNeill *MedH* p. 7; Origen: Hom.ii, “On Psalm 37”

¹⁷⁶⁷ Called “the Carolingian dichotomy” by Cyrill Vogel. See Hamilton’s description of private penance in the 10th century *Le pécheur*; Id. “Le pontifical”; Id. “Les rites”.

¹⁷⁶⁸ Mansfield, 78.

secular courts. Even if performed without words, public penance was in itself public confession of sins.

Especially from the 13th century on, ritualized public penances containing symbolic actions, with or without words, could be regarded as public confessions. Offenders very often bore the signs of their crime (a knife) or of the penalty which they deserved (a rope around their neck). Friederike Neumann presents the forms of both ritual and public penance¹⁷⁶⁹: public confession and flogging were performed before the gates of the church or in the courtyard of the church. Besides the church, the market place became the place for public penance. Here, heretics, fornicators and adulterers were required to publicly humiliate themselves, and sometimes to recant their views, and publicly confess.¹⁷⁷⁰ Public confession of sin in words was a requirement connected to certain types of offences (e.g. murder) or other “public” sins, since the whole community was offended by the crime committed.¹⁷⁷¹

Private confession was made under the seal of secrecy. According to the *ordo* of entry into penance on Ash Wednesday in the Romano-German pontifical (circ. 950), there is no requirement of public confession in the rite of public penance, only of a private confession within the frame of public ritual.¹⁷⁷² After the general admonition of the deacon to all Christians to perform penance, the priest receives the penitent who enters penance; interrogates him/her, consults with him/her about his/her vices, considers his/her status and circumstances when imposes penance on him/her, questions him/her about the articles of faith and his/her willingness to do penance. Then follows the formal prayer of confession of the penitent, the intercessory prayer of the priest, pastoral instructions concerning the eight vices, the act of contrition of the penitent; the priest also formally imposes penance on the penitent. Secret penance includes a confession that is in many respects similar to the confession of public penance. This form of private confession within the frame of private and public penance is attested from the 9th century on.¹⁷⁷³

III.D.1.4. Institutions

The bishops, who were considered heirs to the Apostles, were regarded as endowed with the authority to forgive sins. Expulsion from the church by a bishop implied eternal

¹⁷⁶⁹ Neumann, *Öffentliche Sünder*.

¹⁷⁷⁰ Postles, “Penance”; Id. “Penance c. 1250–1600”, 444–445.

¹⁷⁷¹ Mansfield, 117.

¹⁷⁷² Hamilton, *The Practice*: “The earliest evidence of a specific day for entry into (public) penance is seventh-century; the earliest full rite for penance at the start of Lent is not recorded until the eighth-century Gelasian sacramentary.” (14, 14–23).

¹⁷⁷³ Hamilton, “The unique favor.”

damnation. This power applies to every sin, even the worst ones. According to Augustine of Hippo, the bishop must consult with the penitent into consultation and advise him about the question of undergoing public penance. According to many penitentials (e.g. *PT*), the right to give penance is reserved for the bishops and presbyters. Many early medieval penitentials contain instructions to bishops or a presbyters.¹⁷⁷⁴

From the 13th century on, with the distinction of the two ecclesiastical *fora*, penance became more formalized: (1) what in previous centuries was private penance, became the conscience of the penitent; (2) outer penance became the authority of the *internal forum*; (3) while the ecclesiastical external forum was a kind of penalizing institution, which was no longer connected to the penance or the conscience of the penitent.¹⁷⁷⁵

III.D2. Comparison

III.D.2.1. Institutions

In both religions, the institutions that imposed penances on penitents were legal or quasi-legal authorities (ecclesiastical or secular courts, city councils, internal forums, popes, bishops, priests; courts, communal councils, sages, rabbis). The end of penance (called reconciliation in Christian penance; readmission in Judaism) was also performed by these institutions. These were also the authorities that pronounced (greater and lesser) excommunication.

III.D.2.2. Private Penance

In Christianity, private penance was administered in the internal forum. In Judaism (in the circle of *ḥaside Ashkenaz*) it was imposed by the sage on the penitent. According to the personalist type of penance of R. Eleazar of Worms, the penitent performed penance with the aid of a penitential book, without personal or institutional assistance. In Christianity, private confession was ritualized to some extent, but the rest of penance was not. Fasting was

¹⁷⁷⁴ *RP* (830), *First CCh.10* (circ. 769), a *Draft of the CCh* (circ. 813, M.G.H. *Leges II I* 179, *MedH*, 391, OEH (11th century Ms., based on earlier sources (900–1100, Franzen: ‘The Anglo-Saxon Penitentials’).

¹⁷⁷⁵ Mansfield, 49–51.

performed by the penitent with or without the knowledge of his family members or neighbors. That was also the case in Judaism.

III.D.2.3. Public Penance

In the 13–15th centuries, in Judaism, public penance had analogies with all three types of Christian public penance (public, solemn, secular); the place was the synagogue and the time the synagogal liturgical times (e.g. flogging between *Mincha* and *Ma'ariv*). The rituals imitated mourning rituals or imitated the deserved punishments. Penalties were performed within a ritual frame. The penitent also “played a role” according to traditional religious sources (i.e. according to the Bible and Talmud: the role of the “*sota*”, the “*Cain*” role). Rituals of exclusion and readmission, asking for forgiveness, confession, reconciliation between the parties or with the community were further developed from these traditional patterns.

III.D.2.4. Private and Public Confession

In both religions, the confession of the sinner for the first time (or for the first time in public) was in the center of the process of penance. The admission of sin could be performed privately, publicly, in a ritualized form or simply, without ritual. In some types of processes the requirement was that the confession be secret (e.g. *forum internum* sage-confession of Judah Ḥasid). Public confession was a requirement connected mostly to the process of public humiliation and shaming. In almost every case of public penance the element of public confession (the admission of sin by the very fact of performing public penance) is implicitly contained, even if not expressed in words. In Judaism, the place for this act was the synagogue, before the *bimah*, in the presence of the Torah scroll and community. In Christianity, in political rituals of submission, in secular shame sanctions, and in ecclesiastical processions public confession is expressed by the appearance of the penitent before the congregation barefoot, bareheaded, wearing only a white shirt, with a (extinguished or lighted) candle in his hand, and bearing a thing which symbolizes either his sin or the punishment deserved for his sin. Sometimes, confession and asking for forgiveness in words was an explicit requirement. Clarifying the truth in case of slander or abusive words was always performed in words.

III.D.3. Differences

In the 13–15th centuries, in Christianity, the penance prescribed in the internal forum stood in the center of Christian penance. Private, public and ritual penances were a decision of the procedures of the two *fora* (*externum* and *internum*) and of the secular authorities of punishment (the penitential court, the ecclesiastical court of jurisdiction and the secular court).

In Judaism there was no “internal forum”, although the rabbi served as an instructor and leader in cases not legally punishable, sins of “conscience”, “private sins”, and sins committed against God. The courts of justice could decide about an offender to undergo public ritual penance, as the ecclesiastical and secular courts in Christianity. The verdict was decided as a punishment, but the content of the decision was basically a public ritual of penance.

Unlike in Christianity, in Judaism no exemption was granted merely on the basis of confession, independently from penance. In Christianity, “absolution” was accorded as a consequence of confession which wiped out eternal sin (guilt, *culpa*); penance only diminished the punishment of the Purgatory (*poena*).

III.D.4. Possible Influences

At the end of the 12th century, the sage-confession of Judah Ḥasid could be influenced by the institution of the *forum internum*. In the 13–15th centuries, different rituals of public penance developed in medieval Ashkenazi Jewish communities, and could be influenced by Christian public penance.¹⁷⁷⁶

III.E. Penitent and Community, Rituals and Symbols

III.E.1. The Status of the Penitent

III.E.1.1. Penitent Status According to Cases

According to the rites of Ash Wednesday and Maundy Thursday in the Romano-German pontifical, the change in the status of the penitent is expressed by deprivation of

¹⁷⁷⁶ Ehrman, “Confession of sin”.

arms, bearing the staff of exile and wearing the sackcloth. (circ. 950)¹⁷⁷⁷. Mansfield maintains that in the religious society of the 13th century the penitent could never return to his former status¹⁷⁷⁸.

In both religious communities, the difference between the excommunicated and the penitent status was the same: the excommunicated person was considered spiritually dead for the community, and was cut off totally from the rest of the community. The penitent was considered an unequal member of the community. There were two possibilities: either (1) he returned immediately to his previous status, and had to perform his penance as a full member of the community, or (2) he was more or less outlawed, and regained his previous status only after performing the penance imposed.

III.E.1.1.1. Murderer

In both religious communities, the penitent murderer was required to undergo severe penance. The exile status, as regular penance for murder in the penitential practice of both religions, usually meant a lower and humiliated status with a special life-style, special physical penances and humiliating rituals. The exiled murderer was not member of any community, and was not permitted to stay in one community for a long time; he was usually (but not in every case) forbidden to work, lived on alms, and was prohibited to return home. The chain on his hands and body symbolized all the restrictions in his status.

III.E.1.1.2. Adulterer, Adulteress

For adulterers and adulteresses grave penances were prescribed in both religions. Usually, their penances had also public aspects, but there were differences in the expression of the specific sin of adultery or fornication; sometimes they only wore the common penitent dress and did not confess their specific sin. They were forbidden to join public celebrations; sometimes they were also deposed.

It seems that in the cases of rich or prominent members of both communities – Jewish and Christian – adultery did not have as consequence the loss of legal rights or unreliability in any respect. Adulterers and adulteresses of lower status were sometimes excluded, even chased out of the community or city. In Judaism, adultery or fornication committed “by inferior” classes, for both genders, was fornication with the Gentiles.

¹⁷⁷⁷ Hamilton: “The unique favor”, 239.

¹⁷⁷⁸ Mansfield, p. 108.

Regarding their marital status, usually they were forbidden to remarry, and they were also prohibited to their husbands or wives. However, in Judaism, women were only prohibited to their men, and men were allowed to return to their wives.

For fornication of unmarried persons, penances were generally milder, and after penance they were allowed to marry.

III.E.1.1.3. Injurer, Thief, Curser, Slanderer, Perjurer, Blasphemer, Performer of Magic

Sins committed by these offenders had as consequence the infamous status (*infamia*). Besides the requirements of – material or spiritual – amends, restitutions and penances, these persons lost their legal status, sometimes their titles, honors, positions in society. The status of these penitents depended on their former status; however, there were severe penances also for rich and high standing members. The legal disqualification lasted either until the amends and penance was fulfilled or until the offender was ready to do penance.

III.E.1.1.4. Religious or Community Leader

Religious or community leaders who committed a transgression or crime resulting from their high or prominent status lost their function; sometimes they were also legally disqualified, even expelled from the community, if not excommunicated. Depending on the gravity of the sin committed and circumstances or responsibility, often they could return to their former status, but sometimes they were forbidden for the rest of their lives.

III.E.1.1.5. Betrayer and Political Criminal

Betrayers and political criminals were considered dangerous either for the society of the believers or for its leaders and government, since they harmed the integrity of the community. In Christianity, it was called high treason (*laesae majestatis*). Consequently, there were severe rules which regulated their penance and the changing of their status in the community. The public rituals performed by such penitents had an important function in reconciliation and in the solution of a difficult conflict which touched upon the interests of the whole community.

III.E.1.1.6. Heretic and Apostate

In Christianity, heresy meant the total denial of the principles of faith, therefore the punishment in the high and late Middle Ages was death or severe public penance.

Until the turn of the 12–13th centuries repentant apostates were required to atone only for certain sins committed while living among the Gentiles. However, from the 12–13th centuries on, in Ashkenazi Jewish communities apostasy was increasingly regarded as the denial of all the commandments of Judaism, therefore, returning to the community was a quasi-conversion procedure, combined with severe penances, confession, ritual immersion.

From the 13th century on, heresy was considered by the church high treason due to the power of the Latin Church and papacy and their relation to the secular kingships in Western Europe. In the same way as high treason, heresy was punished with capital punishment if the offender was not willing to publicly withdraw his views. If he denied his views and accepted to undergo penance, severe public penance was imposed on him.

Apostasy in Judaism entailed the danger of betrayal, consequently, the status of repentant apostates was severely controlled just as that of the informer.

III.E.1.2. Processes of Changing the Status

III.E.1.2.1. Changing in the Status of the Penitent

In both religions, the social status of the penitent is lower than his former status in the community. This is also expressed by outward signs (penitent's clothing, sitting apart during communal prayers, prohibition from bearing arms etc.).

III.E.1.2.2. Returning to the Earlier Status after Penance

In the Jewish religion, the idea that the penitent (or repentant) is of higher standing than the perfect one is a frequently quoted principle in the penitentials and in *responsa* dealing with ritual or private penance. That meant practically that the penitent regained his status in the community after performing the penance. However, we also find the idea that the penitent is bound to perform his penance until the end of his life (for example the adulteress in the Bruna 226, apostates, murderers). In Christian penance, the “unlimited” power of repentance and penance is also a central doctrine (for example in CB). However, also we find in the Christian penitentials the idea that the penitent is required to perform penances for the rest of his life.

In both religions, however, in the majority of cases, the penitent regained his former status. Moreover, the penitent could recover his/her former status before completing his/her penance, immediately after accepting to do penance (e.g. Or Zarua I.112; the reconciliation

on Palm Sunday in the 15th century rites, in Konstanz). In Christianity, the practice that absolution and the imposition of penance was performed at the same time, on the one hand, and the theological differentiation between sin (that was forgotten by confession, the penitent being absolved) and guilt (that was punished, on the earth or in the Purgatory), expressed the idea that the penitent was readmitted into the community before completing the penance. The readmission into the community, on the other hand, meant not that the status of the penitent was the same as that of other members, before completing the penance.

III.E.1.3. Possible Influences

The concept connected to penance that the penitent had different status during penance than other members of the community, and the symbolic expressions of that concept by rituals, the modes and rituals of exclusion and readmission can be elements resulting from influence, but also independent developments.

III.E.2. Case-Specific Signs

III.E.2.1. The Signs of the Mourner – a Common Mark for All Penitents

Common signs of the penitent status were to express (1) humiliation, and (2) contrition which penitents were supposed to feel during penance.

In both religions, the penitent status of grave sinners had signs similar to the outward appearance of the mourner. Sometimes, these were common in the two religions (e.g. wearing sackcloth, going barefoot, crying, and sitting on the ground).

III.E.2.2. Murderer

In both religions, in exile, the penitent murderer was required to wear penitent's clothes (sackcloth), go barefoot, stand or lie down at the entrance of the church or synagogue, bear chains on his hands and body and around his neck. He/she was prohibited from bearing arms.

Later, in the 15th century, in the Christian practice, when a single-step penitential process was performed during the public ritual of the group procession on Palm Sunday, the outward appearance of murderers was different: they wore a white shirt, went barefoot, barelegged, bareheaded, with the murderous instruments and candles in their hands, with ropes around their necks, before the cathedral church. In the individual processions performed

in parish churches, they went in the same way to the graves of the murdered persons, to several churches, and received beating before the church.

Arsonists also belonged in this category. In Judaism, the informer had the same status and the same marks as the murderer.

III.E.2.3. Adulterer, Adulteress

In the 13–14th centuries, in Christian communities, adulterers and adulteresses were required to undergo public ecclesiastical or secular shame procession. In white shirts, with candles in their hands, and barefoot, they perambulated the market place or the courtyard of the church, and received public beating or flogging.

The standing in the pillory and especially the shame-stone-carrying, which, on the basis of the Gospel of Matthew, symbolized the gravity of sin, its scandalous character, as well as the damnation to which the unrepentant sinner was liable, were typical shame sanctions for adultery and fornication.

In two Jewish *responsa*, two descriptions of penances imposed on adulteresses show similarities to these types of public processions. The outward appearance of the penitent adulteress symbolized her humiliated status: she was required to sit separated from the rest of the community in the synagogue or in its courtyard, in a white shirt, tied only with a rope, with untied hair, in the same way as the *sota*.

III.E.2.4. Perjury, Theft, Beating, Cursing, Blasphemy

The infamous status of penitents of lower social standing who committed perjury, theft, assault and battery, cursing, and blasphemy was symbolized by identification marks, inscriptions on them, while they stood in the pillory or on a shame-ladder or -stone, or while they carried the shame-stone around the city or market place, or around the church.

Public shame sanction of offenders of higher social standing could be commuted into monetary compensation. Nevertheless, there were cases when commutation was not allowed. Then, penitents were required to bear marks of shame. However, branding, mutilation, and maiming were mostly applied to offenders of lower social standing.

In Judaism, the legal disqualification and deposition of penitents who committed perjury, theft, assault and battery, cursing, and blasphemy were also symbolized, during public ritual processions, by penitent's clothing, public physical punishment, public confession, public reconciliation rituals and public proclamations concerning the status of the offender.

III.E.2.5. Cleric and Rabbi

The deposed cleric was symbolically divested of his clerical attire, and if he fulfilled special functions, of the symbolic expressions of his functions. The status of the removed rabbi was symbolized by the divestment of the symbolic marks of his former status.

III.E.2.6. Political Crime

For political crimes and betrayal, public ritual procession was of special importance, since it was a para-judicial (or extra-judicial) process. In Christianity, in the course of the *harmiscara*, *ecclesiastical harmiscara*, *deditio* (rituals of submission), the defeated party, person or persons went barefooted and -headed, in a white penitential shirt, carrying a dog, a saddle or other objects symbolizing the status of the penitent (for instance, noble or citizen), or his/her profession; a rope around his/her neck symbolized that he/she deserved the death penalty. Public penances of this kind were also required of mayors, betrayers of community.

For heresy, within the frame of public humiliation processions and public recantation of heretic views, cross bearing and candle holding symbolized the status of the heretic and his or her special grave offence.

In Judaism, apostates and informers were also put to open shame being required to appear in public wearing penitents' clothing, refraining from washing themselves, and letting their hair grow.

III.E.3. Common Rituals for Penitents, Community Rituals of Penance

Both in Judaism and Christianity, there is one period of general penitence not only for penitent sinners but for every Jew or Christian: for Jews during the period before Yom Kippur (and Yom Kippur); for Christians in Lent (and on Good Friday).

According to some sources from the 13–15th centuries, the period of *teshuvah* began on the 1st of *Elul*, and lasted forty days until Yom Kippur.¹⁷⁷⁹ The length of the penitential period was based on the forty days, that Moses spent on Mount Sinai to receive the Torah for the second time.

The Lent also lasted forty days. In Christianity, it was associated with the forty days of Christ's fasting in the desert when he was tempted by the devil, but also with the forty days that Moses spent on Mount Sinai. The solemn ritual of confession of criminals on Ash

¹⁷⁷⁹ See II.E.3.3.

Wednesday, the imposition of penance, the penance during the Lent and the absolution on Maundy Thursday, are described in several sources.¹⁷⁸⁰ Since the ritual exclusion and readmission of penitents took place on Ash-Wednesday and on Maundy Thursday or on Palm Sunday, the whole community participated in the ritual. The rituals for penitents symbolized the universal power of penance for the whole community. After the ritual, ashes were placed on the heads of the community members who repeated the Lenten devotion of penitents. Therefore, these solemn rituals are also to be considered communal rituals, since the whole community participated.

For the community, the proclamation to admit criminals and transgressors of community enactments before Yom Kippur – a ritual introduced in the Middle Ages – had a similar function to that of the solemn penitential rituals in Christianity; though for penitents the function of the two rituals differed. Permission for transgressors to pray together with the community on Yom Kippur did not bring about change in the status of the penitent, while the ritual expulsion and readmission after forty days (after Lent), as well as the shortened ritual of public procession and reconciliation of public penitents on Palm Sunday expressed the change in their status: even if they had not completed penance yet, they were readmitted. However, for the community, both rituals, the readmission of transgressors into the community on Yom Kippur and the reconciliation of penitents, symbolized the power of penance.

III.E.4. Typology of Rituals

III.E.4.1. Comparison

III.E.4.1.1. Rituals of Separation

III.E.4.1.1.1. Excommunication

In both religions, the greater excommunication was pronounced within the frame of a ritual in which the whole community took part. These rituals had common features. Curses from the Bible were uttered, the excommunicated person was condemned to eternal damnation, candles were extinguished, and the rest of the community was blessed.

III.E.4.1.1.2. Penitent Status

The beginning of the penance was not always marked by such rituals. Sometimes, symbolic acts of humiliation or words of humiliation were performed or uttered (taking off the headdress and crown, putting on sackcloth, putting ashes on the head, wearing a white shirt,

¹⁷⁸⁰ See III.C.9 and III.D.1.

going barefoot and bareheaded), sentences pronounced (banishment from the community, and house-arrest etc.), prohibitions proclaimed (e.g. from entering the church or synagogue, exercising certain offices and functions in the community, wearing prideful dresses).

III.E.4.1.2. Rituals of Humiliation

III.E.4.1.2.1. Common, Mourning-like Rituals

The most characteristic feature of the penitent was the mourner-like appearance: going barefoot, wearing sack-cloth, putting ashes and dust on the head, sitting on the ground, prohibition from rejoicing or even answering the greeting.

III.E.4.1.2.2. Murderer

The murderer tied his hands around his neck with a chain, went to the synagogue and lied in the front of the entrance door; confessed and received public flogging.

III.E.4.1.2.3. Adulteress

The outward appearance of adulteress was like that of the adulteress in the Bible (her hair was untied and she wore a white shirt tied with a rope); she was sitting alone in the synagogue or going to a procession.

III.E.4.1.2.4. Apostate, heretic

Besides the sign of the mourner, the Jewish penitent apostate was not allowed to sit and discuss with Christian monks and priests; of penitent Christian heretics public shaming procession in a white shirt, barefoot, bareheaded, as well as the retraction of their erroneous views were required.

III.E.4.1.2.5. Deposition for Political Offences

Depositions remembered the *harmshar*-like political submission rituals. Additionally, the signs of prominence were taken away from the communal leader, rabbi, mayor. House arrest or exile from the city was inflicted on them.

III.E.4.1.2.6. Public Shaming for Perjury, Blasphemy, and Contempt of Court

Typical public shaming for the sins of perjury, blasphemy, and contempt of court were the putting the offender in the pillory, on a shame-ladder or shame-stone for a few hours.

III.E.4.1.2.7. Asking for Forgiveness and Public Shame for (Corporal, Monetary, and Honor) Injury

Putting in the pillory was the common shame punishment for thieves, on the market-place, before the city hall, in the courtyard of the church. Public beating or flogging were also executed at these places. Asking publicly for forgiveness and clarifying the truth in case of slander were to be performed either in the church/synagogue or at the graves of the offended persons.

III.E.4.1.3. Rituals of the Outcast and Atonement at a Holy Place

III.E.4.1.3.1. Exile

The exiled person bore the signs of the outcast: he was prohibited from shaving his hair and beard and washing himself, except once in a month; he was required to go barefoot, wear sackcloth and a chain around his neck, and on his hands; he was sometimes forbidden to enter public or holy spaces (a church or a synagogue). He was either a beggar or worked for his livelihood.

III.E.4.1.3b.2. Pilgrimage

By pilgrimage a certain destination was appointed to the penitent. At the holy place, he performed certain acts (dedication, procession, prayer, charity, public confession, asking for forgiveness), because the place itself had the power to atone. Sometimes, he was even flogged or beaten. In Christianity, the penitent pilgrim obtained absolution at the holy place (and received a document about having completed his penance).

III.E.4.1.4. Rituals of Execution or Their Imitation and Public Flogging or Beating

III.E.4.1.4. Execution

Secular Christian executions had their own rituals and symbols. Heretics were burned, criminals either hanged (“dishonest execution”) or executed by sword (“honest execution”). The Jews were hanged upside down by the non-Jewish authorities with the purpose of shaming them.

III.E.4.1.4. Public Beating, Flogging

Public beating and flogging in the church, synagogue, market place, courtyard of these buildings had a humiliating character.

III.E.4.1.5. Rituals of Reconciliation between Parties

III.E.4.1.5.1. In the Church, Synagogue

The processions of asking for forgiveness and public confession in the church and synagogue had a fixed ritual. In Christianity, they were also used by secular courts and in the reconciliation procedures between the murderer and the family of the murdered person, without intermediary instances.

III.E.4.1.5.2. At the Grave

The processes at the grave had also a fixed ritual, which, in Christian practice, goes back to tribal reconciliation procedures. In Judaism, it goes back to the Talmudic passage which prescribes reconciliation ritual in case of transgressions between a man and his fellow man. The rituals originating from two different religions developed in a convergent manner into very similar rituals.

III.E.4.1.6. Ritual of Readmission

In Christianity, readmission had fixed rituals in the form of the solemn penance on Maundy Thursday or Palm Sunday, which also contained the absolution pronounced by the bishop or pope at these festive occasions. There were also other occasions, especially in the later Middle Ages. In Christianity, the indulgences were occasions of general forgiveness for masses. For individuals, readmission to the Church and Eucharist at the end of the process of penance symbolized reconciliation. In Judaism, the readmission ritual for the repentant apostate included confession, acceptance to perform the penance and the *mizvot*, and ritual immersion.

III.E.4.2. Possible Influences

It has already been discussed that penance for murderers had clear signs of influence of Christian penance. The same has been concluded in connection with the public ritual of repentance prescribed for two Jewish adulteresses in the 15th century.

Besides these two cases, the following public rituals have clear analogies in the contemporary Christian public penitential rituals:

(1) Processions – often in penitential clothes and barefoot – to the grave of the offended or murdered person or to the graves of the parents of the offended person, and the rituals of asking for forgiveness and public confession performed in church or synagogue are

clear analogies. The same is true for public clarification and asking for forgiveness in case of slander. In the 15th century, in the Jewish and Christian practice, these conciliatory rituals had similar structures.

(2) Public announcements in the synagogue or church concerning excommunication, removal, and exclusion also had similar patterns.

(3) Public shame processions before or inside the church and synagogue, or in the market place had similar patterns.

(4) Public flogging in the synagogue and public beating or flogging in the courtyard of the church, on the market place, or in the pillory were performed within the frame of a ritual.

III.F. Conclusions

All statements and conclusions in this part are temporary and uncertain. Examples for the four possibilities are discussed throughout part III. For example: (a) penances for murder (exile, tying the hand around the neck with a chain, self-humiliation before the doors of the synagogue) are Christian borrowings; (b) wearing sack-cloth during penance is both traditional Jewish element and an element influenced by the Christian example; (c) we can not establish the origin of self-mortification by sitting in icy water in winter and in bee hives in summer; (d) “Esther’s fast” is an element developed on the basis of traditional Jewish sources.

In the five remaining theses examples for the four types of elements are listed (as mentioned, without solid and well-founded proofs):

(XVIII) Christian borrowings:

(a) private confession to a sage in the penitential system of *ḥaside Ashkenaz*; (2) self-flagellation in the penitential system of *ḥaside Ashkenaz* (both prescribed by R. Judah Ḥasid and by the penitentials of R. Eleazar), and in some later sources; (3) exile for murder and different penances connected to it: tying the hands with chains around the neck; prostrating or standing before the door of the synagogue, public flogging before or in the synagogue; prostrating on the grave of the murdered person; shortening or lengthening the period of penance, according to circumstances; some aspects of the penitent’s self-humiliating behavior (shaving or prohibition from shaving the hair and beard, wearing sack cloth/penitential cloth, going barefoot); paying to the relatives of the victim or supporting the family members of the victim by the murderer; (4) penitential schedule for several years for grave sins including fasting and other self-mortifications; (5) “exile from the city”.

(b) Both Jewish Tradition and Christian borrowings (i.e. developed on the basis of traditional Jewish sources, and supposedly also “intensified” by the Christian environment, in terms of “religious contest”):

(1) *teshuvat ha-mishqal* of *ḥaside Ashkenaz*: suffering commensurate with pleasure atones for the sin committed; (2) the root of sin is the evil inclination/vice (a development of the traditional *yezer* doctrine, as well as the equivalent of the Christian doctrine of vices and virtues); (3) “personalist” atonement; (4) fasting for 40 days; (5) in case of fornication and adultery: physical self-mortification for expiation of sexual sin; (6) public penance prescribed for adulteresses in the *responsa* of the 15th century; (7) in case of cursing, slandering, injury, and murder: public rituals containing confession, retraction of abusive statements and asking for forgiveness either in synagogue or at the graves of the defamed persons or their parents; (8) penances for theft: the precondition for penance for theft to pay fines and make restitution; additional penances for theft (beyond restitution), the complicated laws of restitution developed in the penances for theft and the public shaming of the thief; (9) private and public penances for perjury; (10) release of vows of fasting and pilgrimage through penance; (11) public penitential rituals for blasphemy; (12) public penance for the informer; common features with the political rituals of submission (*deditio* or *harmschar*); (13) the lower status of the penitent in the community, and its symbolic expressions (symbols, rituals of exclusion and readmission); (13) public shame processions and their rituals; (14) public announcements in the synagogue concerning excommunication, removal, and exclusion; (15) the specialization of the Jewish lesser and greater excommunication (*niddui* and *ḥerem*); the increasing role of the threat of greater excommunication (*ḥerem*) in the legal procedure; the application of the lesser excommunication (*niddui*) as both punishment and threat of greater excommunication;

(c) Jewish Tradition or Christian Borrowings (It is impossible to establish on the basis of the sources):

(1) the idea behind *teshuvah ha-ba'ah* (“trial”); (2) the idea behind *teshuvat ha-gader* (“avoidance”); (3) self-mortification by sitting in icy water in winter and among bees in summer; (4) the ritual of the imitation of the death penalty by burying the penitent alive; (5) the idea behind “commutation”; (6) the idea behind “composition”; (7) public penance for injury; (8) ritual public flogging;

(d) Common sources for Jewish and Christian practice or idea in Greek medicine:

(1) the sage who leads the process of *tesuvah* is like the “physician of the soul”; (2) “diseases are cured by their contraries”, vices are cured by virtues.

(e) Only Jewish Traditions:

(1) *teshuvat ha-katuv*; (2) the atoning power of suicide; (3) Esther's fast; (4) the prohibition from "composition" (*compositio*) for murder; (5) ritualized public penance for the ritual slaughterer.

CONCLUSIONS

Penance in the high and late medieval Ashkenazi Judaism was not an organic development of earlier Geonic theory or practice. There are some isolated elements in the Geonic penal system which may have served as precedents in medieval Ashkenazi penance.

The penitential system of *haside Ashkenaz* builds on the duality of private and public penitential acts. There are three main directions into which the penitential system of *haside Ashkenaz* “transfigured” in the 13–15th centuries: (1) private use of penitentials by penitents; (2) their use within the frame of mystical/magical initiation rituals; (3) The use of penitentials in the penal system in the 13–15th centuries.

Regarding the latter case (3), the penitentials were used for the imposition of almost every possible transgression. A variety of penances were applied; some of the penances can also be punishments when not used within the frame of a penitential schedule.

Concerning the process of penance, the *viddui* is its core element. The penitential process had different course according to the private or public character of the process. The public place of the penance was the synagogue. The duration of the penance varied from some days to several years or lifelong penances, according to the period for which the penitential schedules were prescribed. Symbols used in the penitential process had the function to express the status of the penitent in the community. Rituals had the function to express the change in the status of the penitent in the course of the process.

There are five possible categories of elements, regarding their origin. (1) Christian borrowings; (2) Both Jewish tradition and Christian borrowings (3) Jewish tradition or Christian borrowings; (4) Common sources for Jewish and Christian practice; (5) only Jewish traditions.

ABBREVIATIONS

App. – Appendix
BSDS – Bayerische Staatsbibliothek, Digitale Sammlungen
CEEC – Codices Electronici Ecclesiae Coloniensis
DULDS – Darmstadt Universitäts- und Landesbibliothek, Digitale Sammlung
DL – Digital Library
DLG – Digital Library Gallica
DS – Digitale Sammlung
ECD – e-codices database
PDL – Parker Digital Library
UKDL – University of Köln, Digital Library
USDL – University of Sevilla, Digital Library

1.1. Abbreviations of Jewish Sources

Bruna – Teshuvot R. Israel Bruna
Colon – Teshuvot R. J. Colon
CShQ – Commentary on the Shi'ur Qomah
DT – Darkhe Teshuvah
GMM – Ge'onei Mizrah u-Ma'arav
GQ – Ginze Qedem
HemG – Hemda Genuzah
HGH – Halakhot Gedolot ed. Hildesheimer
HGV – Halakhot Gedolot ed. Venice
HH – Hilkhot Ḥasidut
HM – Hagahot Maimoniot
HP – Halakhot Pesuqot min ha-Geonim (ed. Miller)
HQ – Halakhot Qeḏuvot
HQY – Halakhot Qeḏuvot de-Rav Yehudah Gaon
HT – Hilkhot Tshuvah
HTR – Hilkhot Teshuvah, first recension
HTRB – Hilkhot Teshuvah, second recension
Isserlein PuK – Pesaḳim u-Ktavim of R. I. Isserlein
Isserlein ThD – Terumat ha-Deshen of R. Israel Isserlein
IT – 'Isqe Teshuvah
LekYosh – Leqet Yosher
Maharam Cremona – Teshuvot R. Meir b. Barukh, ed. Cremona
Maharam Berlin – id. ed. Berlin
Maharam Lvov – id. ed. Lvov
Maharam Prague – id. ed. Prague
MH-SK – Moreh Haṭṭaim – Sefer ha-Kapparot
Mintz – Teshuvot R. Moses Minz
Mollin – Teshuvot R. Jacob Mollin (=Maharil)
Mollin TH – Mollin Teshuvot Ḥadashot
Mordeḥai – Sefer Mordeḥai
NMM – Nimmukin of R. Menaḥem of Merseburg
OZ – 'Or Zarua
Rif – Hilkhot Rav Isaac Alfasi
RJH – Responsum of R. Judah Ḥasid
SHP – Sefer Ḥasidim Parma (ed. Wistineczki/Jacob Freiman)
SMT – Sefer Minhag Tov
SPY – Seder Pe'ulat ha-Yezirah
SR – Sefer ha-Roqeah
ST – Sefer ha-Teshuvah shel R. Samuel Ḥasid
STR – Sefer Tanya Rabbati
ShaT – Sha'are Tshuvah
ShaZ – Sha'are Zedek
ShLB – Shibbole ha-Leqet ed. Buber

ShLH – Shibbole ha-Leqet ed. Ḥasida
 Tashbez
 TR – Toratan shel Rishonim
 TshM – Teshuvot Maimoniot
 TshGAss – Teshuvot ha-Ge'onim (ed. Assaf)
 TshGHad – Teshuvot ha-Geonim ha-Ḥadashot (ed. Emanuel)
 TshGG – Teshuvot ha-Ge'onim (ed. Ginzburg)
 TshGHar – Teshuvot ha-Ge'onim (ed. Harkavi)
 TshGQ – Teshuvot ha-Ge'onim ha-Qeẓarot
 TshG Lyk – Teshuvot ha-Ge'onim (ed. Mussafiah)
 TshN – Teshuvot Rav Naṭronai bar Hilai (ed. Brody)
 Weil – Teshuvot R. Jacob Weil

1.2. Abbreviations of Periodicals and Encyclopedia in Jewish Studies

AJSR – Association for Jewish Studies Review
 CCAR Journal – Central Conference of American Rabbis Journal (The Reform Jewish Quarterly)
 CJ – Conservative Judaism
 EJ – Encyclopedia Judaica, 12 vols., New York, 1906.
 HB – Hebräische Bibliographie
 HTR – Harvard Theological Review
 HUCA – Hebrew Union College Annual
 J – Judaism
 JANES – Journal of the Ancient Near Eastern Society
 JH – Jewish History
 JJS – Journal of Jewish Studies
 JJThPh – The Journal of Jewish Thought & Philosophy
 JMH – Journal of Medieval History
 JQR – Jewish Quarterly Review
 JPJ – Journal of Progressive Judaism
 JR – The Journal of Religion
 JRE – The Journal of Religious Ethics
 JRS – Journal of Ritual Studies
 JS – Jewish Spirituality
 JSJPHR – Journal for the Study of Judaism in the Persian, Hellenistic and Roman Period
 MGWJ – Monatschrift für Geschichte und Wissenschaft des Judentums
 PAAJR – Proceedings of the American Academy of Jewish Research
 PRAA – Proceedings of the Rabbinical Assembly of America
 REJ – Revue des Études Juives
 SR – Social Research
 USQR – Union Seminary Quarterly Review
 VT – Vetus Testamentum
 ZAW – Zeitschrift für Alttestamentliche Wissenschaft

1.3. Abbreviations of Jewish Notions

EI – *Erez Israel*
 HA – Ḥaside Ashkenaz
 QSh – Qiddush ha-Shem
 MT – Mondays and Thursdays (for fasting)
 MTM – Mondays, Thursdays and Mondays (fasting)
 R – Rabbi
 resp. – responsum
 Shut – She'elot u-Teshuvot
 T – teshuvah
 TakG – Taqqanot R. Gershom
 TB – teshuvah ha-ba'ah
 TG – teshuvat ha-gader
 TK – teshuvat ha-katuv
 TM – teshuvat ha-mishkal
 TRT – Taqqanot Rabbenu Tam

TSh – Taqqanot Shum
YK – Yom Kippur
z’l – *zikhrono li-berakhah*
ztz’l – *zikhron zaddik li-berakhah*

2. Christian

2.1. Penitentials

ALI – Ancient laws of Ireland
BD – Book of David
BP – Burgundian Penitential
CB – Corrector of Burchard
CCH – Collectio canonum Hibernensis
CE – Confessional of Egbert
CH – Canones Hibernenses
CHR – Capitulary of Hinkmar of Reims
CCh – Capitulary of Charlemagne
ConCh – Council of Chalon
CP – Canons of St. Patrick (Canons of the synod of Patrick, Auxilius and Iserninus)
CPII – Canons of the alleged second synod of St. Patrick
CT – Customs of Tallaght
CTO – Capitularies of Theodulf of Orleans
ConT – Council of Tivoli
CST – Capitulary of the Saxon Territories
DE – Dialogue of Egbert
JC – Judgment of Clement
LA – Law of Adamnan
LE – Laws of Ethelred
LEd – Laws of Edmund
OEH – Old English Handbook
OE – Old English
OIP – Old Irish Penitential
OITC – An Old Irish Table of Commutations
PBE – Penitential of Bartholomew Iscanus, Bishop of Exeter
PB – Penitential ascribed to Bede
PBob – Bobbio Penitential
PBig – Bigotian Penitential
PCol – Penitential of Columban
PCum – Penitential of Cummean
PE – Penitential of Egbert
PFin – Penitential of Finnian
PG – Preface of Gildas
PHJLE – Penitential of the bishops of Horlar, Jörundus, Laurentius and Egillus
PP – Capitularies of Theodulf of Orleans
PS – Penitential of Silos
PsCum – Pseudo-Cummean
PStH – Penitential of St. Hubert
PT – Penitential of Theodore
PTT – Penitential of the bishop of Skalholt, Thorlac Thorhallson
RCCol – Regula Coenobialis of Columban
RP – Roman Penitential of Halitgar
RED – Regino of Prüm’s Ecclesiastical Discipline
SM – Senchus Mór
SNB – Synod of North Britain
StG – Tripartite St. Gall Penitential
WC – Irish Canons from a Worcester Collection
WeC – Welsh Canon

2.2. Periodicals, Collections

ARA – Annual Review of Anthropology
JEH – Journal of Ecclesiastical History

JSSR – Journal of Scientific Study of Religion
LThK – Lexikon für Theologie und Kirche
MS – Medieval Studies
MedH – Medieval Handbooks of Penance, McNeill, Gamer
PL – Migne Patrologia Latina
ZRG – Zeitschrift für Religion und Geschichte

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בתי הדין וסדריהם אחרי חתימת התלמוד. ירושלים תרפ"ד.
Assufot
ספר האסופות... מהד' א"י דזובאס, לונדון תשי"א
Bruna
ברונא, ישראל. שו"ת מהר"י ברונא, ירושלים, תשי"כ.
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Derasha le-Pesah
דרשה לפסח. תשס"ו, מהד' שי עמנואל.
GQ
גנזי קדם, מהד' בנימין מנשה לוין, ירושלים, תרפ"ב
GMM
גאוני מזרח ומערב, מהד' יואל הכהן מיללער, ברלין תרמ"ח
Goldschmidt, סדר הסליחות
גולדשמידט, דניאל. סדר הסליחות, ירושלים, תשכ"ה.
Goldschmidt, מחזור לימים נוראים
מחזור לימים נוראים. כרך שני (יו"כ) ירושלים, תשל.
HemG
חמדה גנוזה, מהד' ירושלים, תרכ"ג
HGH
הלכות גדולות. מהד' עזריאל בן מאיר הילדסהיימר, ירושלים תשל"ב-תשמ"ז
HGV
הלכות גדולות. על פי דפוס ויניציה, ירושלים תשנ"ב
Hilkhoh ha-Kavod
Tübingen הלכות הכבוד, תשנ"ח, חנה ליס,
HM
מאיר הכהן. הגהות מיימוניות: במשנה תורה לרמב"ם מהד' ורשה תרמ"א.
Hokhmat ha-Nefesh
ספר חכמת הנפש, תשס"ו.
HP
הלכות פסוקות מן הגאונים. מהד' יואל הכהן מיללער. קראקא, תרנ"ג.
Isserlein ThD
איסרליין, ישראל. תרומת הדשן. תשי"ח, ניו יורק.
Isserlein PuK
איסרליין, פסקים וכתבים, תשי"ח, ניו יורק.
Kol Bo (Lemberg)
כל בו. לעמברג
Kol Bo (Jerusalem)
מהד' דוד אברהם, ירושלים, תשנ"ג.
Kupfer TuP
קופפר, אפרים. תשובות ופסקים של חכמי אשכנז וצרפת, ירושלים, תשל"ג.
Leqet Yosher = LeqYosh
יוסף בן משה. לקט יושר. הוצאת י' פריימן. ברלין תרס"ג.
Ma'aseh ha-Geonim

מעשה הגאונים. מהד' א' אפשטיין וי' פריימן, ברלין תר"ע

Ma'aseh Roqeah

ספר מעשה רוקח, מהד' ח' הירשפרונג, סאניק תערי"ב

Ma'aseh Roqeah (Sinai Ms.)

מעשה רוקח. על פי כ"י סיני. תשי"ע.

Mahzor Vitry, ed. Horowitz

מחזור ויטרי. מהד' שמעון הורוויץ, נירנברג, תרפג

Mahzor Vitry, ed. Goldschmidt

מחזור ויטרי מהד' א' גולדשמידט, ירושלים תשס"ד

Maharam Berlin

שו"ת מהר"ם בר ברוך, ברלין. תרנ"א.

Maharam Cremona

מאיר בן ברוך. שו"ת מהר"ם בר ברוך, קרימונה, שו"ז.

Maharam Lvov

שו"ת מהר"ם בר ברוך, לבוב, תר"כ.

Maharam Prague

שו"ת מהר"ם בר ברוך, פראג שס"ח.

Maharam TuP

תשובות ופסקים לר' מאיר מרוטנבורג, מה' י' ז' כהנא. תשי"ז, ירושלים

MH-SK

ספר יורה חטאים הנקרא ספר הכפרות, מהד' יצחק בן משה אליס, תשנ"ו.

Minhage R. Abraham Klausner

אברהם קלאוזנר. מנהגים. מהד' יונה דיסין, תשנח.

Minhage R. Eizik Tyrnau

אייזיק טירנא. ספר המנהגים. מהד' שמלה י' שפיצר, מהד' שנייה, ירושלים, תשס.

J. Minz

מינץ, י'. שו"ת מהר"י מינץ. קראקא תקמ"ד.

(M.) Minz

מינץ, מ. שו"ת מהר"ם מינץ, למבערג, תרי"א.

Mollin

מולין, יעקב. שאלות ותשובות מהר"ל, מהד' י' סך, ירושלים תשי"מ

Mordehai

מרדכי בן הלל. ספר מרדכי. נדפס ברוב הוצאות הרי"ף.

Moreh Ḥattaim

אלעזר מוורמס. מורה חטאים. צהד' יואל ארלאווסקי, ווארשא, תקנ"ז.

NMM

מירזבורק, מ. נימוקים. נספח לשו"ת יעקב ווייל. ירושלים תשי"ט.

Ozar Geonim

לוח ב"מ. אוצר הגאונים, חיפה וירושלים תרפ"ח-תשי"ג

OZ

יצחק בן משה מווינא. אור זרוע א-ב, זיטאמיר תרכ"ב; ג-ד, ירושלים תרמ"ז-תר"י.

אור זרוע השלם לרבנו יצחק ב"ר משה מוינא: הלכות שבת ועירובין, מהד' ש"י קליין, ירושלים תשס"א

Perush ha-Roqeah al 'Eikha Rabbati

פירוש הרוקח על איכה רבתי, תשס"ו

Perush ha-Roqeah al ha-Megillot

פירוש הרוקח על המגילות, תשס"א

Perush ha-Roqeah al-ha-Torah

פירוש הרוקח על התורה, תשס"א

Perush ha-Torah le-Rabbi Judah he-Hasid

פירוש התורה לרבי יהודה החסיד, מהד' יצחק שמשון לנדא, ירושלים, תשל"ה

Perush Siddur ha-Tefillah

פירוש סידור התפילה לרוקח. מהדורת משה ויהודה הרשלקר, ירושלים תשנ"ב.

Pisque Halakhot shel R. Hayyim OZ

פסקי הלכות של חיים אור זרוע (דרשות מהר"ח). מהד' י"ש לנגה, ירושלים תשל"ג

Ra'avan (Albek/Ehrenreich)

אליעזר בן נתן. ספר ראב"ן, מהד' ש' אלבק, ורשה תרס"ה

ספר ראב"ן, מהד' ש"ז ערנרייך, שאמלויא תרפ"ו

Ra'avyah 1-4

אליעזר בן יואל הלוי. ספר הראב"ה. מהד' א' אפטיובצר, א-ג, ירושלים תשכ"ד.

ספר ראב"ה הוא אבי העזרי למסכת עבודה זרה, מהד' ד' דבליצקי, בני ברק תשל"ו.

ספר הראב"ה הוא אבי העזרי למסכת חולין, זבחים, מנחות [...]. מהד' ד' דבליצקי, בני ברק תשל"ו.

ספר ראב"ה הוא אבי העזרה: תשובת ובאורי סוגיות בענינים שונים, מהד' ד' דבליצקי, בני ברק תשמ"ט-תש"ס.

Rif

תלמוד בבלי

Sefer ha-Manhig

אברהם הירחי. ספר המנהיג. (מהד' יצחק רפאל), ירושלים, תשל"ח.

Sefer ha-'Orah

ספר האורה. מהד' שי' בובר, לבוב תרס"ה

SP = Sefer ha-Pardes, ed. Ehrenreich

ספר הפרדס. מהד' ח"י עהרענרייך, בודפשט תרפ"ד

SPG = Sefer ha-Pardes ha-Gadol

ספר פרדס הגדול. וארשה תרל.

Sefer ha-Yashar, Hiddushin

יעקב בן מאיר. ספר הישר. חלק חידושין. מהד' ש"ש שלזינגר, ירושלים תשל"ד

Sefer ha-Yashar, Teshuvot

חלק תשובות. מהד' ש"פ רוזנטל, ברלין תרנ"ח

Sefer Gematriot

יהודה החסיד. ספר גמטריאות. תשנ"ח, ירושלים.

Sefer Maharil (= Minhage Maharil)

ספר מהרי"ל, סקלאוו, תקנ"ו.

Semaq

יצחק מקורביל. עמודי גולה (סמ"ק), סאטמאר תרצ"ה

SHB

ספר חסידים, ע"פ דפוס בולווגניה. ראובן מרגליות, תשס"ד.

SHP

ספר חסידים, כ"י פרמה. יהודה הכהן וויסטינצקי, עם מבוא מאת יעקב פריימאן, פראנקפורט ע"נ מין. 1924.

SHP

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Siddur Rabbi Shlomo bar Shim'on

סידור רבנו שלמה ב"ר שמעון מגרמייזא וסידור חסידי אשכנז. מהד' מ' הרשקר, ירושלים תשל"ב

Siddur Rashi

סדור רש"י. מהד' שי' בובר וי' פריימן, ברלין תרע"ב

Sirkes, Bait Hadash

סירקס, יי. שו"ת בית חדש הישנות, ניו יורק תשי"ד.

Sode Razayya

ספר סודי רזי"א השלם, תשסד, מהד, אהרן איזנבך. תשס"ד.

Perush ha-Roqeah al-Shir ha-Shirim

אלעזר מוורמס. יין הרוקה, פירוש הרוקה על ספר שיר השירים ועל ספר רות. שס"ח.

SR

ספר הרוקה, ירושלים תשכ"ח

Sha'are Shehitah u-Terefot

שערי שחיטה וטרפות. על פי כ"י נ"י. תשי"ע.

Sha'ar ha-Sod ha-Yihud ve-ha'Emunah

שער הסוד והיחוד והאמונה, תשס"ו.

36 She'arim

ל"ו שערים של הלכות הריאה, תשי"ל.

Shirat ha-Roqeah

שירת הרוקה, תשנ"ג.

ShLB

צדקיה בן אברהם הרופא. שבלי הלקט, מהד' שי' בובר, ווילנא תרמ"ז

ShLH

מהד' שי' חסידה, ירושלים תשמ"ח

Shoher Tov

מדרש שוחר טוב ל, מהד' שלמה בובר, וילנה, תרנ"א.

Shut R. Gershom

אידלברג, ש. תשובות רבנו גרשום מאור הגולה. ניו יורק, תשט"ז.

Shut Rashi

אלפנביין. תשובות רש"י. שאלות ותשובות מהרי"ל, מהד' י' סך, ירושלים תשי"מ.

Shut ha-Rosh

אשר בן יחיאל. שו"ת הרא"ש. ניו יורק תשי"ד.

STR

ספר תניא רבתי. מהד' שמעון הורוץ, ורשא, תרל"ט.

Ta'ame Sodot ha-Tefillah le-Hoshana'ot

טעמי סודות התפילה להושענות ופיוטי שמחת תורה. תשס"ב

Tashbez

שמשון בן צדוק. ספר תשב"ץ. מהד' שניאורסאהן, ירושלים, תשס"ה.

TR

תורתן של ראשונים, מהדי יוסף הלוי הורוויץ, פרנקפורט, תרמ"ב

TshGHad

תשובות הגאונים החדשות. מהדי שמחה עמנואל, ירושלים, תשנ"ה.

TshGAss

תשובות הגאונים, מהדי שמחה אסף, ירושלים, תרפ"ז

TshGG

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TshGHar

תשובות הגאונים, מהדי הרכבי, ברלין, תרמ"ז

TshGLyk

תשובות הגאונים. מהדי יעקב מוסאפיה, ליק, תרכ"ד.

TshHZL

מיללער, יואל. תשובות חכמי צרפת ולותיר. ירושלים, תשכ"ז.

TshM

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TshN

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Tshuv

איגום, א. י. תשובות בעל

Tur

יעקב

Zavva

sid

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Yam shel Shlomo

לוריא. ים של שלמה. ג' כרדים, תשיח.

Weil

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¹⁷⁸² The codex's binding contains a Hebrew fragment.

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TRANSCRIPTIONS OF HEBREW LETTERS

א - '
ב - b, v
ג - g
ד - d
ה - h
ו - v
ז - z
ח - ḥ
ט - ṭ
י - y, i
כ - k, kh
ל - l
מ - m
נ - n
ס - s
ע - '
פ - p, f
צ - z
ק - q
ר - r
ש - sh
ש - s
ת - t

APPENDIX 1: TRANSLATIONS AND EXTRACTS

I.A. Geonic Sources for Different Transgressions and Their Punishment

- (1) Murder: OZI112, HP94, HemG20; ShaZ 4.7.39, see further I.B.
- (2) Adultery and fornication: (A) With a married woman: (a) insufficient witnesses: TRI.29, II.18 (HKY: If a man and a woman say that they have transgressed, the *bet-din* will not listen to them, since it can be supposed that she wants to become his wife. But the man must be flogged; the woman does not need to be. She must stay with her husband. If she is flogged, she will be forbidden to her husband. But if there is one witness who testifies that he admitted [to the witness] that he has transgressed with the woman, she must be separated from her husband with *get*; both must be flogged *makkat mardut*, his hair and beard and her hair must be shaved). HP96 (Rav Zemah Gaon: If there are two witnesses of the fornication, the woman will be forbidden to her husband; but if there is only one witness, she will not be divorced, so that her children may be clean). HP92 (Rav Naṭronai: If someone is suspected of fornication and there are no witnesses, but people say about him that he is shameless, he will receive the forty lashes provided that the woman is unmarried. But if she is married, he will not, so that people should not say about her that her children are bastards). (b) If someone fornicates with his mother-in-law: TR I.29; II.18 [if someone has fornicated with his mother-in-law, he can keep his wife, and receives the forty lashes, and is forbidden to speak again to his mother-in-law. (c) If the husband is away, and the wife learns that he has died in another country: TRI.29;II.18 (If the husband leaves for another country, and people say to the wife that he has died, and she marries another Jew, and after a time the first husband comes back, she must be separated from both and flogged. (B) With an unmarried girl: (a) If he does not marry her afterwards: TshGG155 (Rav Hai: If an unmarried girl says, “I am pregnant from XY” and the man has already been suspected of fornication several times, he must be excommunicated and it must be publicly announced that he is a fornicator); HGH2.306 (If he is not married, and it is rumored that he has seduced a girl, and says, “I have found a door open”, he is not to be trusted and must be flogged). TshGQ16, (Anonymous Gaon: An unmarried woman says, “I am pregnant from XY”, and he lives in the neighborhood, the child is already 3 years old, and it is known about him that he has fornicated many times before; he must be flogged, and it must be publicly announced that he is a fornicator; the child is declared “*shetuqi*”, illegal. (b) If he marries her afterwards: TshGAssI.45,55 (Someone has engaged a girl, and still has given her no *ketubbah*; there has been no blessing on their marriage, he should not be flogged). ShaZ 59I.25 (Rav Sar Shalom: If one engages a woman and does not write her a *ketubbah*, but has sexual intercourse with her, and it is known that he has made this many times before, he must be excommunicated and flogged; if there are witnesses that he has had intercourse with her and he has married her afterwards, it is acceptable; but if he has not, he must be fined 200 *zuz* (= 8 golden *dinars*). (C) Fornication with a female slave: ShaZ III. 6.13 (=HP94, Rav Naṭronai Gaon: If a man fornicates with his female slave, she must be taken away from him and sold, and her price must be given to the poor; he must be flogged, shaved, and excommunicated for thirty days). (D) Fornication with a Gentile woman: ShL (Ms. Monefiori p. 237=p.115, Tykocinski p. 119: enactment of the rabbis of a *yeshiva*¹⁷⁸³ in Babel: A man who has sexual intercourse with a Gentile woman is required to fast 49 days corresponding to the 49 measures, with which the Torah is explained; excommunicated, flogged (forty lashes); he must also go into exile for a whole year and fast on every MT; GQ4.100 (no. 91). (E) A virgin in the house of prostitutes: (Naṭronai Gaon: A virgin who is in the house of prostitutes considered a seduced girl). (F) *Kohen* marries a divorced woman: ShaTz177 (Rav Zemach: If a *kohen* marries a divorced woman, he must be excommunicated until he divorces her; he must be flogged, and fined if he is in *Erez Israel*; if there is a suspicion that he might go to another place to say the priestly blessing, his fingers must be cut off so that he can not say the blessing). HP84 (If a *kohen* marries a divorced woman, all his children are from a forbidden marriage (defiled, *ḥallalim*), and he must be excommunicated until he repents and divorces; and must also be flogged). (G) The wife of a *kohen* taken captive: TRII.7 (Rav Naṭronai: If the wife of a *kohen* is taken captive by Gentiles, she is prohibited to her husband; the *kohen* and his wife must be separated even against their will, they must be publicly announced, and both must be flogged; their children shall be disqualified from *kehunnah*).
- (3) Injury: OZIIBK329 (R. Yehuday Gaon: He who injures his fellow Jew must be flogged, and he must fast for a month; if he refuses to obey, he must be coerced. *ShaTz*4.1.2 (Rav Naṭronai’s explanation to B.Q. 84a): There are no fines in Babel or other countries; Rav Naṭronai quotes a case judged by R. Zadoq Gaon: A man has smashed the teeth of a fellow Jew; the Gaon has decided that the fines can not be collected in Babel; instead, the offender must conciliate the offended one by words or money. Later, the *bet-dins* have taken R. Zadoq’s decision into consideration and decided similarly). OZIIBK327 (*Sefer ha-Mikẓo’ot*: There is a custom in the two *yeshivot* that he who hurts his fellow Jew, and refuses to conciliate his fellow, although the *bet-dins* do not collect fines in Babel, must be excommunicated until he appeases him with a sum of money that the “*tannaim*” and “*savora’im*” mete out to him). OZIIBK328 (If a Jew injures another Jew on a holiday, he will be exempted according to the law of Heaven, but indebted according the law of men in five things (B.Q. 83b): damage, pain, cost of cure,

¹⁷⁸³ Not defined, which *yeshivah*.

stoppage of work, and shame). ShaZ 4.1.19 (Rav Sherira: In case of injury, the *bet din* decides about the amount of compensation, even if the injured person wants to receive more). One has torn the hair or beard of his fellow Jew and has spat towards him; the other one blinded him: according to the decision, the first one must ask for forgiveness and the second one must pay the five fines; if one of them refuses to obey, he shall be excommunicated until he receives the punishment). Slaves and women: *Mordehai* B.Q.8.27 (Rav Nahshon: In case of injury, slaves and women are exempted from payment of fines, but they are flogged). *Mordehai* B.Q. 8.27 (Rav Zemaḥ: A slave who often hurts others must be flogged by his master (*makkat mardut*); the woman is flogged by her husband).

(4) Theft: HP94 (Rav Naṭronai: If someone is suspected of stealing, and there are no witnesses, but there are witnesses of another stealing of his, he can not be flogged, because he can only be flogged on the basis of the testimony of two witnesses; but he must be excommunicated with the Torah scroll and *shofars*).

(5) Cursing: Maharam Prague 293 (R. Matatyah Gaon: If a man spits before someone's wife, he must be excommunicated until he appeases the husband and the wife with money or words). OZBK373 (Rav Matatyah Gaon answers the same question: In Babel, if the spittle reaches her, he must be flogged and excommunicated for thirty days (*niddui*); in *Erez Israel* he must be fined 400 *zuz*. In the latter case, asking for forgiveness from the woman and her husband and fasting are also required. Rav Amram: The woman shall take an oath that the spittle reached her, and he must fast and be flogged. *Rif Shevuot* 4 (Rav Hai: For cursing, the offender must be flogged). ShaTz29.1.3. (For calling the fellow Jew a "slave", the offender must be excommunicated until he asks for forgiveness or is ready to receive the forty lashes). TshHAssII.25 (Rav Nahshon or Rav Zemaḥ b. Paltoi: For calling the fellow Jew a "servant", the offender must be excommunicated; for "bastard", he must be flogged forty lashes).

(6) Disobedience: GMM42: Rav Hai Gaon's *responsum*. See I.C. for translation.

(7) Perjury and false testimony: False testimony: ShaZ 4.7.24 (Rav Paltoi Gaon: For changing the testimony, one must be flogged); GQ.3: (For changing the testimony, the offender must be flogged, and the first testimony is valid). False oath: TRI.29 [If someone testifies alone about a married woman (that she has fornicated), he must receive the forty lashes because of false oath, and his testimony is not valid]. Maharam Prague 121 [The respondent quotes the words of the HQ that if someone swears to divorce her wife and afterwards does not want or can not, he must be flogged because of the (false or vain) oath]. Oath in vain: ShT75 (Rav Hai Gaon: One has taken an oath to divorce her wife and he has not got enough money to pay her *ketubbah*. It has been an oath in vain and he must be flogged forty lashes. But if he thinks that he has the money and he has not, that is an involuntarily transgression, and he does not have to be flogged). TshGHar319 [The same question is answered: He must be flogged, and he must take an oath that he can not pay the *ketubbah*; if he refuses to take the oath, he must be excommunicated; but he can not be coerced (by other means) to take an oath]. TshGHar 345 [The same question is answered: He must be flogged (*makkat mardut*, for vain oath). SP (ed. K.25.2): If he takes an oath that he will not perform a commandment, he must be flogged (*makkat mardut*). TshGHar180: If he takes an oath that he will not litigate in the *bet-din* of his city, he must be flogged, because the great *Bet-din* in Babylonia decides for the *bet-dins* of the cities in each district; and if he does not want not to litigate there, they coerce him to do so.

(8) Offenses against *kashrut*: ShT270 (Rav Sherira Gaon: An anonymous questioner relates that where he lives when *Pesach* arrives, people are in the habit of hiding brine (*muries*) prepared of wheat, barley flour and salt in a house in their courtyards and plaster the door. After *Pesach* they take it out and sell it to a Jew. The Gaon answers that the community leaders must publicly announce that it is forbidden; he who after the proclamation continues to do so must be excommunicated. The Gaon adds that he will send investigators to find out whether the order has been respected or not).

(9) *Kohen* contaminated with the dead: TR I.32;II.20 (HQY and Rav Naṭronai: The *kohen* who has become unclean with a dead man must receive the forty lashes). HP 89 (=HemG 55, the same question R. Hai and R. Naṭronai: His punishment is forty lashes, for doing it voluntarily; but for entering a doubtful unclean place, only *makkat mardut*. Flogging mentioned in the Torah is not in use today, only *makkat mardut*).

(10) Desecration of the Sabbath: Intentionally: TRI.32 (HQY: He must receive flogging and his hair must be shaved off). TRII.20 [Rav Naṭronai Gaon decides that he must be flogged (*yilqeh=malqut*) and his hair must be shaved off]. HLHI.122 (If someone transgresses the Sabbath limit, he must be flogged). ShT45 [Rav Hai Gaon: Someone who transgresses the Sabbath limit is liable to the death penalty of the *Bet Din*, therefore he can not be flogged; but today there are enactments on the basis of which he/she is flogged and shamed (מבזין אותו) so that the thing shall not be as allowed]. Unintentionally: GQII.2–3 (*Responsum* of Hai bar Nahshon: If a Jew is on a journey, and robbers come and want to kill him on the Sabbath, it is allowed to transgress the limit and flee; and he receives flogging and punishment; but if he knows that robbers are on the way, it is considered an intentional transgression, and he must be excommunicated and flogged three (the editor thinks that it is a scribal error, it must be thirteen) lashes. (מחרימין אותו בקהל בשמו כדי לרדות ישרי אחרים ומכין אותו שלש מלקיות). ShLB60 (R. Ḥananel quotes from a *responsum* of R. Hai Gaon: If someone inadvertently lights the candle on the Sabbath eve after the sunset, he must be flogged. If he lights it voluntarily, he must pay a fine. If he refuses to obey, he must

be excommunicated. His relatives are forbidden to speak with him; if they transgress, they will also be excommunicated until they repent.) Punishment on the Sabbath: ShT182 (*responsum* of Rav Palṭoi Gaon: If someone transgresses on the Sabbath or on a holiday, and the community is afraid that the offender will flee to the Gentiles, they must incarcerate him, but they are not allowed to flog him on the Sabbath).

(11) Denunciation: ShaZ 4.7.42 (Rav Palṭoi: The informer is disqualified from giving testimony, even if he only threatens to inform.)

(12) Apostasy: ShaZ 3.6.10 [Probably a *responsum* in the name of Rav Naṭronai B. Nehemiah (719–739) Gaon of Pumbedita (and not Naṭronai ben Hīlai), about an apostate who has claimed that he is the Messiah (called Serene, שריע); he has had many followers who have transgressed rabbinic commandments. The Gaon has been asked by an anonymous Jew whether these apostates must ritually immerse when they want to return to Judaism. The answer is that they must be flogged, rebuked, and fined, but they need no ritual immersion]. ShaZ 3.6.7 [A *responsum* in the name of Rav Naṭronai Gaon (in *responsum* RaDBaZ No. 2.796 quoted in the name of Rav Moshe Gaon; in *resp.* R. Yeshayah Trani No. 19 in the name of Rav Amram): Apostates who also transgress the commandments of the Torah, when they return, they must be flogged, but their children can not return in the same way. (This is the answer to the question whether these apostates must be circumcised (i.e. their children), ritually immersed, and punished (i.e. all of them), when they return)]. ShaTz 3.6.8 (An apostate *kohen* can not say the priestly benediction). ShaTz 3.6.8 [*Responsum* in the name of Rav Naṭronai Gaon of Sura, (ShaTz3.6.11 in the name of Rav Amram, in Ms. Ox. 844 no. 206 in the name of Rav Zemah): An apostate who returns to Judaism must be flogged, but needs no ritual immersion]. ShaTz3.6.15 [Rav Palṭoi Gaon (842–858) is asked the same question; according to the answer, he must neither be flogged nor ritually immersed, but for “making a fence” he can be flogged]. TshN p. 469 (The *get* of an apostate is valid). ShaZ 3.6.3 (Rav Hai Gaon answers that a slave who was circumcised and relapsed needs no ritual immersion for the second time, when he again becomes the slave of a Jew).

I.B. ShaZ 4.7.38, Assaf, העניין par. 7.

“*Responsum* of Rav Naṭronai Gaon: The flogging mentioned in the Torah is not in use today, only the *makkat mardut*¹⁷⁸⁴. The flogging mentioned in the Torah is 39 stripes, and the *makkat mardut* is not so¹⁷⁸⁵, but they flog him¹⁷⁸⁶ until he is willing to accept the decision or until he dies. And with what do they flog him? With a folded halter. And they do not count the blows, but all goes according to the estimation of the judges.”¹⁷⁸⁷

Assaf, העניין par. 8; HemG20; ShaZ 4.7.39 (= Collected *responsa* HM 375)

“[Q.] For him who is liable to the death penalty of the *Bet-din* – for example, murderer, or fornicator with a married woman or with a man – what is the punishment? [A.] We have been taught from Heaven in this way: he can not be punished by flogging, because he who is liable to the punishment of the *Bet Din* can not be flogged, [...] because his sin can not be atoned for by flogging.¹⁷⁸⁸ And also because we can not execute flogging today,¹⁷⁸⁹ which is certainly [a commandment] from the Torah [...] ‘And a calf strip is in his hands’, thus we have learned in the chapter *’Elu hen ha-loqin*¹⁷⁹⁰, and we have not seen or heard from any of our rabbis that they have seen this, or that in one of the four courts of justice in the two *yeshivot* they used to do this. But he can not be exempted totally. And in order that the thing shall not appear to be as allowed, they put him under a ban (*niddui*), chastise him, separate him from the community and flog him (*makkat mardut*) of the rabbis with a folded halter, and there is no need of assessment.”¹⁷⁹¹

¹⁷⁸⁴ Flogging for disobedience.

¹⁷⁸⁵ Not so precise.

¹⁷⁸⁶ The accused.

¹⁷⁸⁷ “*Shuda de-dayyne*”.

¹⁷⁸⁸ bMak. 13a–b: “This Mishnah [it should be noted] mentions instances of [a flogging for] such as incurred the penalty of *karet* [...], because if the offenders should betake themselves to repentance [before God], the Heavenly Tribunal would grant them remission”.

¹⁷⁸⁹ The reason is that if the executor flogged somebody to death, he could not flee to one of the cities of refuge, because there were no cities of refuge.

¹⁷⁹⁰ bMak. 22b.

¹⁷⁹¹ Which is a requirement before *malqut* according to the Torah; for if he can not bear the 39 stripes, they flog him less.

Tur HM 425

“[...] and Rav Naṭronai Gaon has written that today we do not have the authority to flog, exile, kill him¹⁷⁹² or to beat those who are liable to the capital punishment of the *Bet-din*, but we can excommunicate them [*menaddin ’oto*], give them the ‘rebel’s blow’ [*makkat mardut*], and separate them from the community. [...]”

“[...] There is a *responsum* from a Gaon about drunken Jew who has attacked his fellow Jew on Purim and killed him. And [the Gaon] has brooded over the thing a lot in order not to condemn the man as a murderer, and finally he has decided, ‘My fellows, do not encourage transgressors to wildly shoot arrows at their enemies, and afterwards say that they have done it unintentionally. [On the contrary], the court should flog the offenders and punish them in order to ‘make a fence’ [*le-migdar milta*] [...] because we do not introduce fines [*kansinan*] for individual cases, but for public needs and as emergency solutions.’”

OZI.112

“If nowadays somebody kills a man, we do not have the authority to punish him in any way; we are not empowered to kill him, or beat him, or exile him. But [the community members] must not communicate with him. And it is forbidden to pray with him, and also to look at his image; because it is forbidden to look at the image of the wicked.¹⁷⁹³ And he is disqualified from giving testimony.”

I.C. HP94

“*Responsum* of Rav Naṭronai Gaon: If someone comes on his own accord to the *bet din* and says, “I have killed a man, desecrated the Sabbath¹⁷⁹⁴, transgressed”, he/she will not be excommunicated (*niddui*), will not be flogged [according to the Torah], and will not be disqualified from giving testimony on the basis of his own testimony. What has been said, namely that “confession is like a hundred witnesses”,¹⁷⁹⁵ only refers to civil matters¹⁷⁹⁶, not to fines¹⁷⁹⁷, because the law declares that “Every man is considered his own relative, and nobody can incriminate himself¹⁷⁹⁸. But certainly, if one comes to the *bet din* and says, “I have desecrated the Sabbath, eaten *ḥallah*, had sexual intercourse with a *niddah*”, and asks for atonement, they will flog him in order that he shall make atonement for his sin, for he admitted his sins because he has repented.¹⁷⁹⁹ If the Sanctuary stood, he would bring something for sacrifice, and that would be an atonement for him. Now, because he has come to the *bet din*, they flog him and this is his atonement. Because the law is that flogging replaces death¹⁸⁰⁰. For what Raba has said, “no one can incriminate himself”, refers to the death penalty of the *Bet din*, and not to *keritot*.”

GMM 42

“Concerning what you asked that we have here violent men who disobey the court and do evil things: ‘Now there is a difficult time [here], the kingdom is cruel and strong, and we can not punish them [the disobedient ones]. Are we allowed to proclaim against them *niddui* and *herem*, mentioning their names, until they obey?’ [...] [Answer:] ‘We think that according to the law they must be put under *niddui*, and when they obey, they will be punished in the court by flogging.’”

II.A.3.3.

Liturgy of Accepting Fasting for Penitent, Ms. Vat. Rossiana Ebr. 356, 74a–81b

“He who wants to fast, must vow it on the previous day during the *Minḥa* prayer; he shall say, ‘Sovereign of the Universe, I am before you to be assiduous in fasting. May it be your will, God of my fathers, to receive it willingly as the burnt and peace-offerings sacrificed on the altar, and to deal with me compassionately’.

¹⁷⁹² To carry out the death penalty against him.

¹⁷⁹³ Meg. 28a.

¹⁷⁹⁴ In both places *ḥillalti Shabbat* is the expression used, although in the first place grave and voluntary sins are mentioned, whereas in the second place light and involuntary sins.

¹⁷⁹⁵ bKid. 65b.

¹⁷⁹⁶ Monetary matters.

¹⁷⁹⁷ For injury cases.

¹⁷⁹⁸ Sanh. 9b.

¹⁷⁹⁹ עשה תשובה

¹⁸⁰⁰ By *karet*; if someone has received flogging, he is exempted from *karet* punishment (mMak.3,1).

The prayer of the repentant: [...] Another prayer for the penitent: [the text of the HTRB] Another prayer for the penitent: [...]. This is the confession of his sins: [version of the *Viddui Gadol*] *Viddui*: [version of the *Viddui Qatan*] The following prayer is good to say after the *viddui*: ‘We transgressed the positive and negative commandments [...]’ Before he falls on his face in the *Raḥum ve-ḥannun*, he says the 51st Psalm, ‘when the prophet Nathan came to him’, and after he falls on his face, he says: ‘Unto thee, o Lord, I lift up my soul’, and after then he says: ‘May it be your will, o Lord, Supreme God, to turn the scale for me on the side of merit, and judge me to the side of merit.’ And after he stands up, he says, ‘Out of the depths have I cried to you’ (Psalms 130,1). End of the liturgy of the penitent, may the Lord receive us in repentance.”

II.A.3.4.

MH Ms. Parma 2410 fol. 15b

“[Gloss] There are such men, who are strict with themselves, go into the forests to the dens of lions, bears and leopards, and to places where wild animals [of prey] live, and deliver themselves as prey to the wild animals. They train themselves in being unafraid and unknown. In the night they go naked into the forest, shout, cry, their hands are full with whips, and flog themselves until they bleed.”

“[Gloss] All this for the forced converts, [who converted] because [of the fear] of death. But against those who enrage [God] deliberately to fulfill their desires, bow down before idols, despise the Torah of Moses, desecrate the Sabbath, swear [falsely], curse, have intercourse with Christian women, make transgressions punishable with *karet* or with the four death penalties of the *Bet-din*, eat and drink all kind of prohibited and unclean things, shall not the wrath of God flare up? Then if he wants to return in repentance, the offender shall subdue his heart in all things mentioned in connection with the forced converts. And the one who continued and sinned willfully, must be determined to suffer pains which are close to death as we said in connection with fornication with an engaged or married woman. In winter he shall lie naked in ice and snow for one or two hours, and in the days of summer, he shall sit among ants, flies or bees. He shall mortify his flesh with thorns and briars of the wilderness, flog himself, confess, regret, and cry because of his sin forever, night and day. He shall ask for forgiveness from the Creator with broken and humble heart, and return to God with all his heart and soul and strength, because God is forgiving and merciful, and likes repentance.”

II.A.4.1. Commentary on *Shi'ur Qomah* of R. Moshe b. Eleazar, Ms. Roma, Biblioteca Angelica Or. 46

“This book is called ‘The Book of the Divine Glory’ (*Sefer ha-Kavod*) and ‘The Book of the Divine Body’ (*Sefer ha-Qomah*); it concludes with the words ‘The Lord is the God’ seven times, therefore at many places there is a custom to say on Yom Kippur seven times ‘The Lord is the God’. R. Aqivah and his fellows stopped at this point, and when R. Trostlin the prophet came, he added the commentary on the names of the Prince of the Countenance called ‘The Book of the Countenance’. The book ends here.

He who deals with the book above, when completed it, shall say the following blessing [...] And a man shall come to holiness through these: through atonement, sanctity, purity, dress, bravery, righteousness, generosity, greatness, glory, abstinence, pain, fasting, ritual immersion, wisdom, understanding, worship, forgiveness, patience, faith and confidence.

Atonement (*kapparah*) – this is the first thing he has to do: he has to atone for his sins. Each man knows what he has done, and he always has to write down what he has done. He has to fast 40 days and 3 days consecutively. If he commits a grave sin, for example, he fornicates with a Gentile woman, or with a married woman or with a menstruating woman, or commits sins which are equal to these transgressions, can not be pure until he is exempt from his transgressions, as it is said, ‘Because on this day atonement shall be made for you to purify you from all your transgressions, and you shall be purified before God.’

In faith and purity – this is called holy, as is written ‘[And Hezekiah spoke encouragingly to all the Levites] who showed good skill in the service of the Lord’ (2Chron. 30,22) ‘[They were enrolled with all their little children, their wives, their sons and their daughters, the whole assembly] for they were faithful in purifying themselves’ (2Chron. 31,18). Purity, as is written, ‘and cleanse it, and consecrate it’ [Lev. 16,19]. Each fast needs ritual immersion; through ritual immersion one shall be holy, as is written, ‘Your camp must be holy, so that he will not see among you anything indecent’ [Deut. 23,15].

Dress – this means wearing sackcloth, as it is taught in a *baraita*, ‘the sack never should be empty’; so did the men of Niniveh when they wore sackcloth; so did our ancestors, and so did R. Judah he- Ḥasid, my grandfather, and so did my teacher, my grandfather z”l.

Bravery [...], righteousness [= charity], – he must give charity, on every fasting [day] with generosity [...], greatness [...], glory [...], abstinence, – he must withdraw from the world, that is to say from the customs of this world, and shall not deal with the vanities of this world [...].

Pain – he must afflict himself in eating. When he wants to eat, he shall not eat to be satisfied [...] Ritual immersion, – if he can, let him immerse three times a day. He must immerse in the first three days three times a

day at least, and do so in the last three days too; in all the [remaining days of the] 40 days once a day; after the 40 days he shall do everything as I said above, following the schedule given above. He shall not begin it if he cannot deal with. He must do all that, and he must withdraw from the world. Wisdom and understanding, [...] worship, [...] forgiveness, – he shall forgive all the world what they do to him [...] faith, patience and confidence, – he must believe and have confidence in God [...].

He shall not change anything in what I wrote; if he changes something, he will be punished. If he is not punished, his descendant will be punished; they will go down to destruction; or God will bring on him plagues. He must flog himself three times every day, and every time when he flogs himself he must confess and mention the following Divine Names: [...]

He must do all this alone and secretly, so that nobody shall know it, because in all that is known to the world, there is no success. There is proof for this in what happened to the Tablets because the first ones given through sounds were broken. [...] This is the rule: a man must always do complete penance, he must purify himself first; then he might think that he is clean. He shall fast as stated above; he shall not look at women, only at his wife, [11b] and he must sustain his fellow-----¹⁸⁰¹ with food and drink; he shall not eat meat, except when he himself slaughters and examines the animal; he shall not believe anyone except when he behaves in this way.

A man shall be careful to take himself a friend who is *hasid* [pious] in order not to stumble or to make the other one stumble. He must be careful at the time when he starts [studying the book] to have white clothes. Blessed is he who is waiting, who knows something about the holiness of his fathers, keeps everything as it is commanded, and keeps everything in his holiness.

He must be careful not to change the prayers of the whole year, because in them there are allusions to all above and below; they were written in the holy spirit. He shall not say one thing with the mouth and think something else; he shall not hear abominable and nasty things while he is studying this book; he may not deal with other things, with enchantments or with names [of magic spells] [...] He shall make a separate chest for this book, and shall not put in it other things except books, in order not to be punished by God who dwells in it for the desecration [of the Name]. Thus no fire, no water or other harmful thing shall have power over it. He must keep it in purity.

When a man wants to deal with it and wants to find a companion, he must put his fellow to the test through ten trials that are not known to his fellow. If both stand the test, they can go on, but if they fail in one out of ten trials, they shall not begin studying, because they are not likely to succeed. Yet, they must multiply the penances until they apparently atone [for all their sins]. If they put each other to the test through ten trials [that are not known except by the conceiver of the test], and they both stand all the trials, then they shall know that they are likely to succeed because God will help them.

After a man touches his wife in the bed, he must purify himself. He must rejoice in the worship of God and in His love, then he will merit the holy spirit.”

II.A.4.2. *Seder Pe'ulat ha-Yezira*, Ms. London BL 752

“One must fast 40 days continuously, ritually immerse on each day, also on the Sabbath. In the evenings he is allowed to eat only the bread of distress and drink the water of oppression. When he has completed the 40 days, he must fast three days continuously, without eating in the night either, and the third day he shall go to immerse during the day. He must sit immersed in the water up to his neck, and a small child must go with him, no more than three years. He must say in the water: I adjure you, “Zurtag”, in the name of the harmful angels, in the name of the angels of fear, in the name of the angels of the spring, in the name of all the angels around you, in the name of your master, in the name of Azbuga, in the name of the Great Seal, your master “Zurtak”, in the name of [---] “Zurtag” [...] in the name of your master the Lord [YHWH], the Lord [YHWH], the God of Israel, the king, the angel of angels [...] to take away the heart of stubbornness from me, take away the heart of stone from me, renew my heart in me, give me a new spirit; remove the evil inclination from my heart. Teach me the meanings of the Scripture, the Mishna, the secrets of the Talmud, Aggadah, Sifra, Sifre, Tosefta, Talmud, Aggadat and traditions. Let me know and understand everything my eyes can see and my heart wishes, and remember everything I learn, forever. Even after my death I may repeat everything before you, Lord, with good explications. Anything they will ask me, I may know and answer immediately; I may speak in a clear language, and be allowed to talk before the angels, before the princes, disciples, and masters. When I sit together with a disciple, you yourself may be with me, and tell me what is to be said about the Scripture, the Mishna, commentaries and Aggadat. In everything I wish to write, and in the commentaries you may teach me and be to my help in everything I wish. You may estrange the evil inclination from me, and teach me the whole Torah from *Aleph* to *Tav* so that I shall know as much as R. Aqiva does, so as to be able to teach. Take away the trash from me; remove the loathsome things from my heart so that I may be an adept before your

¹⁸⁰¹ Letters unreadable in the manuscript. See for conventional signs of the edition the end of the English introduction to the Appendix.

master, before whom you sit among the companions to whom you are the leader. So you sit in the middle of the companions to repeat them the *halakhot* which you have heard from the mouth of the Mighty One. You may teach me everything without pain, everything I wish to learn before you. If you do not do as I said, the Lord shall expel you from your place. If you believe me and go before your master to ask him, and return and speak to me immediately, I shall do everything as you wish and you shall receive authority from your master. If I am worthy, you shall teach me everything I said, and I shall never forget it. Amen Amen Amen Selah.”

II.A.4.3. *Sefer Minhag Tov*, Ms. Budapest, Kaufmann A89

“[...]”¹⁸⁰² [These are] from the customs of R. Eliyyahu the Elder, from the customs of my saintly masters. My soul instigated me to write a little about their customs in order that the Torah of the Lord might be in my mouth. I examined their words [...] what is written in the “Great Enlightener”¹⁸⁰³ in the third chapter in the 11th gate [...] [He will ascend towards] [...] the knowledge, wisdom, the true and faithful spirit, [...] the spirit of patience and forgiveness, the spirit of generosity, compassion, the spirit of [...] innocence in the fear of the Lord [*Shem*], the spirit of awareness, diligence, the spirit of cleanness [...] the spirit of sanctity, humbleness, the spirit of fearing sin, piety, abstinence. [...] He ascends near the holy spirit, adheres to it and becomes sublime. If the power of the body, which is the spirit of life [*nefesh*] [...] on the soul [*neshamah*], becomes strong, it draws the soul after itself, it draws all the mind, understanding, knowledge and wisdom towards the vanity of this world; it attracts the soul towards vanity; or it draws her away one step after the other from the spirit of God, towards the spirit of lie, treachery, the spirit of fornication, gluttony, towards the spirit of anger, vainglory, the spirit of jealousy, shame, grudging, the spirit of lie in the love of the Lord, the spirit of dizziness (Is. 19,14) and laziness, the spirit of abomination and carcass, the spirit of defilement and harshness, the spirit of desperation and looseness. The soul will descend to the evil spirit, and to this it will adhere and sink. Because when she cleaves to the holy spirit [*ruah ha-qodesh*] she comes close to the upper light one degree after the other on the ten degrees – unless she shall cleave to the evil spirit and shall depart one degree after the other from the upper light on the ten degrees – she shall cleave to ascension and depart from abyss; he shall leave a portion from the ration of the permitted and abstain by all kinds of abstinence.¹⁸⁰⁴ Behold, the index of the kinds of abstinence [...]

Sefer Tanya Rabbati, 172 sec. 81

“I found that there are places where people stand up at the dawn of Yom Kippur as on the other days of the supplications until the sun rises up. I also heard that there are places where people do not leave the synagogue in the night but say penitential prayers, supplications, and confessions all night long. We do not act in the same way. [...]”

II.B.1. Manslaughter and Murder Bazak’s Arguments

It is useful to sum up the four questions discussed by him and his answers on them, because these questions are relevant also in the sources discussed in this chapter. (1) Whether the *bet din* has the authority to judge criminal cases ‘nowadays’ (after the destruction of the Temple). The authority (*samkhut*) of the Jewish court to punish criminals is accepted on the basis of the principle of ‘making a fence’ (*le-migdar milta*). (2) Under what circumstances is the murderer not responsible for his deed? (In case of self-defense; if there are two murderers; if the murderer was drunk). (3) Evidence: if there are not two proper witnesses, or the culprit himself/herself confesses his/her sin (and there are no other witnesses). In case of murder insufficient evidence can be considered as ground for punishment, on the basis of ‘making a fence’. (4) The purpose of punishment in case of murder: (4.1) To make atonement for the sin committed; for the feelings of the criminal himself. But that is only the case when he himself asks for penance or punishment in order to clear himself by pain and mortifications, so it does not fall into the category of punishment by law, but it belongs to the religious field (according to Bazak). (4.2) To deter other possible criminals from committing sin; that is the *par excellence* purpose of punishment. The *bet din* is even authorized to execute the murderer if the generation is known to be evil, or if the murderer himself is known as murderous and evil (*mu’ad*), or if there is a fear that by not punishing with death, the sin of murder will be supported in the community. (4.3) To express the graveness of penalty (in

¹⁸⁰² The beginning of the manuscript is damaged, there are unreadable parts in it.

¹⁸⁰³ *Ha-ma’or ha-Gadol*, probably the title of a mystical book.

¹⁸⁰⁴ The introduction contains teachings related to the medieval Jewish neoplatonic schools, which formed also the basis for the *kabbalah*: the ten degrees of the ladder of ascension from the material world to the highest spiritual sphere, which is called ‘upper light’ and ‘holy spirit’.

proportion to the sin committed on the basis of the principle of justice). (4.4) To find mitigating and aggravating circumstances. (4.5) To gratify the feelings of revenge of the relatives.

SHP 175

“‘The first came forth ruddy’ (Gen 25,25), it teaches that he was destined to be a murderer (Ber. Rab. 63,8), (1 Sam. 16,12). So it is also written about David ‘ruddy’, and he asked for forgiveness that he was destined to kill the Gentiles.¹⁸⁰⁵ The murderer must be ‘vagrant and wanderer on the earth’ five years equal to the number of the times in which it is written ‘vagrant and wanderer’ ‘vagrant and wanderer’ ‘Nud’¹⁸⁰⁶. Another interpretation is: three years (Gen. 4,12) ‘you will be a vagrant and a wanderer’ (Gen. 4,14) ‘I will be a vagrant and a wanderer on the earth’, (Gen. 4,16) ‘and settled in the land of Nod’ [the land of Nud].¹⁸⁰⁷ It is written (2Sam. 21,1) ‘There was a famine during the reign of David three successive years’, and it is written (2Sam 21,1) ‘It is on account of Saul and his bloodstained house’.¹⁸⁰⁸ It is written (2Sam 13,34), ‘Meanwhile Absalom had fled’, for ‘you shall be vagrant and a wanderer a year on the earth’, (2Sam. 13,37) ‘and Absalom fled in the second year to another place’, for ‘I will be a vagrant and a wanderer on the earth’, and Absalom fled in the second year to another place, for ‘to the land of Nud’.¹⁸⁰⁹ [According to the interpretation of] him who says that five years [are the years of the exile], it is written (2 Sam 14,28), ‘And Absalom lived in Jerusalem two years and he did not see the face of the king’.¹⁸¹⁰ And [even] if the man [the murderer] has wife and small children, he must go into exile, as in these days.”

SHP 176

“There is a story about a man who killed a soul and then supported the heirs with food; he did not go into exile, but said, ‘I know that if I go among the Gentiles, I shall desecrate the Sabbath. And he prepared for himself an iron [belt] and girded his body, through which he was very much tormented, and [he also mortified himself with] fasts. They said that this kind of anguish was twice as terrible as the tortures of exile. And he did all this in order not to eat the bread of the Gentiles and not to desecrate the Sabbath. The murderer (Yeb. 25a) is not allowed to take the wife of the murdered person [...]”

SHP 177

“So that anyone who kills a person accidentally and unintentionally may flee there and find protection from the avenger of blood’ (Josh. 20,3). In the last letters of the last words there is an allusion to “the orphan” (*‘ha-yatom’*), and the last letters of the words in inverted order [form the word] “save” (*‘malat’*). [It teaches that] if the father killed, the orphans must be saved, his orphans [of the murderer], in order that he may not be punished quickly. There are men who do not live but in order that others may benefit from them.”

SHP 131

“Know and understand that anyone who kills a soul or does something bad to a man, is punished not only for one [single] person but for all who are grieving for him, as it is written (Gen. 42,22), “Now we must give an accounting also for his blood” (Ber. Rab. Par. 91) – “also” means that one must add the blood of the old man [Joseph’s father, Jacob] and of all who are grieving for him. Cain was punished for the blood of Abel, who

¹⁸⁰⁵ The sequence of interpretations of biblical verses in this paragraph reflects a deterministic view about both the offense of murder and its punishment. All biblical characters are presented as persons destined to be murderers. Their exile – of three or five years – as punishment is presented, as well, as divine imprecation, reflecting the deterministic view.

¹⁸⁰⁶ In this interpretation the words ‘*na*’ and ‘*nad*’ (each of them appear twice) and ‘*Nud*’ are counted, the result being five.

¹⁸⁰⁷ In this interpretation the sentences which contain ‘*na*’, ‘*nad*’ and ‘*Nud*’ are counted, the result being three.

¹⁸⁰⁸ According to this verse the three years of famine in the country are divine punishment for the bloodshed of the royal family, according to God’s answer to David. The verse comes to support the idea that punishment for murder is a decree by God.

¹⁸⁰⁹ In this interpretation the verses 2Sam. 13, 34 and 2Sam. 13,37 (‘Absalom had fled’, ‘and Absalom fled the second year to another place’) are interpreted as corresponding to the three years of exile which were deduced from the Gen. 4, 12, 4,14, and 4,16 for the three years of exile of Absalom, the place of his third year of exile being the place to which he fled in the second year.

¹⁸¹⁰ This interpretation counts the two years during which Absalom resided in Jerusalem and did not see the king to the years of exile.

was killed, (Sanh. 37a), for the blood of his descendants, for the blood of Adam and Eve, for the spirit which was placed in him, for the image of God, and for the world which was created for the sake of man. Therefore (Gen. 4,15) “[Therefore whosoever slayeth Cain] vengeance shall be taken on him sevenfold”. Behold, he who kills a soul is as though he destroyed the whole world¹⁸¹¹ and all who in the future would be¹⁸¹², and he destroyed also all who are grieving for him. He who causes pain, will be punished for all the pain of those who are grieving for him”

SHP 1673

“Behold, someone followed his fellow man with a drawn sword; the pursued one hid himself and the pursuer did not find him. Someone else wanted to seize another one, not in order to kill him but only to cut off his hand or one of his members on which life does not depend, and he did actually cut one of his members. Now do know that in the world to come according to the [law] of Heaven, he who wanted to kill will be punished more severely than the other one who cut the member of his fellow man. Not about this it was said (Kid. 39b) “the evil intent is not counted to the deed”¹⁸¹³, because this one pursued who the other man was determined to kill him.”

SHP 172

“Women were suspected of eating their children. Some [Torah-] students said: (Sanh. 79a) ‘The stubborn and rebellious son is killed because in the future he will kill human beings, thus also these ones’. The sage said to them: ‘The Jews are not in their [own] land [to judge criminal law]. There are women who do this against their will, and there are some who [indeed] do magic. You shall do this instead: proclaim it in the synagogue when the suspected ones are also present, and take care that if any of the children are harmed by them, you should smash their teeth with the stones from around the well, and the guilty ones will die in that hour, for it is written (Ez. 13,21), ‘I will [...] save my people from your hands, and they will no longer fall prey to your power.’”.

SHP 173

“It is written (2 Kings 11,1) “She [Athaliah] began to kill the whole royal family”. One [woman] wanted to have a husband, but the man said, ‘I don’t want to marry her’ because she had many children. So she took the hands of her sons and placed on the graves of the dead, and the dead called her sons [to go] after them, and her sons died [too]. Like the one, if someone had married her (despite her many children), her children would have been saved from what she did after the man had not been willing to marry her. [...]”

SHP 174

“A baby cried in the night, and people felt and knew that a woman did that to him. The mother of the baby said to the sage: “Behold, my son cries, because a woman bewitched him, I can heal him, and he will not cry anymore, and the malady will return onto the first child [of that woman]. [The sage] said to her: ‘Even if the mother transgressed, the child did not transgress.’”

SHP 1287

“[...] There is a story about a woman who washed her two sons, and one of them drowned the other one. So the mother swore not to wash her sons [any more]. Later she circumcised her son [*ba’alat brit*] and washed [her son] and she died. [...]”

HTR 23

“Murderer: if a man hits his fellow and kills a soul, whether man or woman, or kills a child, shall go into exile for three years; he must be flogged in each town, and say ‘I am a murderer’. He is not allowed to eat

¹⁸¹¹ Sanh. 37a: “All those who destroy one soul from the Jews, it will be considered for him as though he destroyed the whole world.”

¹⁸¹² See BQ 119a: “But because he killed Nov the city of the priests, who have supplied for them water and food, the Scripture equals it as thou he had killed them.”

¹⁸¹³ “The Holy One, blessed be He, does not combine an evil thought with an [evil] act”. That is, for punishment, i. e., one is not punished for mere intention.

meat, drink wine, shave his beard and hair, wash his clothes and his body, except for his beard once in a month. He shall tie his hand, with which he killed around his neck with a chain [**], go barefoot, cry about his murder, fast on each day until he ends his exile. Then he must fast for one year on Mondays and Thursdays, although he fasted for three years every day. He shall not harm anybody; he shall be silent with everybody; if the people say to him, “Murderer!”, he shall not quarrel with them, but keep silence. He is not permitted to go to rejoicings in those three years. When people come out of the synagogue, he shall lie down before doorway, and people shall pass over him and not tread upon him. He shall honor his wife and everybody; he shall confess each day.[*]”

Orhot Ḥayyim, Berlin 1902, II. 26–27, translation from Soloveitchik, “Halakhah”, 102

“There are those who forbid [such slaughtering] ... and what Saul did, he did contrary to the opinion of the Sages. [Signed] R. S. son of R. Abraham, known as Uchmann. Once there was a rabbi [or teacher] who slaughtered many children in time of persecution because he was afraid that they would be baptized. And there was another Rabbi [or teacher] with him who got angry and called him a ‘murderer’, but he ignored [his words]. And the angry rabbi [or teacher] said, ‘If I am right, he [the slaughterer] will die a horrible death. And so it happened. The Gentiles seized him, and first they flayed his flesh and then put sand between his skin and his flesh. The persecution came to an end. If he had not killed the children, they could have been saved.’”

Semaq of Zürich¹⁸¹⁴, Jerusalem 1973, no. 6 pp. 57–58, Soloveitchik, translation from “Halakhah”, 104

“The holy ones who slaughtered themselves and their children when they came to be tested, for they did not rely on their inner fortitude [*al da‘atan*] [...] and they were afraid that the Gentiles would force them to apostatize and that they would thereby desecrate the Name of God, they all have a share in the world to come and they are fully martyrs (*qedoshim gemurim*) [...] and from here they find support in time of persecution to slaughter children who do not know the right from the wrong, for we fear lest they be assimilated among the Gentiles becoming Gentiles and it is ‘preferable that they die virtuous rather than die as sinners.’”

II.B.2. Adultery, Fornication SHP 62

“In the tractate Mo‘ed Qatan¹⁸¹⁵ R. Ḥananel comments, “God forbid that R. Ilai the Elder has permitted transgression. Instead he said, ‘If you see that your evil inclination is overcoming you in eating and drinking and in all kinds of revelry and you are afraid of getting drunken and transgressing’, he has allowed you to go to another place and take on black clothes. All this in order to subdue your evil inclination.” Because the guestholder’s heart will be broken. As it is said¹⁸¹⁶: ‘A dog which is out of its home territory will not bite.’ After you do so, your heart will be broken, and it will be that you yourself have withheld yourself. But transgressing or even drinking wine with all kinds of songs which lead to joy, are forbidden, and how many other things which are graver sins. This happens when you can not subdue your evil inclination¹⁸¹⁷: take that Talmud student whose reputation was objectionable. He drank and [sang] all kinds of songs, as it is explained there. And he did as R. Ilai [said]. Because if you think that he did this [to] transgress [there], R. Judah would require to excommunicate him, or something the like. This means that he did not transgress. Despite this, for a Talmud student there is desecration of the Name in this¹⁸¹⁸. In the [tractate] Pesahim¹⁸¹⁹ it is explained.”

HT

“[...] [Fornication] with an unmarried *niddah* which is punishable by *karet*: TM: In proportion to the pleasure enjoyed in kissing and touching, he has to fast for forty days at least, he shall not eat meat and drink wine the night before and after the fast, and shall mortify himself in lying [on the flour], day and night, to achieve pain equal with the desire, and delight enjoyed. TK: He shall lie on the hard ground, or on a board, shall wear black clothes, fast and flog himself no less than forty days, confess three times a day in anguish and tears, and shall not rejoice. With [...] a married woman which is punished with strangulation [...]: TM: He must cause himself pain proportional to his pleasure with her; he is not allowed to eat meat and drink wine for a whole year,

¹⁸¹⁴ By Moses of Zürich.

¹⁸¹⁵ MK 17a. See: Tosaf. s. v. דא, and Rashi s. v. מה, in the name of R. Hai Gaon.

¹⁸¹⁶ Eruv. 61a.

¹⁸¹⁷ MK 17a.

¹⁸¹⁸ *Hillul ha-Shem*, even in drinking and revelry.

¹⁸¹⁹ Pesahim 49a.

except on the Sabbaths, holidays and Purim; he is not allowed to eat warm food, either, to wash himself except on the Sabbath and holidays a little, to see rejoicing, except on the occasions of engagement in the time of blessing, to embellish himself with anything. He shall flog himself each day, lie on a board without pillow, only on the Sabbath and holiday on hay and straw, with a pillow under his head. He shall deny his animal nature in which there is the graveness of the desire, and live the life of pains, with a sackcloth on his body; shall not speak about the things of desire, coveting, kissing, touching, love, delight and deliciousness; TK: He who has sexual intercourse with a married woman which is punished by death, shall suffer pain as terrible as death: he shall sit in ice or snow once or twice a day for an hour, and in summer among flies, ants or bees, and shall suffer pains as terrible as death.¹⁸²⁰ [...] He who has intercourse with a Christian woman: must fast and flog himself in order not to be tied to her in the permanent fire [of the *Gehinnom*]. He is not allowed to eat meat, drink wine, to wash himself at least for forty days until the wrath of God turns away from him. If he has intercourse with a Gentile maidservant, he shall fast on MT, and is prohibited from washing himself for forty days. [...] ¹⁸²¹ He who kisses, embraces or touches women without lying with them, must fast MTM [...] He who has intercourse with his *niddah* wife shall fast for forty days continuously, flog himself each day, and is not allowed to eat meat, drink wine, eat warm food, and wash himself in those days. If a man has intercourse with a prohibited relation or with his *niddah* wife, shall sit in cold icy water for the time of the cooking of an egg, shall fast no less than three days, and no more than forty days; every day he shall confess his sin whether he fasts or not. If he embraces or kisses his *niddah* wife [...] he shall fast and confess. [...]"

DT

“And this is the penance for him who has intercourse with a married woman: in winter he shall sit in ice or snow once or twice a day, naked, or three times up to his navel, while he can read the first *parasha* from the *Shema*. [...] In summer he shall sit twice a day among stinging ants, which are called ‘un maisen’ [‘Ameisen’ – German], while he can read the *parasha* from the *Shema* carefully, three times a day [...] He shall receive flogging, [...] and shall not wear colorful clothes [...] He who has intercourse with a Christian woman must fast and flog himself, lest he will be tied to her like a dog in the *Gehinnom* [...] If she does not bear a child, he shall fast daily for a year, [...] and is not allowed to wash himself at least for forty days [...] If she bears a child from him, he shall fast daily for two years even if he is mutilated or has physical disability [...] He must receive flogging¹⁸²², because he troubled the Holy One, blessed be He, to create a bastard from a foul-smelling drop; he must torture himself in lying; if people rebuke [for] his smelly deed, he must justify the punishment. [...] He who entices a virgin who is not engaged, and lies with her, if she is a minor, the enticement is violation and he is liable to the death penalty. If she is an adult girl or from a defiled [*halla*] or maidservant, and she is judged as enchanted, this is his penance: he must be flogged¹⁸²³ three times a day; shall fast for a whole year, lie on the ground, wear sack near his flesh for a year, let his beard grow, and confess every day for the evil done. He who has intercourse with a widow who has not ritually immersed, is liable to *karet*; must be flogged three times¹⁸²⁴; shall fast one year MT, must multiply the supplications, wear sackcloth near his flesh, and confess his sin of having intercourse with a *niddah*. If she has ritually immersed, he must be flogged once, and he shall fast forty fasts. This is also the penance for having intercourse with an unmarried girl or a divorced or a widow. [...]"

Bruna 226

“I have heard a clear testimony about a married woman who once committed adultery, wanted to do penance, and went to Mahrzak in Twerk. He commanded her to uncover her head, take off the skullcap and

¹⁸²⁰ In HTRB Ms. Jer. 621 fol. 22a there is a gloss: “And he who deserves the punishment of strangulation, must pray that the Holy One, blessed be He, shall bring on him heavy [disease] of boils, as it is written (Job. 7,15) ‘So that I prefer strangling and death rather than this’.”

¹⁸²¹ Gloss in Ms. Wien–Warsaw 204 (Italian writing, 15th century), which is on the basis of the RJH, word by word from “but if he sins a second time with a Christian woman” to “and if he heals and does not return to his sin, it is also good”. At the end of the source it is mentioned: “I found it in an old booklet [*Mazati be-qunteres yashan*]” In HTRB Ms. Jer. 621 fol. 22a there is a gloss (similar to the RJH): “[...] three days continuously, that he shall eat neither during the day nor during the night, and he must act like that for three years, once a year, and the proof is from Esther, that she did so [fasted three days and nights continuously], for she sinned while having sexual relation with a Gentile [...]” [Reference to the Book of Esther 4,16, with the midrashic interpretation that she transgressed with a Gentile. See above].

¹⁸²² Or must flog himself.

¹⁸²³ Or must flog himself (*yilqeh*).

¹⁸²⁴ Or must flog himself.

veils, dishevel her hair, as an adulteress¹⁸²⁵. Then he ordered for his wife: ‘When this adulteress enters the winter house¹⁸²⁶, you shall say to her this, in these words (in German): ‘Come, you shameless woman, you adulteress, you adulterous married woman, do you want to do it?’ She must answer: ‘I am a shameless woman, I am an adulteress, I want to do penance for my sin.’ Then he commanded her to sit in cold water until her body became weak, then they took her out from the water, and set her among pillows and quilts to warm her up; and [he ordered for her] also fasts and self-mortification.”

Weil 12

“I shall return to my previous words: we can not aggravate the sufferings for her as her punishment would be, out of the above mentioned reasons, because her sin¹⁸²⁷ is greater than she could bear. She committed two sins: adultery several times while she was a *niddah*, and she gave birth to an illegitimate child. Even if she had not committed adultery but only once, and even if she had not been a *niddah*, and even if she had not given birth to an illegitimate child, her punishment would be to sit in ice and snow, and in summer among flies etc. as R. Eleazar the author of the Roqeah and R. Juda Ḥasid prescribes. Because she had intercourse while she was a *niddah*, she must fast for forty days at least, even if she did not transgress more than once. The Ramban states: ‘He who has intercourse with a *niddah* must fast for 365 days, beyond the other torments which they prescribed.’ If we prescribed [penances] for each and every transgression, we would never end [the list of penances]. Behold, I shall write you my modest opinion: because the thing is known to all, she must confess her sin publicly, as it is written ‘he who covers his sin shall not succeed’¹⁸²⁸. In the chapter of *Yom Kippurim*, R. Judah said, this is the sin known [= sins which have become notorious]¹⁸²⁹. She must go to the synagogue of women and say: ‘I transgressed against God, blessed be He, I have done so and so, I regret my sin, I am ashamed of it, and I would like to do penance’, and all this in German. She must do that in two or three communities, i.e. in Ulm, Augsburg, and Pappenheim, in the places where she has sinned. She must take off her jewels; she is not permitted to put on any ornaments; she shall wear black clothes as a mourner; she is not allowed to cover herself with veil, only with a worn-out, shabby sheet; her hair covered with her cloak as a mourner, belted only with a rope, as an adulteress, as it is written about the *soṭa*. In the synagogue she shall sit apart, far away from the other women as a mourner. She shall not lie in a bed, but on a board or on the ground, and only a pillow shall be under her head. She shall confess in weeping and sighing, and say explicitly her sin three times every day, once after each prayer. This is to be done for a full year, at least. She shall fast for 365 days continuously; she is not allowed to eat meat and drink wine during her fast. In that 365 days on Sabbaths, festivals, first days of the months, and on the days of Nissan she may not fast. On those days, she is not allowed to drink wine and eat meat, either, except on the Sabbaths and holidays, when she may drink a little wine and eat a little meat. In those 365 days she is not allowed to wash her head, except once a month, and to wash herself, except before festivals a little. And in winter she shall sit naked in cold water or snow for about a quarter of an hour twice a week, on Monday and Thursday. In summer she shall sit naked, in the same way, among flies, bees or flees. In the ten days of *teshuvah* she shall fast three days and three nights continuously, and thus after the tenth of Ṭvet, and thus between 17th of Tammuz and 9th of Av. In those 365 days she shall stay away from men, she may not speak with them, only if necessary, and she is not allowed to see a man, nor the clothes of a man. After 365 days she shall fast two years or three, MT. She is not allowed to eat meat and drink wine the night after the fast. She shall stay away, as far as possible, from men all her life, she must confess every day, after the 365 days, for two years or three; she shall wear less jewels all her life. All her life she shall do penance and mortify herself as much as she can.”

Mintz 98a

“Concerning what you have asked: ‘Whether the man who had intercourse with the unmarried adult girl after that she had reached the age of the *niddah*, and came to receive penance, can be considered as one who certainly had intercourse with the *niddah* and must receive penance as one who had intercourse with the *niddah*, or maybe not [...] Even he who marries a woman in purity, as the religion of Moses and Israel requires, must ask

¹⁸²⁵ As it is written about the *soṭa*.

¹⁸²⁶ *Bet ha- ḥoref*.

¹⁸²⁷ Gen. 4,13.

¹⁸²⁸ Prov. 28,13.

¹⁸²⁹ bYoma 86b: ‘Rav Judah said: Rav pointed out the following contradictions. It is written: Happy is he whose transgression is covered [= forgiven], whose sin is pardoned (Ps. 32,1); and it is written: He that covers his transgression shall not prosper? (Prov. 28,13; hiding, not making it public by confession) This is no difficulty, one speaks of sins that have become known [to the public], the other of such as did not become known.’ Certain sins, such as have become notorious, one ought to confess publicly, secret sins one need confess to none but God.

her whether she has kept the seven pure days, before he touches her, as it is in the laws of the *niddah*; because the mind of the woman is easy, even if she is supposed to be clean, and [is supposed to be] immersed. Especially he who fornicates with a [girl or] woman must ask her whether she has immersed or not. But even this may not help, [because] she is not to be trusted, being loose. He had better not start an affair with a *safeq niddah* [doubtful unclean] because of the impurity of *niddah*. Maybe he did not ask her whether she had immersed or not, therefore I think that he must do penance. [...]"

II.B.3. Injury OZ PBQ 161

"R. Jeremiah complains about his son-in-law that he is always beating his daughter, and that he disgraces her by undoing her hair, not as the Jewish law [requires it]. [...] You shall punish him severely, either in his body or in his property because of his transgression. He must make great atonement [= penance]. You shall deal severely with him, according to what you think that he can bear [...] If he does not keep the peace and continues to hit and disgrace his wife, we will agree with you to excommunicate him, in the lower and the upper court¹⁸³⁰, and you can compel him by the power of the Gentiles to give her *get*. [...] Simḥa of Speyer."

Maharam Prague 383

"Concerning Simon who seized the throat of a man, took out his knife and said: 'I will crush your skull', I don't know what to say. The truth is that he did a great abomination, and although in these days we do not collect fines for injuries, there is a custom in every community to enact great decrees and "fences" [for guarding the Torah, to punish beating], as the case requires it. [...] If he were in our place, we would surely flog him. [...]"

Isserlein PuK 210¹⁸³¹

„Thus shall he do: he shall go on the day of Torah-reading when the Torah scroll is still on the *bimah* from his place to the place of R. Eliezer on the way before the Holy Ark; the leaders of the community [*tove ha-qahal*] shall go there, and he shall say to R. Eliezer: 'Eliezer, I have sinned against the God of Israel, and against you, because I have desecrated the synagogue and the holy *mizvot*; I have also transgressed what the Torah warns against: to hit and injure the fellow man. Therefore I ask for forgiveness from the God of Israel and from you, because I regret what I have done.' I estimate the fee for the physician at half of measure. R. Gershom shall give R. Eliezer two gold coins, and R. Eliezer shall give the two gold coins, with the knowledge of two trustworthy men, to the honor of the synagogue in Gratz, to a *mizvah* he wants, because they are only as fine required to fortify "the fence" [around the Torah], as I explained it above. That is [also] why I do not require anything of him for '*shevet*', because that is not settled, as the fee due to the physician, a known sum that R. Eliezer must pay. "

Weil 28

"[...] The insulted one, Ruben accused Simon of having humiliated him by hitting him on the head and wounding him so much that the blood had poured down from his forehead onto his face. The witness, R. Israel testified that he had seen Simon hitting Ruben on the head, and the blood pouring down from Ruben's forehead onto his face and chin. [...] On the day of Torah reading, he shall go to the *bimah* after the reading, and say in these words, loudly: 'I sinned against the Lord, the God of Israel, and against the so and so Ruben, and I multiplied my sins, when I hit Ruben with the wood on the head until his blood poured down from his forehead unto his chin. I have sinned, transgressed, committed crime, and now I ask the Name, may He be blessed, to forgive me, and I also ask Ruben to forgive me.' Then, on the same day, between *Minḥa* and *Ma'ariv*, before he says *Ve-Hu rahum*, he shall be flogged in the synagogue. Thus it is to be understood from the *Orah Hayyim* that he must be flogged between *Minḥa* and *Ma'ariv*, in order that he may say *Ve-Hu rahum* after flogging. He shall also give money, so that his sin may be atoned for [...] After Simon has fulfilled all the above requirements, he shall be admitted among those qualified for testimony and oath. What I wrote about giving a silver coin holds good if in your country there is no custom [of punishing] violent persons who hit their fellow-men. But if there is a custom, you shall do accordingly [...]"

¹⁸³⁰ In the earthly court and in the Heavenly court.

¹⁸³¹ See quotation from this *responsum* also below in II.B.15 (desecration of the synagogue).

Colon 154

“[...] Concerning R. Asher Yaz Kaz whose cries have reached me, about all that was done to him in Verona. [Firstly,] about the beating when he was hit repeatedly in the synagogue until his blood fell to the ground; they tore his *tallit* and *tefillin*, and the blood poured out on the *maḥzor* from which he was praying, as have been told. Now, what shall we say? Shall this blood be welcome or shall it go up as the good fragrance of the incense [*reah niḥoaḥ*]? We shall leave that now, because that is a crooked thing which can not be straightened until the Day of Judgment comes [...]”

Minz 93a¹⁸³²

“[93a] [...] An ill fame spread about Simon, in the matter of the beatings [...] Therefore I shall put on Simon *teshuvah* as he himself has asked; then he shall take the oath and he is exempted. But we must aggravate the *teshuvah* on him, because he did not regret his sin before, and did not ask for penance, only now, because of fear and the claim of Lea, as I explained. [93b] I ordered the following penance for Simon: [...] There are four kinds of penance: TB, TG, TM, TK. I shall explain them shortly [...] You must know: because you raised your hand [against your fellow Jew], you are called an evil-doer, even if you had not hit him; all the more so since you hit and wounded him. In the tractate Sanhedrin, in chapter ‘*Arba mitot*’, it is said: ‘he who hits the jaw of his fellow-man is as though he hit the *Shekhinah*, Rav Ḥuna says that his hand shall be cut off, because it is written: ‘the raised arm shall be cut off’.’ In the *Sefer Ḥasidim* there is a story about a Jew who hits his fellow-man and regrets it, and puts his arm into a hollow and breaks it, for it is written ‘and the raised arm shall be broken’.¹⁸³³ He who regrets his sin and is remorseful can not make atonement until he appeases his fellow-man. Then he shall regret [his sin] in the same degree as he sinned. That needs no further explanation, because it does not belong here, since the offended one is already appeased. His punishment is easy to explain: he who beats his fellow transgresses a negative commandment, as it is written ‘[but he must not give him] more than forty lashes. I he is flogged more than that [your brother will be degraded in your eyes]’.¹⁸³⁴ Therefore, he who shows regret and wants to do penance shall receive flogging as mentioned above. Before flogging he shall confess and say, ‘Hear, my sirs, etc.’ as mentioned above. After that he shall receive the flogging. Because there is a little transgression in raising of the hand, and he would receive flogging for the false oath anyway, all is to be taken in one flogging, as I shall explain it below with the aid of God. Therefore, you shall fast for a full week from Sabbath to Sabbath, and these are six days; all those days you shall confess in the morning and in the evening as explained above. You shall refrain yourself from raising your hand against a Jew for ever. [...] And now I order the [text of the] confession; be careful to confess with a perfect heart and with contrition, otherwise you shall do as the one who ritually immerses and the abomination is in his hand. And thus shall he say [...]’¹⁸³⁵.”

II.B.4. Theft SHP 22 = 632

“It is written, ‘Be warned, my son, of anything in addition to them’ (Qoh. 12,12). The sages said, ‘If somebody robs one out of five persons, and he does not know which of them he has robbed, according to the law of the Heaven there could be no remedy for him unless he pays each one of them for the misappropriated article’ (BQ 103b)¹⁸³⁶. It is written, ‘he shall return what he had robbed by robbery’ (Lev. 5,23 = Lev. 6,4). Why is it written ‘robbed’ in addition to the ‘robbery’? [It means:] If he returns the robbed thing on the day when he steals it, he does not have to pay in addition. But if he does not return it that week, month or year, he must add to the robbed thing according to what the robbed person would profit from it in the meantime. The robbed person shall tell [the amount due to pay in addition], since he can estimate to what extent he would profit from that stolen thing from the day he is robbed until he gets it back. Besides, he shall also assess the pain [caused by the loss], though that is not commanded by the Torah. But in order to fulfill the law of Heaven, it is mandatory to also count the pain. Because, behold, (BQ 83b) ‘one who injures his fellow man becomes liable to him for five items’, the ‘degradation’ is the distress. And in that case he must know how much the pain of the robbed person is. Because there could be one who has a hundred pounds, and he does not care about the pound which is stolen from him, and another one, who has a thousand pounds, and he is sorry for the stolen one pound more than he

¹⁸³² See quotation from this *responsum* below, in II.B.3, in connection with perjury.

¹⁸³³ SHP 631, above.

¹⁸³⁴ Deut. 25,3. R. Minz prescribes the offender the biblical flogging, which is to be performed within the frame of the public ritual in the synagogue.

¹⁸³⁵ Here follows the text of the confession.

¹⁸³⁶ In BQ 103b the opinion of R. Aqivah (versus that of R. Ṭarfon), and in BQ 103b not ‘according to the law of Heaven’.

who has less. There could be one who has little, and he is robbed, and he suffers by that, since he lacks food and drink. Because before he was robbed, he had eaten and drunk and rejoiced and dressed [richly], and now he suffers. All these must be considered by the robber, [and also] the pain of the relatives, the lack of delightful things; and he must give them in proportion to the damage he caused, and in accordance with the [person] of those whom he robbed [...]"

SHP 632

"[...] As it is said¹⁸³⁷ "all is to be estimated in accordance with the status of the offender and the offended one", [regarding the] pay[ing of] the money. And [he is also required] to do penance by afflicting his body: he shall fast for one or two months, as the laws of the mortification [require]. The money which has remained for him – even if it is from his troublesome work – he shall not receive; he must even add from his own, in accordance with the pleasures which he has enjoyed from the sum; the self-mortifications [must also be] commensurate with the pleasures. [Then] about him is said¹⁸³⁸ "the intended evil deeds will be attributed to him as merits". Although the Rabbis [do not] mention [explicitly] the significance of that penance, that is what those who do not want to be called to judgment¹⁸³⁹ may do: [already] in this world they shall receive punishment and revenge, because they [thus] receive by themselves all the mortifications which are decreed on them by Heaven.

But on him who robs many people, although he has repented in the ways we wrote, the Holy One brings afflictions as he deserves, because many people have asked for revenge on him.

He [who does penance on his own accord] shall receive a reward instead of the punishments which are decreed for him from Heaven, because, since he has received by himself the mortifications and penances which we have prescribed, he is no more bound to receive them from Heaven. It is written (Jer. 30,11) "and I will not let you go entirely unpunished" – [this means that] sometimes I will let you go unpunished, sometimes I will not let you go unpunished."

SHP 1418

"He who eats from the *terumah* inadvertently must pay the principal and a fifth part, and he who steals voluntarily must not pay [the fifth part], only the principal. If the robber were due to pay more than he steals, he would never repent. If one eats the *terumah* inadvertently, the Holy One knows that if he knew [that he eats the *terumah*], he would not transgress, therefore He will forgive him by the *qorban* (sacrifice) and the [principal with the] fifth [part], so that in the future he should guard himself and should not eat from the money [of the *terumah*] of the *kohanim*."

II.B.6. Slander SHP 91

"Ruben has slandered about a righteous man, and in this way he has desecrated the Name, because people believe [the slander]. If Ruben comes and asks for forgiveness from Simon, and Simon pardons him, Ruben must say¹⁸⁴⁰ 'I have said lies about him'. If those who have heard [the slander] have already gone to a faraway land, there is no pardon for Ruben at all. It is good that [Simon] has pardoned him, instead of quickly taking revenge on him.

He who speaks good things of a wicked person, and says about the fraudulent man that he is trustworthy, and people believe the slanderer, [then] the slanderer denies his previous words, it is as though he had stolen from people, because he has praised a fraudulent person [...]"

HTR 16

"[...] In the '*Torat Kohanim*' (*Sifra*) for slander [the divine punishment] of the disease of boils [comes upon the transgressor]. Miriam, who spoke [i.e. slandered] not before Moses [was hit by disease of boils]; he who speaks about his fellow slanderer in his presence, all the more [receives the divine punishment]. Be careful of the disease of the leper, (Deut. 24) 'remember what the Lord your God did to Miriam'! He¹⁸⁴¹ must fast and flog [himself] for every transgression, all the more for the sins punishable by the four kinds of death penalty of the

¹⁸³⁷ BQ 83b.

¹⁸³⁸ Yoma 86b.

¹⁸³⁹ I.e. in the world to come.

¹⁸⁴⁰ I.e. publicly proclaim.

¹⁸⁴¹ I.e., the slanderer.

Bet-din and *karet*, all the more for the vain oath [or mentioning God's Name in vain], all the more for the desecration of the Name [...]"

II.B.7. Arson ***Or Zarua* II. *Sanh.* No. 23–24**

“‘Certain gravediggers etc’¹⁸⁴² [...] And they think [...] ‘it is allowed to desecrate the Festival for the sake of *mizvah*, and we shall remain in excommunication for the sake of atonement.’ There are some [Rabbis] who argue from that¹⁸⁴³ that during the Sabbath nights it is allowed to extinguish the fire¹⁸⁴⁴. Then they decree fast, charity or flogging; then they return [and desecrate the Sabbath by extinguishing the conflagration] again and receive again the punishment [i.e. penance], because they think that they are doing a *mizvah* so that the Gentiles shall not come and kill the Jews. However, I have written in the *Hilkhot Shabbat* that because now we are living among the Gentiles, and there is danger of death, we shall not prescribe any punishment.”

II.B.8. Contempt of Court **Talmudic Law Concerning Contempt of Court**

According to the Talmud, the cursing of the judge is a scriptural prohibition (Ex. 22,27 and 22,8; and Mekh. to this verse; Sanh. 66a, the *Elohim* being interpreted as human judges). Cursing is punishable by flogging, cursing a judge, by double flogging, but the person must be warned beforehand. Insulting a judge or court could be punished by *herem* and *makkat mardut*. In Talmudic times, the administrative, not the judicial officers were the main targets of contempt (in words and violence). Detailed rules were worked out to facilitate the perilous tasks of court messengers to serve summonses and to execute judgments (BQ 112b–113a). The standard punishment of insulting court messengers is *niddui*, after three prior warnings; but admonitory lashes were also administered (‘he shall be beaten until his soul departs’ Ket. 86b) not only for insulting process servers (Kid. 12b, 70b) but also for failure to pay judgment debts (Ket. 86a–b). In post-Talmudic times obedience was enforced by admonitory lashes (Rosh 8.2; 11.4). This was applied when previous public admonitions, exclusion from religious and civic honors, the disqualification of suing and testifying, *niddui* were of no avail (R. M. Minz 38, 39, 101).

Paragraphs in SHP, HTR and IT concerning ban and those sinners who have no share in the words to come

There are other paragraphs in SHP, HTR and IT in which transgressors of ban are mentioned together with those categories of sinners who have no share in the world to come and those from whom the repentance is not accepted. These are those who “lead others to sin: and who “separate themselves from the community”. But while these are already known categories from the Talmud, in SHP they have a special meaning, which is due to the communal organization of the Jews in the time of SHP and their relation to the Gentile authorities. Like the ban, also these grave transgressions express the need of the loyalty of the members to community interests and the interdependence of all the members. In SHP 198 the specific sin of leading others to conversion is discussed. In this case an extreme opinion is expressed by SHP. The notion of the sin of “leading others to sin” (the source of the punishment of losing the world to come being in the Sanhedrin chapter 10) is wider than simply teaching in an erroneous way. It is connected in SHP and HTR with the special sin of the individuals of the community which harm all the community, and especially the sin of the leaders of the community, who betrayed their function as being elected for the representation of the interests of the whole community, and betrayed by this the whole community (to the Gentiles – king, ruler, citizens, bishop, noblemen – in tax matters, court litigations of monetary matters etc.). This is called in the other sources “informer” or “betrayers”. Those who “separate themselves from the community” has also a special meaning: the individuals who seek exemptions first of all in tax matters from the Gentiles and cause harm by this to all the community who has to carry their monetary burdens also.

II.B.9. Perjury **SHP 1314**

“[...] If a judge sees that two Jews are coming to the *bet-din*, and he feels and realizes that one of them is falsely accusing the other one, knowing about his fellow that he will give him what he wants, (before) [instead

¹⁸⁴² bSanh. 26b.

¹⁸⁴³ From bSanh. 26b.

¹⁸⁴⁴ I.e. conflagration.

of] swearing even truly, and that fellow is known to be righteous and trustworthy, the judge shall discern whether the accusation is justified; and if he knows that he [the wicked one, the accuser] will not repent, the judge shall accept to be taken from the *zaddik* and given to the wicked one [...] ¹⁸⁴⁵”

SHP 1397

“A Jew has been falsely accused by the Gentiles. They have said, ‘You have done so and so to us!’. He has been required to swear that he had not. He has sworn truly. He has said to the sage, ‘I regret, that I have sworn, although it has been true what I have sworn. I have been forced to swear against my will, so that they should not kill me. But my father and mother have never sworn, even on the truth!’. The sage said to him, ‘If you want your sin to be atoned for, you must take it upon yourself not to mention the Name of Heavens, either by swearing on the truth, or in vain, either in the language of the Gentiles [*lo‘az*], or in any other language, as people are accustomed to say, ‘Thus may God help me!’; and you shall never say thus unless you read a [biblical] verse. You shall also not have any trade or deal, except if you can believe without swearing, in order not to be forced to swear.’”

SHP 1403

“Old sages have been asked, ‘In a town, some Jews and Jewesses have been taken captive [by the Gentiles], and [the Christians] have compelled them to work on the Sabbath. Some [Christians] have pressed them to eat *un-kosher* food, and the Jews have not been able to flee, since they have been guarded. They have asked the Gentiles to allow them to leave for a certain time. The Gentiles have said to them, ‘Take an oath on the Ten Commandments that you will return until a certain time!’

Others have said, ‘In a town, there a Jew has been held captive. [The Christians] have closed him in a chamber. In that chamber there has only been *un-kosher* food, and although [the Christians] have not forced him to eat un-kosher food, they have given him no *kosher* food. When the Jew has realized that he is going to die, he has eaten the forbidden food in order to recover and save his life. He has said to the Gentiles, ‘Let me leave to gather the money which I owe you, so that I can ransom myself!’ They have said to him, ‘Swear on the Ten Commandments that you will return until a certain time.’ He has sworn. Is it allowed to break the oath in order not to eat forbidden things?’ ¹⁸⁴⁶

The sage has said that it is not allowed, because perjury would be a willful [sin] and [it would be] the desecration of the Name, whereas eating forbidden food is allowed in order to save one’s life.”

Weil 123

“Because of the sin of the mouth and the words of the lips of Weibs of München, who has sworn falsely before the caretakers in Regensburg concerning property [taxes], I have been asked to examine his case and ask him to do penance for his sin. He, humbly and broken-heartedly, repents of the sin committed by his hands. The sages have said, ‘he who comes to be purified will be supported (Yoma 38a). Therefore, I have prayed for him, and have looked to find a remedy and cure for him, in order to return him to his status and righteousness, and so that those who err should learn from his case. It is said in the chapter *Shevuat ha-dayyanim*, ‘The whole world trembled in the hour when the Holy One, blessed be He, said, ‘You shall not swear [in vain]’. The sages have considered the vain oath a grave sin. Roqeah writes, ‘Perjury is as grave as though he had denied God etc.’ Therefore, I say that he must receive flogging in the synagogue in the evening before *Ve-hu-rahum*, three times, on Monday, Thursday and Monday. After flogging, he must publicly confess in German, ‘I have sworn falsely concerning my property I have sinned, transgressed, committed crime; I shall never return to that way; I have received flogging, because I have sinned’. In the chapter *Gid ha-nasheh*, Or Zarua writes in connection with [that penance imposed on] ¹⁸⁴⁷ the ritual slaughterer at whom fat of abomination has been found [that he has been punished in this way,] although his sin has certainly been an involuntary and not a very grave transgression. One can not say the contrary and claim that there [in the case of the ritual slaughterer] he has caused many people to transgress, and that is why his punishment has been so great. We have explained [in the case of the ritual slaughterer] that it has not been a willful sin, all the same, it is not as grave an offence as vain oath. Consequently, I am of the opinion that here we must decide stringently, at least as stringently as in that case. Also because his sin has been public, and has entailed the desecration of the Name, so we are not allowed to decide leniently. Roqeah also writes: ‘He must be flogged several times, and he must fast continuously for forty days, except on the Sabbaths, New Moons and holidays; when he ends the forty days, he must also fast according

¹⁸⁴⁵ In order to prevent the wicked one from committing perjury.

¹⁸⁴⁶ The question referred to the case when the Gentiles will not release him after returning.

¹⁸⁴⁷ I.e. public flogging three times, MTM, in the synagogue, and public confession.

to the number of the Sabbaths, New Moons and holidays of the forty-day fasting period; then he must fast a whole year on Mondays and Thursdays. If he can not bear the pain of the fasts after the forty days, he must give money to charity and suffer other pains, as the sages of his town impose on him. He must refrain himself from swearing for the rest of his life, even on the truth, even in German etc. as it is in the Roqeah. If there are no other witnesses to his perjury, except the caretakers or other members of the community, he is not disqualified from taking an oath, since all of them are involved. They have fined him for their own benefit, and added [the fine] to the confessed sum, that is to say, for all of them have benefited from his repentance. That needs no further inspection. Even if he confesses, [he will not be legally disqualified,] because one can not incriminate himself, and simply because there are no other witnesses than those from the community. Even before he has completed his penance, he is not disqualified from giving testimony if there are no witnesses, except those from the community. The little, Jacob Weil has said.

Remark [gloss]: *Haggahot Asheri*, chapter *Zeh Borer*, [contradicts that decision], according to which one who falsely swears regarding an amount of money does not regain his legal status until we see clearly his repentance from perjury through giving a considerable sum of money, as the slaughterer has done, from whose hands *terefah* has come out [in bSanh. 25a] etc. See there.”

R. Isserlein PuK 214

“[...] As to the Jew who has been found to swear falsely concerning property [taxes], and has been required to pay fines to the citizens, to the duke and the [Gentile] judges, and on behalf of the community, you have arrived at a compromise, as I have noticed it in the copy of the writ in German that you have sent me. Now, you are in doubt whether you are entitled to let him sit together with the leaders of the community [*tove ha-qahal*], when they are [in the council] to decide about the needs of the community, to “make a fence” [around the Torah, *le-migdar milta*], to judge community and individual matters, since you certainly know that he has sworn falsely and has not done penance before God. [On the other hand, you do not know whether] you transgress the writ in German, which has been agreed by you all, if you prevent him from sitting in the community council.¹⁸⁴⁸ [Answer] [...] It is obvious to you that he has sworn falsely due to the desire for money, so he is worse than a thief or robber [...] Although the writ is bound by ban and oath by all of (them) [you], there is a warning according to the Torah [against perjurers] not to allow them to sit together with the community. The bans and oaths, [on the other hand], are only valid concerning voluntary acts. All the more so since there is no formal agreement [*qinyan suddar*] [regarding the writ] which would be binding [upon you]. [...]”

Minz 93¹⁸⁴⁹

“[...] For the above reasons, I think that Simon can not be disqualified from taking an oath [according to the Torah], only from swearing a rabbinic oath. Lea can only required of Simon to take a rabbinic oath. And although people speak ill of Simon on account of that beating and the desecration of the Sabbath by carrying to the public space, Rav Sheshet has said must receive forty [lashes] on his shoulders’ and he will be qualified for taking an oath.¹⁸⁵⁰ And they flog because of ill fame.¹⁸⁵¹ Anyhow, in this case we must be careful. Even if we disqualified Simon, he would be exempted, as I have explained, because only a rabbinic oath is required of him. We can not decree a “regulation” to abolish another “regulation”¹⁸⁵². So, Lea has no means to disqualify him [...] Therefore, I impose *teshuvah* on Simon, as he himself has asked, and then he will take the oath and will be exempted. [See above]

And now you, ‘son of man’, hear¹⁸⁵³: The prohibition of swearing [falsely] is severe, perjury is a great transgressions liable to *karet* and to the death penalty of the *Bet-din*; the world trembled when the Holy One, blessed be He’ said, ‘o not swear falsely etc’. Thus, because you have sworn falsely, by which you have totally transgressed a negative commandment, you must receive flogging. Before flogging, you must publicly confess and say, ‘Hear, gentlemen, I have transgressed against God, may His Name be blessed, for I have sworn falsely,

¹⁸⁴⁸ A writ about mutual trust and support of the council members.

¹⁸⁴⁹ See quotation from this *responsum* above, in II.B.3, in connection with beating.

¹⁸⁵⁰ If he receives the punishment, the offender will be no longer legally disqualified. Therefore, in both instances, Lea can not disqualify him.

¹⁸⁵¹ Flogging can be administered in case of ill fame.

¹⁸⁵² The rabbinic oath concerning the pledge required of Simon is a “regulation”, because there are no other means to prove the truth. Lea has tried to disqualify Simon for his transgressions as an evil-doer, which would be another regulation, since there have been no proper witnesses for his sins. Lea has wanted to use the “regulation” of disqualification in order to abolish the requirement of swearing a rabbinic oath, which was a “regulation”. That is to say, she tried to abolish a “regulation” with a “regulation”, which is not accepted.

¹⁸⁵³ R. Minz addresses the penitent, Simon.

so and so. I am ashamed, I regret my sin with perfect contrition, and accept to do penance'. Then he must receive flogging¹⁸⁵⁴. You must fast for forty days continuously, confess twice a day, in the morning and in the evening. You must refrain from swearing and taking vows for the rest of your life, even from swearing on the truth [see above]. Now I shall prescribe the text of the confession [see above].”

Colon 166

“(a) Concerning the case of Ruben who has sworn to his father not to marry a woman without his permission. Before swearing, he had said before witnesses that he intended to annul the oath [probably, if the father did not consent to his marriage, but he had taken the oath], sbecause he was afraid that his father would not allow him to go to a certain place if he refused to swear. [...] I think that the behavior of the father can not be an excuse for annulling the oath afterwards [...] (b) You must also know, that [the oath of the son] is not considered a extorted oath [...] (c) As to your doubts whether the father is entitled to protest against the woman [...]. I think that if she is a proper woman, the father has no right to protest [...].”

Weil 172

“[...] I remember when I poured water on the hands of Maharil, sega”l z”l, in Mainz, a man called R. Isaac of Salzburg, the son-in-law of R. Sanderman of Halle, came. He had taken an oath to divorce his wife and regretted it. Mahari sega”l did not want to absolve him from his oath. So [R. Isaac] went to Nürnberg to Maharaz Katz z”l, and he absolved him from his oath. I have wondered why Mahari decided with stringently in a case that is not a prohibition according to the Torah, even not a Talmudic one, only an enactment of the Gaons [...]

[My decision is that] the punishment for a Jew who does not care about the honor of his Creator, but rebels against Him and is disobedient to Him, by taking publicly a vain oath, is flogging for disobedience [*makkat mardut*], as the Rambam writes. If that man wants to give compensation [*kofer*], then instead of flogging compensation must be imposed on him, as you think it proper, and considering what that man is [...] That money must be given to the caretakers of the community, and distributed among the poor and Torah students. He shall also accept to fast, according to what you deem necessary and what kind of man he is.”

PuK 62

„[...] Concerning the minor who cursed his father in his childhood, when he was eleven year old, and at the same time testified falsely against an innocent Jew, saying that he had stolen, and now wants to do penance for [those transgressions]. I think that a minor does not punishable, and can not be warned [not to commit sin], even if he reached school age. [...] Therefore, I think that it will be acceptable if he receives a kind of penance. I usually do not prescribe *mishqal* penance [self-mortification in proportion to the pleasure enjoyed in sin]. But R. Weibs is worthy to prescribe [*mishqal* penance], and [the penitent] must do according to his prescription. And also [the offender] who has transgressed his oath not to gamble must receive penance according to [R. Weibs'] prescription. [...] Says the insignificant, the young one in Israel.¹⁸⁵⁵”

II.B.10. Transgression of a Vow The Vow of the Woman and Its Release

According to Talmudic law, the vow of a married woman is only valid if the husband does not annul it when he hears it.¹⁸⁵⁶ The vow can be annulled (*hafarah*) by her husband on the day when he hears it, and if he does not annul it on that day, he can not annul it later. If the husband annuls the vow, the sage can not allow her to fulfill it. But if the husband approves the vow of her wife on the day when he hears of it, or even if he keeps silent (which is equal with approval, although maybe he would like to protest), then there is a discussion in medieval commentaries whether the sage can release (*hattarah*) the vow after the approval of the husband in case the woman (or the husband) asks for release. In other cases, for men, divorced women or widows, vows can be released by a sage or three laymen if there is a basis for the release (for example, he/she has not known about the difficulties connected to the fulfillment of the vow etc.).

¹⁸⁵⁴ This sentence is in the third person singular.

¹⁸⁵⁵ R. Israel Isserlein.

¹⁸⁵⁶ Num. 30,4–17. In bNed. 81a–84a self-imposed ascetic vows are discussed, such as abstinence from food, washing oneself, wearing certain clothes and sexual relations. Any vow, be it a dedication (*neder hekdesh*) or promise of prohibition or deprivation (*neder issar*) can, if the promiser regrets it, be declared void by an ordained rabbi or by three un-ordained men (*hedyot*).

On the basis of five *responsa* of the 15th century, which will be discussed below, and the main topic of which is the release of the vow of a woman,¹⁸⁵⁷ it is obvious that this was a real problem at that time. At two places – in a remark of a further (sixth) *responsum* of R. Isserlein about the problem whether one can divorce her wife who vows frequently and does not fulfill her vows¹⁸⁵⁸; and in a *responsum* of R. M. Minz about the release of vows to go to the Holy Land¹⁸⁵⁹ – it is explicitly stated that people in those days used to vow frequently and did not always fulfill their vows, since they were “light-headed in vowing”¹⁸⁶⁰. For that reason, R. M. Minz used to impose fasting, self-mortification or abstinence, fines and charity as penance, if someone asked him for the release of a vow. R. Bruna decided that for the release of a vow to go on pilgrimage to the Holy Land it was enough to give charity equal with the expenses of the journey, and one did not necessarily have to go into exile, which was the regular penance imposed for the release of a vow of pilgrimage (either to the Holy Land or to graves in Europe).¹⁸⁶¹ From the above mentioned *responsum* of R. Isserlein, it is clear that for the husband the fact that his wife often vowed and an failed to fulfill her vows meant a real and grave problem and reason for divorce, because he believed, according to the *responsum*, that they had no children because of the transgression of his wife. The rabbis faced the problem of the release of vows quite often. It is also obvious that they repeatedly hesitated whether there were sufficient grounds for their release. Therefore, they decided to release them by imposing penance, the measure of which was deliberated in each case by the rabbi.

Concerning the vow of a woman the question was whether the sage could release it after the approval or silence of the husband on the day when he learnt of the vow of his wife. The woman, in any case, was bound to give an acceptable reason for the release, but even in this case, there were two different opinions related to the release by the sage: according to the first one, the sage could not release vows that were approved by the husband or vows if the husband learnt of the vow of his wife and kept silent. According to the second opinion, the sage could release vows that were approved by the husband or were not protested. From the Talmud, it is not obvious whether the second opinion had any legal basis, but according to the *responsa* of R. M. Minz and R. Colon, this was the custom in the Middle Ages, and the rabbis proceeded in this way: the husband asked the sage for the release of his approval, and the sage nullified his confirmation; then the woman also asked for the release of her vow, which was done in the same way as in the case men, widows and divorced women, that is to say, on acceptable grounds which is acceptable and through regret (*petah ve- harata*).

According to the *responsa* of the 15th century, the basis for the positive and negative decisions concerning the question of the possibility of the release of a vow taken by a married woman after the confirmation of the husband is two commentaries in *Sefer Mordehai*¹⁸⁶². In *Sefer Mordehai* to tractate *Gittin*¹⁸⁶³, the decision of Ri (Ha-Zaken, Isaac of Dampierre) is quoted: it is the husband’s right to annul the vow, and if he does not annul it on the day when he hears of it, the sage can not release it for his wife. In *Mordehai Ketubbot*¹⁸⁶⁴, on the other hand, the author clearly states that the sage can release the vow of the woman at any time, because his authority is greater than that of the husband, for he releases the vow “from its root”¹⁸⁶⁵. But the different cases of confirmation, silence or annulment of the husband, and the questions related to the authority of the sage to release such vows are not discussed separately.

The basis for the negative decision of *Mordehai* is *Tos. Ned. 79a*, where it is decided that a vow can only be asked to be released only on the day when the husband hears of them. Ri has decided on the basis of *Sifre* (explained below).

The positive decision of *Sefer Mordehai* to *Ketubbot* makes use of the commentary of Rashi, and argues that he has explained in bNed. 69a, 79a and Yev. 25a that the sage can release the vow of a woman at any time, even after the confirmation of the husband. The sage can not release it unless the wife provides a proper ground for the release. R. Eliezer of Metz has decided in the same way in bNed. 79a (viz. that the sage can release the vow of the woman even if the husband confirms it). The Rosh¹⁸⁶⁶ and the *Tur*¹⁸⁶⁷ have decided similarly.

The question whether the sage can release the vow of fasting of a married woman if the husband confirms her vow is mentioned in a *responsum* of R. J. Weil’s.¹⁸⁶⁸ In fact, the question concerns the following

¹⁸⁵⁷ R. J. Weil 15, R. Israel Isserlein ThD 279, R. M. Minz 18 and 111, R. Colon 50.

¹⁸⁵⁸ PuK 628.

¹⁸⁵⁹ Minz 79.

¹⁸⁶⁰ Minz 79.

¹⁸⁶¹ Bruna 77.

¹⁸⁶² And in some *responsa* a third one from *Mordehai* Austria. See below the discussion of the last three *responsa*.

¹⁸⁶³ Par. 376.

¹⁸⁶⁴ Par. 196.

¹⁸⁶⁵ And does not only “annul” it as the husband.

¹⁸⁶⁶ *Piske ha-Rosh, Nedarim*.

¹⁸⁶⁷ *Yoreh De’a Nedarim* 234.

¹⁸⁶⁸ Weil 15.

problem: if she does not exclude the Sabbaths from her vow, only the festivals, and wants also to be exempted from fasting on the Sabbaths, must she be absolved from her vow concerning Sabbaths? The answer to the question is given on the basis of a practical decision,¹⁸⁶⁹ which R. J. Weil learnt from his teacher, R. Mollin in Mainz when he was a student in his academy: R. Mollin ruled that the vow of a married woman had to be released before three laymen. R. Weil mentions that in the *Tur Yoreh De'ah* there is a controversy about the question. The controversy regards the problem whether the rule of R. Aqiva – that a vow released partly is released entirely – can be applied to vows (including more than one prohibitions), which are released before an ordained rabbi or un-ordained court of three laymen, or only to the vows of error, which need no release¹⁸⁷⁰. The answer can also be deduced also from the *Tur*, but R. J. Weil decides on the basis of what he has learnt from his teacher, and mentions that there are rabbis who do not think that such vows should be released by three laymen. Therefore, he adds that in this case the release must only include the Sabbaths, which have not been mentioned in the vow (and not the festivals, which have been excluded from her vow).

The second part of R. Weil's *responsum* concerns the problem of the right of a sage or of three laymen to release the vow of a married woman, and R. Weil decides that they can release her vow even if her husband is out of town.¹⁸⁷¹ But he categorically maintains that if the husband approves the vow, it can not be released. He also quotes the Mordehai *Ketubbot* regarding permission, in which it is stated that the sage has the authority to release vows, even after the approval of the husband: and he adds his own explanation to the words of Mordehai: that is to say, "even if she has a husband"¹⁸⁷². However, R. Weil decides that if the husband confirms the vow, the sage can not release it.

The question whether a vow of self-mortification of a woman after the approval of her husband can be released is discussed by R. Isserlein as well. Contrary to R. Weil, R. Israel Isserlein discusses in detail the two contradictory opinions, above all on the basis of the two contradictory decisions of Mordehai, and arrives at the conclusion that the decision in the *Ketubbot* is the one on which there one can rely. A sage can release the vow of a married woman after the day the husband hears of and consents to the vow. However, he is of the opinion that one must take account of the opinion of the *Tosafot* as well. But he does not discuss in detail the way in which the release is to be performed.¹⁸⁷³

The *responsa* of R. M. Minz (18 and 111) and R. Colon (50) show the most elaborate phases of the discussion on the question; for two reasons: (1) firstly, two of the *responsa* (Minz 18 and Colon 50) quote a text of Mordehai Austria's¹⁸⁷⁴ to Sabbath *Kirah*, in which there is a clear argumentation in favor of the release of vows by a sage (that is only mentioned in Minz 18, and discussed in detail by R. Colon), (2) secondly, all three *responsa* make reference to "practical decisions" (*halakha le-ma'ase*) of rabbis and to the "custom" how to release such vows, which form the basis of their decisions.

The question in the first *responsum* of R. Minz¹⁸⁷⁵ is how a vow of a woman can be released by the sage after the husband learns of it. The man who sends the question to R. Minz is well aware of the contradiction between the decisions in *Mordehai Sabbath* and *Ketubbot*, on the one hand, and *Mordehai Gittin*, on the other hand, and explicitly asks the "custom" regarding that law from the *halakhic* authority, R. Moses Minz.

In Minz 111, the same question is answered by the respondent to another man – by making reference to the previous answer also – in detail. The decision, however, is not based on rabbi Minz's argumentation, but explained on the basis of the custom. It is in accordance with what we also know from the answer of R. Colon: first the sage releases the approval of the husband and nullifies it; then on the basis of the presented reasons and regret, he releases the vow of the woman at her request.¹⁸⁷⁶

¹⁸⁶⁹ *Halakha le-ma'ase*.

¹⁸⁷⁰ See note below.

¹⁸⁷¹ Differently from the custom mentioned by R. M. Minz and R. J. Colon, namely, that first the husband must ask for the release of his approval or silence and then the woman must ask for the release of her vow, if the husband has approved the vow or kept silent (see below). But it seems that R. J. Weil considers the release of the vow valid only if the husband does not annul nor confirm the vow. In this case, even if the husband is out of, the rabbi or court can release it for the woman.

¹⁸⁷² Weil 15.

¹⁸⁷³ Isserlein ThD 279.

¹⁸⁷⁴ There are two main recensions of the *Sefer Mordehai*, "*Mordehai of Rhine*" and "*Mordehai Austria*". The printed version in the standard editions of the Talmud is on the basis of the *Sefer Mordehai Rhine*.

¹⁸⁷⁵ Minz 18.

¹⁸⁷⁶ On the basis of the explanation of bNed. 82b–83a of R. M. Minz, this means that if the husband hears or knows of her vow, but does not annul it immediately, and she drinks wine on the same day and defiles herself with the dead, and after that, on the same day, the husband annuls her vow of *nazir*, the vow is not valid, and she does not have to receive the forty lashes for the transgression of a negative commandment. But if he does not know about, and learns of it after her transgression, and annuls it, she is still liable.

The most elaborate and clearly argued answer can be found in the *responsum* of R. Colon 50 about the release of the vow of a woman related to abstinence, after the silence of the husband.

According to another question, asked from R. Israel Isserlein, the husband wants to divorce his wife, because she vows and does not fulfill her vows. He asks whether he can divorce her, since this is one of the cases in which he can divorce her without giving her the price of the *ketubbah* (Ket. 72a); but the woman claims that she vows and does not fulfill her vows because they have no children. R. Isserlein answers that, she really must fulfill her vows, and the wonder will happen in that way. But he makes it clear that even if she transgresses, and although these days people make vows irresponsibly, one must well examine the case for a decision to divorce her without *ketubbah*; and what is more, to punish her by other punishments. He argues that Rosh has also decided in a case, in which the wife has eaten meat with milk, not to divorce her without *ketubbah*.¹⁸⁷⁷

Maharam Lvov 164

“[...] my friend, Elyakim! You must know that I greatly wonder at people who vow [to go on pilgrimage] to the graves, because it resembles necromancy. We only find about Qaleb that he has prostrated on the graves of the fathers (Soṭa 34b). That means that he has prayed to God, and the holy place has caused that his prayer has been accepted. As we also find it about Abraham, ‘to the place in which he stood’ [Ex. 3,5], which means that the place causes [i.e. brings about miracles]. Or we often find that type of man who disgraces a dead person, and then in his honor he prostrates on his grave (Hagigah 22b). But I don’t know why women and men who do not know that go to those places. And I usually release vows for anyone who comes to me with the intention of doing penance [concerning vows]; and he/she must give the expenses of the journey and the value of his/her effort to charity, and then he/she will be saved from crying. Ḥayyim Palṭiel, the worm [= insignificant].”

Mintz 79¹⁸⁷⁸

“Concerning your question whether we can release vows taken in times of trouble to go on pilgrimage to the Holy Land, I think that there are two questions here. The first is whether we can release a vow to go on pilgrimage from an un-clean land to the Holy Land. That belongs in the category of vows which can be released. Regarding the second question – namely, whether it can be released because it is a vow taken in times of trouble – I have already written my answer above.¹⁸⁷⁹ [...] Therefore, I think that we can release such vows, because these days the roads are unsafe, and there is almost always danger of death and of property for one who goes on pilgrimage. There are many misfortunes; for example, there have been persons who have been killed by sword, etc. [And also because even] those [Jews] who do not have much property, have many expenses without profit or incomings, and can not give money to charity, and maybe he [who has taken a vow of pilgrimage] will be compelled to ask for the aid of others. [...]

And concerning your question: ‘When I was a child I heard that great rabbis released such vows and required [of the Jew who asked for the release of his vow] to give [from his property an amount of money] equal to the expenses [of pilgrimage] to a *mizvah*’. It is true that it is a widespread custom, and I myself have been many times with rabbis [in *bet dins* that have released vows by imposing charity as penance for the annulment]. And the same is the custom for those who vow to go to the graves of the ancestors or to the graves of righteous and saintly men [in Ashkenaz], and can not fulfill their vows because of the dangers on the roads or because they are too weak for the pilgrimage: [the rabbis] release for them by requiring of them to give to charity for a *mizvah*. And that is even better than fulfilling the vow, since there are rabbis who have opposed the custom [of going on pilgrimage to the graves in Europe] and have called it ‘necromancy’. [...] But to require of those who ask for the release of their vows of pilgrimage to the Holy Land to give to charity, is not reasonable, because [in this vow] there is nothing from ‘necromancy’. [...]

[However,] I say that because the generation makes vows rashly, and they ask for the release of their vows easily; and they are not ashamed of running to the sage to release their vows, and their mouth easily says *Selah* and, ‘I don’t care if I vow, I shall go to the sage to release it for me’; and there are many people who do that; therefore, I usually do not absolve the vow for either an unlearned man or a householder until he gives a little from his property for a *mizvah* according to his property and the nature of the vow. And sometimes I also impose self-mortification on them, according to the case. And I also threaten them not to continue that way, I tell them something about the punishment for [breaking of] vows and oaths, and he who fears God will hear and take it to his heart. And if there is one person out of thousand who hears the rebuke, it is enough, and I will receive a reward for the explanation and for preventing him from sin, with the aid of the Rock, blessed be He. [...]

¹⁸⁷⁷ Isserlein PuK 68.

¹⁸⁷⁸ See also II.C.8 (pilgrimage) for translation from this *responsum*.

¹⁸⁷⁹ That they can be released as well.

“All those who have had the intention to perform a *mizvah* and have not succeed are considered as though they had performed it. [...] Therefore, those Jews who have had the intention to enter the Holy Land and have been prevented from continuing [their journey, or have died] on the way, are considered as though they had entered the Holy Land. [...] I have heard of a man who has vowed to go on pilgrimage to the Holy Land, and has changed his mind because of his old age and the dangers [on the roads]. He has gone to a rabbi, and has asked him to release his vow. Many rabbis have hesitated to release his vow, because, in their opinion, he has not done well by asking for the release of his vow. I do not know why they hesitated [...], because it is not graver than other vows. We usually release it if there is a reason for it and regret [*petah ve- harata*]. [...]

[...] If he becomes sick on the way [and can not fulfill his vow], he can ask for the release [of the vow], and [make atonement] by giving the expenses of the journey to Jerusalem to the poor of Jerusalem. Because at the end of the chapter *Ha-gozel qammah* (BQ 111a)¹⁸⁸¹ it is taught that the money atones for the half of the sin committed.¹⁸⁸² And if it is so, *galut* atones for the half of the sin committed (Sanh. 37b) and money atones for the half of the sin committed, and they can release his vow. And I have heard that they release [the vows] of those who have vowed to go on pilgrimage to the graves of the forefathers [and can not fulfill their vows], by giving money to charity [as atonement], even without exile. That is what I think, Israel Bruna. And in the *responsum* of the Rosh, I have also seen that such vows can be released.”

II.B.11. Ritual Slaughterer, Un-Kosher Food HTR 22

“[...] He who transgresses at a meal that is not a *mizvah*, by drinking like a son who is “a glutton and a drunkard” [*ben zolel u-sove'*]¹⁸⁸³, shall refrain from doing it again, and is only allowed to attend a meal that is a *mizvah*. He should not get used to drinking wine and beverages, and should only drink at his own table with his household. He should not delight in eating all kinds of delicious foods, and must reduce the portion size of food and drink for the sake of his Creator, (Avot 6,4) ‘Eat bread with salt, drink water in small measure, sleep on the ground, live a life of deprivation and toil in the Torah’, and you will not stumble.”¹⁸⁸⁴

MH Ms Parma 2999 fol. 58a

“If [a Jew] eats carcass or pork, he transgresses a negative commandment every time he eats. If he eats milk with meat in the house of a Gentile, he is liable to *karet*. But if young boys sin in the same way, their transgression must be judged more leniently. He who [eats these prohibited things] must fast twice a year for forty days: once in the summer and once in the winter. He is forbidden to eat meat during the whole year, except during New Moons, Hanukkah, Purim, Sabbaths, festivals, and events such as engagements or a circumcision. He must receive flogging in proportion to the times he eats. If he eats unintentionally, he must fast on Monday and Thursday and give eight *dinars* to charity. He who gives his fellow Jew prohibited food to eat, or sells it to him, saying that it is *kasher*, or carcass, saying that it is ritually slaughtered, must fast twice a year for forty days; must be publicly flogged once a month, and is not allowed to trade with that thing for one year, or until [the rabbi, community] sees that he mends his ways.”

Knowledge of the ritual slaughterers in medieval Ashkenaz

Concerning what the real professional knowledge of the ritual slaughterers was in medieval Ashkenaz, we can only learn from some indirect references. In the answer of R. Mollin 194, it is stated that an unbeliever is accepted to be a ritual slaughterer, but an apostate is not. This alludes to the possibility that at that time there were apostate slaughterers. About their professional knowledge we can learn from one of R. Isserlein’s *responsa* in PuK 177. (For translation, see further) R. Isserlein answers R. Eleazar in connection with the complaint of R. Eleazar who has enacted certain decrees regarding the requirement for ritual slaughterers to learn the laws of slaughtering. R. Eleazar’s complaint highlights the low level of their professional knowledge. The decree enacted by R. Eleazar have been disregarded by Ashkenazi Jewish ritual slaughterers. R. Eleazar asks whether their

¹⁸⁸⁰ See also II.C.8 for translation from this *responsum*.

¹⁸⁸¹ In case of restitution by a robber.

¹⁸⁸² And the *asham* sacrifice also for the half, in the case of robber. Exile (*galut*) is therefore considered by R. Bruna as means of atonement instead of the *asham* sacrifice. That exile atones for half of the sin committed is derived from Sanh. 37b.

¹⁸⁸³ Deut. 21,20; Sanh. 71a.

¹⁸⁸⁴ Avot 6,4; HTR 22; MH.

slaughter is to be declared un-kosher. R. Isserlein's answer is that their slaughter does not need to be declared un-kosher just because they do not fulfill the requirement related to learning the laws of ritual slaughter properly. They have been supposed to be trustful slaughterers. In Colon 33, R. Colon discusses the procedure by which a slaughterer can be disqualified. (For translation, see further, App. II.B.11.) According to his answer, one witness is not enough to disqualify a suspected ritual slaughterer. But if the suspected ritual slaughterer errs several times, it is advisable to remove him definitely. Moreover, if the ritual slaughterer sells un-kosher meat, he must be publicly punished in order to "make a fence". His transgression is not like other men's who sell un-kosher meat. (Colon 40. This decision is in accordance with the decision of the Roqeah. For translation, see further, App.II.B.11.)

Isserlein PuK 177

"[...] R. Eleazar, [...] [concerning] the decree enacted by you in the public assembly of the festival, with the agreement of the [community] leader z'l, that ritual slaughterers must learn ritual slaughtering; and though they have accepted [to fulfill the enactment], they have not fulfilled it. [...] There is always punishment in matters¹⁸⁸⁵ that the public attends and accepts for the sake of a *mizvah*, to "make a fence", and guard over the commandments of God, may He be blessed. [The decrees] can be annulled by love and peace, or by quarrel and jealousy. However, I think that the work of those ritual slaughterers must not be disqualified, even for the future not [*le-kha-tehillah*]¹⁸⁸⁶. [...] It is not like the [case of the] community who has enacted a decree that only one ritual slaughterer is allowed to slaughter, etc. as it is in the *responsum* of Rosh; there the reason is explained: in order to "make a fence" [*le-migdar milta*], they have the right to prohibit what is allowed [according to the Torah]. [However], in this case the community has refused to maintain their decree, and they themselves have annulled it. Therefore, there is no "making a fence" in the matter. Because it does not make any difference whether they have annulled it or have not accepted it from the beginning. This is what Ra'avyah has written in a *responsum* [quoted] by the [*Sefer*] *Mordehai*, in the first chapter of Baba Mezia."

Colon 40

"R. Menahem [...] concerning what you asked me some days ago about the slaughterer who sells slices of meat without koshering them [from the sciatic nerve, *niqqur*], which often causes stumbling, because sometimes buyers do not know that the slice must be koshered, and eat it without koshering it; and it was due [for you] to "make a fence" and repairs concerning that thing, in order that no slaughterer should sell any meat without koshering it [...] Because if a slaughterer sells [meat without *niqqur*], even he does that without claiming that it is koshered, he must be flogged or disqualified, according to the case [...] Because the slaughterer who has the duty of koshering the meat before he gives it out of his hands deserves to be punished, since he has transgressed the commandment of 'before a blind etc.' (Lev. 19,14); for people trust him and think that the meat is koshered. And this is not the case for somebody else [than a ritual slaughterer].¹⁸⁸⁷ [...] Therefore, the slaughterer must kosher it before he sells it. [...] However, nowadays, the custom is not so widespread, especially among French people. For they have often slaughtered for Gentiles, especially in the first days when [the number of the Jews in] exile [in Europe] was not so great. At that time, there was not a single Jew who slaughtered [only] for Jews, but [only Jewish slaughterers who slaughtered for Jews together with the] animals of Gentiles."

Colon 33

"[...] R. Metatiah [...] concerning what you have asked me regarding the ritual slaughterer about whom only one witness has testified that he has slaughtered improperly, and now he denies it. [...] Even if it were true that has not slaughtered properly, as the witness testifies, he can not be definitely disqualified. But if he ready to wear black and perform the penance which is prescribed for him, he regains his status [*kashruto*]. [...] Because from now on, the matter depends on the ritual slaughterer. [...] [Nevertheless,] if he is the same slaughterer who has stumbled before in his examination [*bediqah*], as you have written to me, and your community listened to me, they would definitely remove, because the matter is suspicious. [...]"

II.B.12. Yayin Nesekh

¹⁸⁸⁵ I.e.: ... the court, community, community leaders can punish on the basis of the enactment, in which...

¹⁸⁸⁶ I.e.: ... of those ritual slaughterers who have not fulfilled the decree to learn ritual slaughtering, even for the future are not disqualified. (Even if they slaughter after the community leaders or the rabbi have realized that they have not fulfilled the decree to learn the laws of ritual slaughtering).

¹⁸⁸⁷ People do not trust the slaughtering of an ordinary man and examine the meat whether it is koshered.

IT

“He who unintentionally drinks *yayin nesekh*, either little or much, is required to fast for five days, according to the five times mentioned in the Torah:¹⁸⁸⁸ ‘For their wine is the wine of Sodom’ (Deut. 32,32), ‘their grapes are grapes of poison’ (Deut. 32,32) ‘Their clusters are bitter’ (Deut. 32,32), ‘[the gods who] drank the wine of their drink offerings’¹⁸⁸⁹ (Deut. 32,38), that means ‘their wine’. [...]’¹⁸⁹⁰ But he who drinks *yayin nesekh* intentionally is required to fast for forty days, and is forbidden to drink wine, except on the Sabbaths and New Moons. Those 40 times are equal to the 14 times that are written in the *parashat* Pinchas *nesekh* in singular and 14 times in plural, these are 42¹⁸⁹¹ and ‘*hasekh nesekh*’ is considered 1 [instead of 2, and because it is written twice], these are 40. He must fast in this way, and also give to charity, and perhaps the Lord of the Hosts will forgive him and his sin will be atoned for.

Penance for those who buy regularly [*yayin nesekh*]: All the more for hirers who intentionally buy *yayin nesekh* and sell [or give] as though it were *kasher*, for very little gain, and in order to be liked by those who send it.¹⁸⁹² They lead people to sin and transgress the ban [*herem*] which Eliyyahu, may his memory be blessed, has made on Mount (Sinai) [Carmel] with three hundred priests, three hundred Torah scrolls, three hundred *shofars*, and with the Holy Name that is written on the Tablets.¹⁸⁹³ [These are] those who buy all kinds of things touched by Gentiles, and not only [wine] trodden by the feet of Israel.¹⁸⁹⁴

Consequently, those hirers who have done this evil and prohibited thing [selling *yayin nesekh*], and those who prepare cheese in the houses of the Gentiles and do not care to supervise and examine it themselves whether it is *kasher* or not, but place a little child there instead who [is so ignorant that he] can not discern between right and left [hand], and thus they give Israel food that is prohibited by the Torah, such as meat with milk, – they are equal. Both shall go to everlasting destruction: they who give the prohibited thing¹⁸⁹⁵ and they who say that it is permitted¹⁸⁹⁶; they will not be counted to the righteous, because they have sinned and have caused others to sin, and have transgressed the commandment ‘you shall not put a stumbling rock before a blind’ (Lev. 19,14).

Therefore, they must confess, fast, and be flogged for transgressing a negative commandment. Their punishment will be very great unless they mend their ways through severe penance. All their deals, deeds and desires shall only be for the benefit of the community. They are never again allowed to prepare wine; their sin must always be before them; they shall confess and repent with all their strength. ‘He who confesses and leaves his sin will be pardoned’ (Prov. 28,13). The first men who know about that thing,¹⁸⁹⁷ and do not protest, will be destroyed for their sins. If they do not disclose their sins, [they will be] shamed by their tongues and throats before their Creator and the whole crowd.¹⁸⁹⁸,”

II.B.13. Transgression by Dressing, Behavior, and Benediction in Vain *Taqqanot Shum 1223* (ed. David Viskot and Moses Kaplan)

“1. No Jew shall wear clothes like those of the Christians, fringes of the hollow arm wrappings; no Jew shall have locks [like the Christians], and no Jew shall trim his hair in the Gentile fashion, or shave off [the edges of] his beard with a razor or with something similar to a razor [...] 7. [...] One shall go to the synagogue only in a ‘*kurna*’¹⁸⁹⁹ or ‘*maqtooren*’¹⁹⁰⁰ and not in ‘*zoqniah*’¹⁹⁰¹.”

¹⁸⁸⁸ I.e. five biblical verses, from which the prohibition of *yayin nesekh* can be deduced.

¹⁸⁸⁹ Written twice in that verse.

¹⁸⁹⁰ The text continues: “If one [involuntarily] eats the bread of Gentiles and drinks *yayin nesekh* [...]”; and other biblical verses are quoted to support the five days of fasting prescribed as penance for these two transgressions.

¹⁸⁹¹ Fourteen times for the singulars, and twice fourteen for the plurals, that is 42. Two times written ‘*hasekh nesekh*’, which was counted as two, is considered only once, therefore the total occurrences of “*nesekh*” is 40.

¹⁸⁹² I.e. to be liked by the Gentiles.

¹⁸⁹³ The source is *Tanḥuma (Buber) Par. Va-yeshev*, 2. There, for Ezra, Zerubbavel and Jehoshuah, and not for Eliyyah, that they have pronounced *herem* for everyone who eats the bread of the *kutim* (of the Samaritans).

¹⁸⁹⁴ It is an allusion to the grapes trodden by Gentiles during wine-making, which, according to some decisors, makes the wine *yayin nesekh*. The curses and imprecations refer to Jews who buy grapes trodden by Gentiles.

¹⁸⁹⁵ Saying that the *yayin nesekh* is *kasher*.

¹⁸⁹⁶ The cheese prepared without supervision.

¹⁸⁹⁷ Their transgression.

¹⁸⁹⁸ Allusion to the punishment in the world to come.

¹⁸⁹⁹ Or *kurza*, in Old German *chursina* – upper cloth.

¹⁹⁰⁰ Upper wrapping cloth, from the time of the Talmud.

¹⁹⁰¹ In Old French: *souquentille*; in Old German: *sukin* – the upper cloth worn by women, which was also worn by monks.

“2. [...] At the weddings, the young Jews shall not take more than the value of six coins from the coins of the kingdom. The young men who are with the bridegroom are not allowed to take anything from the householders; they shall not steal [...] 5. No man or woman shall make for him- or herself a meal which is not a *mizvah* unless one makes venesection or there are guests; then he can say to the fellows to eat with him; or the [pregnant] women before childbirth; or on festivals, that is allowed.”

HTR 28

“He who shaves off the sides of his beard with a razor transgresses negative commandments. [If you have transgressed them,] from now on, you shall not transgress any longer, and do not shave off your beard, [for it is written] ‘You shall not follow their practices (Lev. 18,3)¹⁹⁰²”.

IT

“He who says a blessing in vain, for example on *zizit* and *tefillin* which are not prepared according to the *halakha*, and he has thought that they have been prepared according to the *halakha*, if there is a righteous *hasid* and wise sage in town who knows how to prepare it, and he has not asked him, he will be close to willful sin. Therefore, each man shall ask a wiser one than himself; and [a Jew] always must examine his *tallit* so that even one thread should not be torn,¹⁹⁰³ and he should not say a blessing in vain. If he has a *tallit* which is prepared according to the *halakhah* and he does not examine it many days, and after many days he examines it, and finds one thread torn, he must fast on that day when he finds it torn and wraps himself in it. If there is the rest of improper things in it, and he knows from the beginning that it is not prepared as required, and he says a blessing in vain, he is due to pay ten gold coins [*zehuvim*]. If he has ten gold coins, he must give them to somebody who fears sin and needs them. He shall not speak again in vain in the synagogue, and shall not speak anything when he praises the Holy One. It is good for everyone who fears sin and likes His commandments to wear a *tallit qatan*¹⁹⁰⁴ in order not to go four cubits without *zizit*.¹⁹⁰⁵ That is the penance for him who says a blessing in vain on the *tallit*. If he is poor and cannot afford to give ten golden [coins, *dinars*], he shall say in his heart, “If a rich man said to me, ‘Either give ten gold [coins, *dinars*] or fast some days in order not to give’¹⁹⁰⁶, [I had to fast for some days.” Therefore,] he must fast as many days as he has blessed in vain.

If he receives *tefillin* from someone who is skilled and he is told that it must not be examined, or [that it has been examined] from year to year, and he examines it, and he finds letters erased, he does not need to fast for this, as we have mentioned about the *zizit*, although they are holy, but because they are covered, and the sages have not ruled that one must examine it, therefore, if he finds the letters erased, his punishment is less severe than for blessing in vain, because the *zizit* is visible to the eye, and it can be mended. But for the scribe the punishment is severe, because he is not permitted to write *tefillin* and *mezuzah* until he has good ink and good parchment. Yet if he writes, he will be responsible for pronouncing blessings in vain, and his punishment is very severe. Therefore they who write *tefillin* and *mezuzot* must be warned to write them only with good ink on good parchment, and they must not write in the hour when they are tired and can not concentrate for the sake of Heaven. And it is not right for the mean and lazy ones to write *tefillin* and *mezuzot*, because if the mean one does not write them according to the *halakha*, they will not make *genizah*; and if the lazy one, because of his laziness, does not write them according to the law, he will not correct and write it again. Therefore, everybody must be careful to do the *mitzvoth* as required, and he will be thriving and prosperous.

The law what to do with dirty clothes on the Sabbath: Every man must be careful to examine his clothes and his body so that they shall not be dirty at the time of the prayer, and nobody shall say a blessing in vain. He who has his clothes dirtied with urine on the Sabbath, for example, if a man has a little child by him, whose shirt is stained, then, according to the sage, it is not advisable for that man to pray. If he is ashamed because all are inside and he is outside, he should pour water on his clothes, and then he is allowed to pray. On the Sabbath, however, he is not allowed to pour water on his clothes, because that is considered cleaning; but if he has no other clothes, he must cover the stain with a coat, overcoat, wrap or another shirt, which is not dirty, then he is allowed to pray. He must be careful to pray with intention, and to overcome his evil intentions for the glory of

¹⁹⁰² Those of the land of Canaan.

¹⁹⁰³ I.e. one *zizit* (fringe) missing, torn from the four fringes, the four fringes being a *mizva*.

¹⁹⁰⁴ Special small praying shawl worn all day.

¹⁹⁰⁵ Apparently, this is the regular *tallit qatan* and not the special *tallit* worn by *haside Ashkenaz*. About the special *tallit* worn by *haside Ashkenaz* see R. Samson of Shanz's *resp.* in Maharam Prague 287. "ואותן טליתות העשויין כמין קפרוניש שמעתי שזו היא טליתות של חסידי אשכנז ויש לו ד' כנפים וכשפרשט מעליו שוטחין ומתכסה בו וי"א דלא מקרי טלית אלא כעין שלנו שעשוי להתעטף בו ולהתכסות כדכתי' כסותך ומברכיי להתעטף ואני נזהר מללובשן לאפוקי נפשאי מספק אבל אותו קוטיש שיש להן בית זרוע לא דמי כלל ואין כאן מיחוש [דכנף] דידהו לאו כנף."

¹⁹⁰⁶ Probably some words are missing from the manuscript.

his Creator, because one will have name in the world to come only if he withholds his desire in this world in order not to transgress the will of the Creator; as those who withhold themselves from the delights of speaking more often with their children in order not to abolish the words of the Torah and the prayer; and the delight with the children is from this world.

Therefore, all the dealings and desires of the man shall be to honor his Creator, with all his heart, with all his soul and all his strength. A man should not say, 'Behold, how [perfectly] I fulfill the *mizvot zizit* and *tefillin*!', because people will say that he does it out of pride so that people shall honor him. If he is poor, they will say that he does all this in order to receive from the others what he wants. But the intention of man shall be for the sake of Heaven. He must forgive those who have suspected him; finally, the Holy One will change their heart to good; they will know that his intention is for the sake of Heaven. Then he will fulfill [these] commandments not secretly but openly so that others shall see and do the same, and he shall lead others to good.

In the *Sefer Ḥasidim* [it is written] that one should say this blessing each day: 'May your will be, our God and the God of our fathers, that you shall find patience and cold temper with us and in all your deeds; that you shall be patient with us; your mercy shall surpass your judgment; you shall behave with your sons mercifully, and judge them beyond the law. If someone sees the Heavens opened, he shall say that prayer, because R. Ishmael the High Priest said that prayer when the Holy One, blessed be He, said to him: 'Ishmael, my son, you shall praise me!''.

II.B.14. Desecration of the Synagogue HTRB: Ms. Parma de Rossi 2295 par. 187

"*He who desecrates God's Name.* It has been taught [*baraita*] (Qid. 40a) 'Credit is not allowed for the profanation of the Divine Name, whether it is unwitting or not.' [...] The most important thing [in the repentance of] the desecration of the Name is that the repentant shall publicly confess his sin, and say to [others] 'Do not learn from me, because I have sinned, transgressed, committed crime, I have done evil, desecrated the Name as a fool.' And he shall keep fasts several times, receive flogging, and confess each day for the rest of his life.'"

Weil 152¹⁹⁰⁷

"[...] R. Eliyyahu did very wrong that he pushed the prayer leader from his place at the time of the prayer; he committed a great sin. Firstly, because the prayer leader was compelled to interrupt the prayer, and was due to transgress [the commandment] 'do not interrupt the first blessings'. Secondly, that he did not care about the honor of his Creator, about the honor of R. P.,¹⁹⁰⁸ and about the honor of the holy community. [...] And what is more, he disgraced the honor of the Divine Presence [...]"

PuK 210¹⁹⁰⁹

„R. Eliezer b. Shalom and R. Gershom b. Shalom have come before me to judge them. R. Eliezer cries against R. Gershom that he has gored and pushed him during the circulation on *Hoshanah [Rabbah]* during *Sukkoth*. [...] Firstly, he has desecrated the sanctity of the synagogue; secondly, he has performed the *mizvah* in sin. In addition to this, [he has transgressed] when the Torah scroll has been on the *bimah*, in which there is written, 'they shall not exceed', and 'lest they exceed'¹⁹¹⁰. Our rabbis have explained that even if [the flogged person] is an evil person from Israel, he [the executor of the flogging] transgresses a negative commandment, because [the flogged person] has received his punishment.¹⁹¹¹ And 'it is prohibited to molest the queen while she is in the palace of the king' [Esther 7,8]."¹⁹¹²

Mintz 76

¹⁹⁰⁷ See quotation from this *responsum* also in II.C.6 (*niddui*).

¹⁹⁰⁸ The name of the rabbi is abbreviated in the *responsum*.

¹⁹⁰⁹ See quotation from this *responsum* also above in II.B.3 (assault and battery).

¹⁹¹⁰ Deut. 25,3: 'With forty stripes shall they beat him; they shall not exceed, lest, if they continue to beat him with many stripes above this, thy brother become despicable in thine eyes'.

¹⁹¹¹ The verse in Deut. 25,3 prohibits the executor of the flogging to flog more than 40 lashes. The *a majori* reasoning of the rabbis expresses that if it is prohibited to flog an evil person more than his punishment, how much more an innocent one.

¹⁹¹² The 'place of the king' refers to the synagogue in which the Torah scroll is present. See quotation also above, in II.B.3.

“[...] ‘little foxes’¹⁹¹³ became angry with R. I. Bruna. On the seat where he is accustomed to sit in the synagogue crosses were drawn, on his place it was written ‘unbeliever’¹⁹¹⁴, and other mocking, shameful and disgraceful words that have never been heard, even [with respect to] an ordinary man. It happened twice or three times that crosses were drawn on his sitting place, and writings were written, with words of ‘tar’, profanation of the Divine Name, and idolatry. It is a duty for all Israel to do something against the desecration of the synagogue. Therefore, I did my part in that, and wrote to the holy community of Regensburg: ‘Great peace be upon the holy and prideful community of Regensburg, may it live [...]’

I am writing [to you] concerning the evil news which have reached me that a cross was put in the ‘little Temple’, the synagogue, of your city. We cry because of that evil news, namely that the synagogue has been desecrated: the Holy of Holies which was established in sanctity and purity by the great Rav, R. Judah Ḥasid, together with other righteous of the world, may their rest be in Eden! The Divine Name [*Shem ha-Meforash*] dwells in it, together with other Grades of Holiness, and with many Torah scrolls! Therefore, we have torn our garment, because it is like the blessing of God himself, may He be blessed forever¹⁹¹⁵. Woe to us, that such an abomination happened in Israel! It is a duty for all Israel to do this: to search and examine well who did that evil thing. That sinful man deserves to be cursed and damned, as it is written, ‘Cursed be the man who shall do a graven or cast image of idol etc.’. He is there, hidden [among you], you are close to him! Therefore, please, my friends and rabbis, do that, lest, God forbid, destruction should come from that, curse and wrong for the Name, blessed be He. Therefore he deserves to be cursed with the words of the Torah on each Monday and Thursday in each community for the sin he has committed. It must also be pronounced by *naḥash*¹⁹¹⁶ that everybody who knows him shall come before the rabbis of your city and say what he knows about the matter so that it shall be known and publicized. Do to that man as the law requires! You are also due to write to the rest of the communities that they shall also do that, as it is written: ‘Do I not hate those who hate you, o Lord?’ (Ps. 1139,21).

All this I have written to remind¹⁹¹⁷ you of the evil news which have come before us. You shall learn from the idol of Mikha¹⁹¹⁸ which he did for his own pleasure: the cloud [= the Divine Presence] drifted away from there, and they were expelled from their place, all the tribe, and after that the Amalekites ruled there, as it is written, ‘all the stragglers at you rear etc.’¹⁹¹⁹. All the more so since sin was done to enrage and to cause hatred. Please, go and remove the strange gods, that is to say, the man who has committed that, from among you, and the wrath of God will depart from among you. Then, you shall consecrate the house of your God through fasts, prayers and charity so that you may live long, peace and blessing shall dwell in your ‘partition’¹⁹²⁰, and you will be called ‘holy’. [...] Moses Levi Minz.”

Weil 140

“[...] I have also heard that those wicked men¹⁹²¹ brought to the synagogue the [Gentile] officer of the town on Yom Kippur [and] on Rosh ha-Shanah. They caused the [Gentile] officer to push and take the prayer leader R. Meisterlin Yaz from the *bimah* when he stood to pray [for himself] and to pray for the congregation. Woe to that shame, woe to that disgrace!

In the chapter *Heleq* it is said, “the unbelievers have no share in the world to come”, and in the *Gemarah* it is explained, “he who puts his fellow to shame before a sage” [has no share in the world to come].

These men did double [evil] thing: they shamed a sage himself, and they shamed him before the Divine Presence [*Shekhinah*]. Therefore, those men are cursed before God; they can not be forgiven until they make their crooked ways straight, according to the words of R. Meisterlin. If they obey and mend their ways, it is good; but if they persist in their rebellion, they must be excommunicated [by *herem*]. Behold, I send on them snakes [*naḥash*] and *serafs* until they mend their ways.

¹⁹¹³ Cant. 2,15: ‘Catch us the little foxes that destroy the vines: for our vineyard hath flourished’. The ‘foxes’ is a frequent metaphor in the literature of the time for the heretics, apostates, unbelievers, informers, both Christian and Jewish.

¹⁹¹⁴ “*Apikoros*”, which means ‘apostate’, ‘Christian’ or ‘betrayed’.

¹⁹¹⁵ Rending the garment as a sign of mourning for the desecration of the synagogue is like blessing God himself.

¹⁹¹⁶ *Niddui*, *herem ve-shamta*, excommunication.

¹⁹¹⁷ Allusion to the verse from the Deut. quoted later: ‘Remember what Amaleq did to you on the way as you were coming out of Egypt, how he met you on the way and attacked your rear ranks, all the stragglers at you rear, when you were tired and weary; and he did not fear God’. (Deut. 25,17–18).

¹⁹¹⁸ Judges 17–18.

¹⁹¹⁹ Deut. 25,18. allusion to the attack of the Amalekites.

¹⁹²⁰ מחיצה = partition or division, meaning ‘dwelling place’, with an allusion also to the divided community in the quarrel of R. Bruna and R. Anshil..

¹⁹²¹ Jews from the community who were not ready to pay their taxes to the community.

You, men of truth and fearers of God, be strong for our Torah and religion in order not to be mocked. Do to them all that is possible in order to wipe out from their heart the evil thoughts, so that they can not pour out their anger and say, “Our hand is strong”. The wickedness from amidst you shall depart, and by your hand shall Heaven be sanctified so that others shall see and learn from that! Your righteousness shall last forever.”

II.B.15. Desecration of the Sabbath SHP 630

“There is a story about a *hasid* who once loaded his wagon with clothes¹⁹²². When he came to the place where he wanted to sell them, he unloaded the wagon and untied the horses before a guest-house. He sanctified the beginning of the Sabbath before the guest-house. And the [royal] guardians came and plundered the houses [of the whole town]. The Jew, the possessor of the wagon, came and prepared the wagon during the Sabbath night; tied the horses to the wagon in order to lead the wagon outside the town. [Meanwhile,] the messenger of the king came and proclaimed that the plunderers were not allowed to take anything from the Jews [of the town]. When he arrived home¹⁹²³, the Jew went to a sage so that the sage should teach him perfect penance. The sage told him, “You shall load the wagon in the same way and measure [as you did in the Sabbath night], and put your hand on the ground, and the wheel shall be brought across your hand. You shall give the money received for the clothes to charity, or you shall hire scribes to write *Torah*, *Nevi'im* and *Ketuvim* [...] and the orphans and the sons of the poor shall read them [...]”

SHP 692

“A man has desecrated the Sabbath and has gone to a sage to ask him for *teshuvah*. The sage has said to him, ‘You shall distribute money or the equal of it¹⁹²⁴ among the sons of good men [*benei tovim*] who are ashamed to receive charity.’ The man has refused to do that, and the sage has not imposed on him *teshuvah*.

One can not consider the observance of one Sabbath a commutation for the desecration of one Sabbath; he can only atone for the desecration of one Sabbath through mortification proportional to the sin committed.”

IT

“For each transgression [i. e. Sabbath desecration] which a man commits, even unintentionally, [e.g.] if he touches the candlelight and extinguishes it, or if he lights the candle and forgets that that day is the Sabbath, or if he does not know [that that day is the Sabbath], he must confess and fast at least for two days, on Monday and Thursday.

Especially those who say to the Gentiles or their [Gentile] maidservants to light the fire in the stove or to warm up the winter house¹⁹²⁵, who desecrate the Sabbath for their own pleasure, know in truth and indeed, that their worm¹⁹²⁶ will not die, and their fire [in the *Gehinnom*] will not be extinguished, even on the Sabbath, because their soul will have no rest there. They will be punished accordingly: they have no rest to sin intentionally on the day of the rest, so they will have no rest after [all] the Sabbaths unless they mend their ways with all their heart, with fasting, flogging, confessing, at least for half a year, on Mondays and Thursdays. They must keep and honor the Sabbaths twice as much as before [they have sinned], and they must not do evil again. That will be considered for them atonement.”¹⁹²⁷

Ms. Parma 2999

“If someone desecrates the Sabbath intentionally: if it is by carrying something from the private space to the public space, he must fast for three days [and nights] continuously, if he can; or he must fast for forty days and eat in the nights. He shall multiply charity and ask for forgiveness from God. And on each Sabbath he must get up early in the morning, go to the synagogue and pray. After the prayer, he must remain in the study house to hear the teaching, if he can not learn alone. If he desecrates the Sabbath by working, he must fast for forty days continuously; then, he must perform ‘Esther’s fast’, for three days¹⁹²⁸; he must flog [himself] secretly each day.

¹⁹²² He was trader in clothes.

¹⁹²³ To his home town.

¹⁹²⁴ I.e. almsgiving in other ways.

¹⁹²⁵ *Bet ha-horef*, the house where the family lived in the winter in the European Jewish houses.

¹⁹²⁶ In the grave which tortures the dead.

¹⁹²⁷ See remarks in the dissertation for the prohibition of warming oneself by the fire lighted by a Gentile on the Sabbath.

¹⁹²⁸ Three days continuously, day and night.

He is not allowed to be among Gentiles on the Sabbath and stay among those who work on the Sabbath, at least for three years. If he desecrates the Sabbath unintentionally¹⁹²⁹, he must fast on Monday and Thursday, and he shall give eight *dinars* to charity.”

Mintz 93¹⁹³⁰

“[...] For the desecration of the Sabbath, you must fast three times on Monday, Thursday and Monday; you shall confess twice a day, in the morning and in the evening, as explained above.

But if he¹⁹³¹ has unintentionally desecrated the Sabbath by carrying his knife on the Sabbath [outside the Sabbath borders], he must not be flogged, and [that transgression] must not be taken together with the other transgressions when he is flogged. Therefore, I have prescribed for him to give a sum of money to charity, because by the desecration of the Sabbath he has committed a sin liable to sacrifice. Therefore, he shall give money, as it is written in the *Tashbez*. [...]”

**II.B.16. Informer
Taqqanot R. Tam**

“[...] Ban [*herem*]: Only one witness or the relatives [of the persons involved] are accepted [*kasher*] to testify [in the case of the informer]. [The testimony of the witnesses is accepted] even if they do not hear [the denunciator] informing, only see him speaking with the ruler, and afterwards the ruler falsely accuses the denounced Jew [...]”

Taqqanot R. Gershom

“Enactment of the Geonim: if a Jew learns that another Jew has informed against him [to the ruler], and has proof, and goes and speaks to the ruler in order to clear himself of false accusation, and because of this the informer loses [his property], the first one who has informed against his fellow Jew is considered an informer, according to the law concerning fines. [And the Jew who has spoken with the ruler to clear himself is not considered an informer,] because it is not the case that he has saved himself by delivering the property of the other Jew to the ruler [which would be betrayal with the purpose of material gain, but it is considered self-defense].”¹⁹³²

HTR 27

“Informer: He who betrays his fellow Jew makes him hated in the eyes of the ruler. He falsely accuses him, takes his property away from him, kills him, his wife, sons, daughters, and his entire household. If he stole from him or robbed him, he would not cause him so much pain, and would not sin so gravely. Therefore, he must pay him all [the damage] caused by his information, must be to him a permanent slave, ask him publicly for forgiveness, receive flogging, fast and confess, as though he had killed all his sons, daughters, and his whole household. He has taught the ruler to seize the property of the Jews; [...] he shall confess and mend his ways with all his heart.”

MH Ms. Parma 2999

“If a Jew informs against his fellow Jew, or steals from him, or robs him, and has money, he must pay him the damage, ask him for forgiveness before three men, and must be his friend by serving him. If he has betrayed his fellow Jew to the ruler, he shall not speak evil of the Jews for one year, either good or evil. He must receive flogging once, and fast for forty days. [...]”

Maharam Prague 485

“He is certainly disqualified from giving testimony and taking an oath until he pays the damage. He must do penance through fasting and flogging, as the Roqeah has prescribed. These are the words of *Sefer ha-*

¹⁹²⁹ I.e. by working.

¹⁹³⁰ See quotations from this *responsum* above at II.B.3 (assault and battery) and II.B.9 (perjury).

¹⁹³¹ Here, the wording of the decision of R. Minz changes from the second to the third person.

¹⁹³² The second one can not be condemned as an informer.

mizvot: 'It is allowed to kill the informer in any place, even in our days, when we do not judge criminal cases. He who kills him first is worthy of respect. It is allowed to kill him before he informs. Even if he only says, 'I shall inform against somebody, against him or his property!', he allowed himself to be killed. And [people] shall warn him, 'Do not inform!'. And if he is so insolent that he says, 'I shall inform against you!', it is a *mizvah* to kill him, and he who kills him is worthy of praise. It is written in the *Sefer Hafez*: 'The informer is disqualified from giving testimony and taking an oath'. Thus they have decided in the two academies."

Maharam Teshuvot Maimoniyot Nezikim 14

"We do not have the right to punish the informer, only God is allowed [to punish him]. [...] And now, in this case, I think that he must do penance as a perfect murderer who kills with his own hands (Sanh. 76b). [...] Even without testimony, only on the basis of his confession, I am of the opinion that he must do penance just as a murderer, 'Because in his blow there has been enough power to set the whole world ablaze' (BQ 60a); / iron must be put around his neck; / he must be punished in proportion to 'his capacity' (BM 43a)¹⁹³³ / and humiliated publicly and secretly; / he must supplicate in exile as a wanderer and vagrant, / humble himself with a slim face and a slim countenance / as severely as he can; maybe he will be pardoned, / and on the day of the wrath of God he will be hidden. / He must atone for by sacrificing his own soul, / must 'cover' his crime 'with a pot'¹⁹³⁴, / must darken his face with fasts and vigils, praying [continuously] for one or two years. And with everything by which you are going to punish him, I shall agree, so that he may find atonement."

NMM – Informer

"Law [*din*]: The son of the informer must pay [the damage] after him [after the death of his father] from the property which he has inherited, because it is a recognizable [known, a fixed amount of] damage. And in this case, it has not been said, 'He shall prepare it, and the just shall put it on'.¹⁹³⁵ And if he [the denounced one] has acquired the sum of the damage caused, they shall not take it away from him. He [the denounced one] can take an oath and take the sum, that is to say, if he says that he has lost a certain amount of money, and the informer admits a part of it, [the informer] is liable to the oath from the Torah; but he can not take an oath, because the informer is disqualified from giving testimony and taking an oath until he pays all the damage caused to the other one. He must do penance through flogging and fasting. And since he is disqualified from taking an oath, his adversary shall take the oath and take the sum, if the informer admits part of the sum. There is a difference between the informer who is suspected of denunciation and the informer who is not. There [BQ 117a] it is explained the law concerning the pursuer, and that in the hour of denunciation it is allowed to kill him with bare hands, as Rav Kahana has done when he has torn out the throat of the informer [pursuer, BQ 117a]. However, either in the hour of the deed [denunciation] or another time, it is allowed to hire a Gentile to kill him."

Mordehai Ha-gozel

"Concerning what you have asked about R. Ephraim who the other day went to the Gentile court to complain about R. Yoel and force him to be judged before the Jewish court [...] R. Ephraim did not do good to his people, therefore he deserves to be stretched on the pillar [i.e. to be flogged], because he went to the Gentile court to force his opponent; and although he only wanted to be judged according to the Jewish law, he should not have done so without the approval of the community or the great rabbis in the kingdom. [Consequently,] he shall receive the punishment of flogging or shall pay, all in accordance with what kind of man he is, and according to what the rabbis of the kingdom shall decide on him."

Informer in the Community of Strasburg about 1370

The community had among its members two informers through whom it was exposed to the raids of the knights of Andlau. Since the Jews could not summon the two informers before the Christian court without involving the knights, they applied to their rabbi for help. The rabbi, R. Samuel Schlettstadt, secretly constituted a court of justice, which condemned the two informers to death; one of them, named Salamin, was executed. The

¹⁹³³ In BM 43a it refers to paying according to property, but here it refers to the flogging, and means that he must receive flogging [*makkat mardut*] according to what he can support. (*Vay-yilqeh be-ḥaser ve-yeter*).

¹⁹³⁴ פכסתר, bEr. 104b: "if a [dead] creeping thing was found in the Temple in the 'azarah on the Sabbath, a *psykter* (Gr., wine cooler, a large brass pot) was to be put on it (to keep it covered during the Sabbath), in order that the priest shall not become unclean.

¹⁹³⁵ Job 27,17; BM 61a – i.e. if a man has received interest, his heirs ('the just') are under no obligation to return it, but may put it to their own use.

second escaped, converted to Christianity, and informed the knights about what had happened. The knights, followed by an armed mob, came to Strasburg, to take vengeance on the Jews. The Jews told them that the man had been executed by command of R. Samuel Schlettstadt. The knights set out for the latter's house, but R. Samuel Schlettstadt ran away with his pupils to the castle of Hohelandsberg, near Colmar. Later, he left his hiding place for Babylonia. The nasi of Babylonia, supported by the rabbinate of Jerusalem, wrote a ban against the community of Strasburg, in favor of the rabbi. The rabbi returned to Germany with the sentence of ban; he probably perished some years later (circ. 1380) when all the Jews of Strassburg were massacred. The case is presented on the basis of the narrative of Joseph Loanz, published by Grätz, MGWJ 24, 408, quoted in EJ.

II.B.17. Apostate Responsa Related to the Status of the Apostate from the 15th Century

We shall only list the cases shortly: (1) Women captured by Christians were allowed to their husbands on the basis of the testimony of Christians (Isserlein ThD 241; it has been discussed above, II.B.2.3; Isserlein PuK 34). (2) A man prohibited himself by vow from gambling with a Jew; R. Liwa of Neustadt asked R. Isserlein whether he was allowed to play with an apostate; in his answer, R. Isserlein made it clear that it was allowed, because the apostate was not a Jew. (Bruna 135, see II.B.10.3, II.B.10). (3) For the qualification of the repentant apostate for testimony, see II.C.9. (4) A divorce bill could not be sent to the wife through an apostate messenger, because he was required to take an oath that he would not invalidate the *get*, and an apostate was not trustful regarding oaths (Weil DvH 17). R. Isserlein decided in the same way, but he used to advise the husband to give the bill to an apostate messenger and also to send it to the wife, and thus it could not be invalidated: (Isserlein PuK 42, PuK 43, ThD 237) (5) The apostate wife was not required to divorce (Isserlein ThD 219) (6) If an apostate wife returned to Judaism, she needed no other *get* (Isserlein PuK 44, PuK 256). (7) In the case of a girl who became demented, Colon decided that her engagement was not valid and the bridegroom did not have to pay a fine; he argued from a *responsum* of Rosh's, where a girl became apostate and Rosh decided that the bridegroom did not have to pay the fine for the invalidation of the engagement (Colon 101) (8) A woman about whose apostate husband was testified that he had died was permitted to marry again (Colon 175). (9) A girl who was forcibly converted to Christianity in her childhood, returned to Judaism as an adult and got married. R. Bruna decided not to write in her *ketubbah* 'from the rabbis' and 'from the Torah' (Bruna 243). (10) If the *yabam* was forcibly converted in his childhood, he could not be exempted from *halitzah*, even according to lenient decisors (Isserlein ThD 223). (11) According to ThD 349, a Jewess was killed together with her husband during a persecution; their children were taken away by the Christians and converted. After a time, the father of the woman died, and both the brother of the father and the brother of the husband demanded the inheritance. The brother of the husband demanded it on the basis of being the guardian of the children. However, being no evidence of the children, R. Isserlein decided that the brother of the dead father would come into the inheritance. (Isserlein ThD 349).

SHP 200

“This is what the sages have been asked: Once one man converted to Christianity, and after a time said to the Jews, ‘I want to return to be a Jew’. He had only little money, and the Gentiles trusted him. He wanted to take [the money offered by the Gentiles], and run away to be a Jew. [The first sage] said to him, ‘Since you want to do penance, you shall not take anything from them’. [The second] sage said, ‘Regarding that he has only converted because he has not had the desires of his heart, it is better for him to take the money from the Gentiles and run away; and he shall not eat pork and shall not desecrate the Sabbath; and if they catch and kill him, his death will be an atonement for his sins.’ The third sage said: ‘It is better for you not to advise and instruct him what to do, lest we harm ourselves; because he will immediately say to the Gentiles that the Jews have given him advice, and we will be in danger. Therefore you shall not say anything to him.’ And so it happened. The man told the Gentiles, and the Jews were almost killed; and they had to pay a large amount of money for this.”

SHP 201

“If there is an apostate about whom the Jewish leaders of the city and the sages know that he wants to return, but by his running away they would be exposed to the danger that [the Gentiles] will accuse them of helping him to escape, he can cheat the Gentiles and say that he wants to go on a pilgrimage¹⁹³⁶ [to the grave of

¹⁹³⁶ In the Wistineczky edition lit. “to play” (“לשחוק”), but according to other manuscripts לשוחה which means “to the grave of Jesus” (Ms. Ox. Opp. Add. 34, par. 87). SHB: par. 198: שקדש, a saint. See Baumgarten, . “Shared Stories”, 46–47; Fram. “Perception and Reception”.

Jesus in Jerusalem]; so he shall take a cross on himself until he comes out of the place where they know him; then he shall get rid of the cross, and there will be no complaints about the Jews.”

HTR 24

“He who has denied God [has apostatized] has transgressed the whole Torah. Consequently, he must take off all his fine clothes, and is prohibited from putting on any embellishment (ornament). He must mourn, cry, regret his sin, and fast every day for some years. He must humiliate himself and confess three times a day. He is prohibited from eating meat, drinking wine, washing himself, except before the Sabbath and before holidays. He is only allowed to wash his head once or twice a month. He is not allowed to attend celebrations and weddings, except the benediction. *He is forbidden to sit at [or together with] Christian priests or monks who speak about unclean idolatry; he must depart from the shadow of abomination; he is not allowed to enjoy anything that belongs to them; he must depart from the door of their houses, and from the courtyard of abominations.*¹⁹³⁷ [**] And immediately after he repents and ritually immerses, he is considered a Jew. [*] And from all things in which he has transgressed he shall return to his Creator, and he shall mortify himself in proportion to the pleasure [of the sin committed]: he was happy on the days of their holidays, desecrated the Sabbaths, denied God, accepted [another] God and prostrated before him, ate all kinds of unclean food, had intercourse with Christian women, committed sins punishable with *karet* and with the four death penalties of the *bet din*; therefore he must return from all what he has done, and he must worship his Creator with all his soul, with all his heart, and with all his strength. He must lie on the ground and suffer many pains. [*] And if the people say to him, ‘wicked apostate!’ he must keep silent, and all his thoughts must only be for the good.”

[*] In the **MH Ms. Parma 2410** (15–16th centuries) fol. 15b, instead of the sentences between the marks, there is a gloss.¹⁹³⁸

“And all this is written about the forced converts, [i.e. those who have converted] because [of the fear] of death. But shall not the wrath of God flare up against those who deliberately enrage [God] to fulfill their desires, who bow down before idols, despise the Torah of Moses, desecrate the Sabbath, swear falsely and curse, have sexual intercourse with Christian women, commit transgressions punishable with *karet* or with the four death penalties of the *bet din*, eat and drink all kinds of prohibited and unclean things? Therefore, if he wants to repent, the offender shall subdue his heart in everything mentioned in connection with the forced converts. And the one who has continued and sinned willfully must be determined to suffer pains which are close to death, as we have said in connection with fornication with an engaged or married woman. In winter, he shall lie naked in ice and snow for one or two hours, and in the days of summer, he shall sit among ants, flies or bees. And he shall mortify his body with thorns and bristles of the wilderness, and flog himself, confess, regret his sins, and cry, because of his sin forever, night and day. And he shall ask for forgiveness from the Creator with broken and humble heart, and return to God with all his heart and soul and strength because God is forgiving and merciful, and likes repentance.”

DT:

[**] “He must wear sackcloth on his body, and black clothes, wrap himself in black, fast on Mondays and Thursdays all his life, wear shoes of [leather of] cow which are tied with a strip [...]”

HTR 28

[...] Because he who adheres to a certain transgression, either light or grave, in order to enrage [God], is an apostate [regarding that] thing: either because he wears *shamez* or because he shaves his beard with a razor; or he cuts *qumi* [in his hair] as the Gentiles do or he eats prohibited food or he has sexual intercourse with a Christian woman; or he is a thief and the thing is known; and it is considered as though he has denied that a certain *mizvah* was given to Moses by the Holy One, blessed be He. And because of the suspected thing he can not be a judge, and his testimony is not accepted. He must regret his sin, confess with tears from the bottom of his heart; he is forbidden to do evil again, and must depart from ugliness and what is like it.

A man converted to the religion of the Gentiles denies the whole Torah and adheres more strongly [to Christianity] than the Gentiles, as it is said in the *Avodah Zarah*, ‘It is prohibited to deal with a Jew who has turned to idol worship [literally, ‘evil culture’, *tarbut ra’ah*],¹⁹³⁹ whether in [his] going [that way] or in [his]

¹⁹³⁷ “Abomination” is used for the cross. This sentence has been omitted in the print of the *Sefer ha-Roqeah* – probably due to censorship -, but, with some variations, it is to be found in all the manuscripts of HTR and HTRB. This completion is on the basis of the Ms. Paris 363. In HTRB, instead of the next sentence, there is: “Immediately after he returns, he must ritually immerse in forty *se’as*”. In HTR: “Immediately after ritual immersion, he is considered a Jew”.

¹⁹³⁸ See. App. II.A.3.4.

¹⁹³⁹ In AZ 33a: to a fair which was associated with idolatrous festivals.

returning'.¹⁹⁴⁰ And so [it is written] in the first chapter of *Hullin*: 'The ritual slaughter of the Cuthean [*kuti*, non-Jew, belonging to Samaritan religion] is prohibited'.¹⁹⁴¹ He who keeps the Sabbath on a marketplace is considered a Jew; and he who publicly desecrates the Sabbath is considered a Gentile, concerning [the law of] hiring from him area [in the common courtyard] (if) [regarding the fear that] he did not make *eruv*.¹⁹⁴²

Ms. Oxford 784 28a

“[Beginning of penance:] Regretting, weeping in the heart, confessing in the morning and in the evening for some days, in first person singular: ‘My God and the God of my fathers, may my prayer rise before You etc.’ ‘I have sinned’.¹⁹⁴³ Each time he must say: ‘For the sin I have committed...’,¹⁹⁴⁴ in [first person] singular; he must abandon the sin mentioned in his confession all his days, and flog [himself] in secret at least three times a day .

The words of the *viddui*, according to Rambam¹⁹⁴⁵: ‘My Lord, I have sinned, transgressed, committed crime before You; I regret my sins, I am ashamed of my deeds, I shall never return to my sin.’ Rambam also has written: ‘From the ways of the repentant: the penitent must always cry before God, weep, with supplications; he must give as much money to charity as he can afford; he must depart from the thing in which he has sinned, change his name and all his bad deeds into good ones, mend his ways, and go into exile from his place, for exile atones for sins by making one humble, meek, and lowly.’

The first thing is the *tevilah* [ritual immersion] and *viddui* [confession] three times, blessing after ritual immersion while his feet are still in the water and he covers his heart.

He must sit in cold water up to his neck at least for an hour. But in the winter, it is enough for less than an hour. He must fast three days and three nights continuously.

Then, he must fast on Mondays and Thursdays at least for a year. But after Yom Kippur he must fast for forty days continuously, except on the Sabbaths; and he is prohibited from eating meat and drinking wine during the forty days. He must fast a second time for three days and three nights continuously in the first year. Then, he must fast once a week for a whole year, and then once a month for several years.¹⁹⁴⁶ He must take off all his ornaments, and he must be one of the humiliated people who do not despise others.

His wife is required to do the same, except that she is required to sit in cold water only for half an hour and she is not required to flog herself. Likewise, she must only fast for three days and three nights and for forty days, or [if she can not, only] for three days and three nights. She is also required to perform the other fasts but not in the same measure as his husband does, because she is not commanded about the *mizvot* like the man; and also because she is not so strong.

When he sets out on a journey, or he feels weak, he is allowed to postpone fasting for another day. The woman is only required to fast for half a year, on Mondays and Thursdays, three days and three nights as mentioned above, and forty days continuously, and after every fast she must give a little money to charity.

They do not need to wait until the completion of their penance; immediately after ritual immersion and fasting for three days and three nights continuously, they belong to the Jewish community regarding all holy things: it is allowed to drink wine with them, and it is prohibited to shame them. Then they must perform all the penances mentioned above. And then they have fulfilled all the penances required.

The name of the man who has received penance together with his wife is R. Kalonymus. Says ‘bound’, the son of the Ish Yemini z”l. That is what I have found and copied. And I have heard that he is R. Isaac Tyrnau z”l. And if so, then he is called Isaac bar Binyamin.”

Leqet Yosher II. p. 49

“I have copied these [words] from R. Judah Obernik ztz”l who has copied them from R. Yuzman Katz¹⁹⁴⁷ who has written them on the margins of his book, in the name of the Gaon ztz”l [R. Isserlein]:

¹⁹⁴⁰ AZ 33a.

¹⁹⁴¹ Hul. 3b: “Our Rabbis taught: The slaughter of a Cuthean is valid. This only applies to cases when an Israelite stands beside him [during slaughter]”. In Hul. 5a–b, the ritual slaughter of the apostate is not accepted: “One who is an apostate in respect of idolatry is regarded as opposed to the whole Torah; consequently, R. Anan’s opinion [that his slaughter is accepted] is refuted.”

¹⁹⁴² Eruv. 62a.

¹⁹⁴³ ‘*Ashamti*, viz. the small confession of sins, called *Viddui Qatan*.

¹⁹⁴⁴ ‘*Al het*, great confession of sins, called *Viddui Gadol*.

¹⁹⁴⁵ Mishneh Torah *Hilkhot Teshuvah* 1.1.

¹⁹⁴⁶ In the edition of Shlomo Spitzer: two years, instead of several.

¹⁹⁴⁷ Both were students of R. Israel Isserlein: the first was Rav in Meisterli, the second in Neustadt; the first gathered the preaching and *responsa* of R. I. Isserlein, also from the notes of his students, the second was the

He who denies God [is an apostate]; he must shave off his hair and ritually immerse in the presence of two or three men, and he shall confess three times ‘*Ashamnu*’ [‘We have sinned’ – the ‘*Vidui katan*’] etc. while he is still in the water up to his chest. He must fast for three days continuously day and night, and also for forty days [continuously] before the end of the year. Besides, he must fast on Mondays and Thursdays throughout the year, and is prohibited from eating meat and drinking wine in the first year, except on the Sabbaths, festivals, New Moons, Hanukkah, and Purim. During the year, he is prohibited from making new clothes for himself unless he needs them. He is prohibited from attending celebrations, except wedding blessings, and he must stand far away. He is not allowed to lie in a bed or on a quilt; he is only allowed to put a pillow under his head. He is prohibited from playing any game. He shall do all this until the end of the year.

In the next year, he must fast on Monday, Thursday and Monday, and he is allowed to eat meat and drink wine; in the third year once a week. After the third year, he shall fast once a month for the rest of his life. He must depart from the [Christian] priests [or monks], since he is prohibited from hearing abomination [idolatrous words] from them; he is prohibited from debating with Christians; he shall always feel regret in his heart, every moment, because he has denied God, desecrated the Sabbath, eaten all kinds of forbidden things and had sexual intercourse with Christian women. If he hears others mocking him and calling him an ‘apostate’, he is forbidden to answer them.”

Ms. Ox. 784 25b–26a

“Because it is said in the chapter ‘*Amar lahem ha-memunneh*’: ‘He who comes to be purified will be supported’ (Yoma 38b–39a); because the Holy One, blessed be He, wants and loves repentance; as it is said in the chapter ‘*Ein Omdin*’: all Israel is due to participate in that *mizvah* and to separate him from the prohibited thing. ‘All Israel is responsible for one another’, and he who has the power to restrain his fellowman from evil, but does not, is responsible [‘it is as though the chain has been put around his neck’]. (Sanh. 27b)’

Now, blessed be the Holy One, in that *mizvah*, in the case of that man, R. Isaac bar Samuel, nicknamed Zanvil, who has come to me weeping, confessing, regretting, and sighing over the sins committed under the compulsion of those who have baptized him in the water of abomination. He has not been able to support all the heavy tortures, as it is said, ‘[because Rab says] If they had lashed Hananiah, Mishael and Azariah [would they have worshipped the [golden] image?].’ (Ket. 33b)¹⁹⁴⁸. He has strong proofs on his behalf that his heart has not turned away from God, saying, ‘The waters closed over my head, and I thought I was about to be cut off’. (Lament. 3,54). The proof is that he stayed in his uncleanness only for two weeks, and as soon as he found an open door to leave uncleanness for cleanness, he immediately went out and went to his father who was poor, old, and sick. He wept because of his father and his father wept over his uncleanness. He told his father that he wanted to do perfect penance and that he would never return to his wickedness. He gave his father a little money, all he had, he honored him in his heavy illness, and fulfilled the *mizvah* of honoring his father. After his father died, he also began to fulfill the *mizvah* of honoring his old and sick mother, as she is before us. Now his good intention is recognizable from his deeds, and the Holy One, blessed be He, adds the good thought to the good deeds.

Because of all the above mentioned reasons, because he has thrown away abomination and has come to immerse in pure water, after washing himself and shaving [off his hair] before the *bet din*, it is my duty to support him and bring him in under the wings of the Divine Presence [*Shekhinah*], and to transmit him, while he is still in the pure water of the *tevilah* [ritual immersion], the light and difficult commandments of the Torah, the positive and negative commandments, the principles, and all the requirements of the penance [*teshuvah*] which he is due to perform: the fasts and confessions. He [must] accept to accomplish everything required, with a contrite heart, weeping in the waters of the *tevilah*. There are penances that he must do until the end of his life. I have done accordingly. He has performed a proper *tevilah* before us. Immediately after coming out of the *tevilah*, he is a perfect Jew, and it is allowed to drink wine with him, as with all the other Jews. That is taught according to the first chapter of the Ḥagigah (Ḥag. 5) where it is said, ‘R. Haninah bar Papa says: He who commits a sin and regrets it, his transgression is pardoned immediately, as it is written (Malachi 3,5): ‘[those who oppress] the widows and the fatherless, and deprive aliens of justice, but do not fear me, says the Lord Almighty’, behold, if they fear me, they will be pardoned’. That penitent is a perfect poor, takes care of his mother who is old, sick, and completely poor, [therefore] it is a *mizvah* to care for him; and everybody who is first in that *mizvah* deserves reward in this world and in the world to come. Says Zahav b. Shoham.¹⁹⁴⁹

secretary of R. Issrelein. See. J. Freimann in the introduction to the Leqet *Yosher*. See further: Eidelberg, *Jewish Life*; Id.: *Medieval*.

¹⁹⁴⁸ Ket. 33a–b: ‘And even if we say that it is so, whence [do we know] that [the penalty of] death is severer? [33b] Perhaps [the punishment with] lashes is severer, for Rab has said etc’.

¹⁹⁴⁹ David b. Moshe.

[fol. 26a] Beginning of penance: after *tevilah*, he must afflict his body with severe fasting, as the Roqeah prescribes, depending on what he can support, on his strength and health. After his *tevilah*, R. Isaac bar Samuel z"l shall fast in the first month for three days and nights continuously every week, if he can. If he can not, three days continuously; then two days and two nights continuously, then he shall eat one day and fast one day until the end of the first week. Then he shall do so in the second, third and fourth week, until the end of the first month. After every fast, before eating, he must prostrate himself and confess; he must confess with a broken heart and with sighs. He must give as much money to charity as he can afford. He is prohibited from eating meat, from drinking wine, from lying in a bed, on a quilt or pillow; except on the Sabbaths, on festivals, on New Moons, on Hanukkah and Purim: on these days he is allowed to eat meat and drink wine as much as he needs, and he may lie in a bed and use a quilt and a pillow.

In the second month, he must fast continuously every day, and after each fast he must do as in the first month. But if he is strong enough to fast three days and three nights continuously, or two days and two nights continuously as in the first month, it is better.

After the end of the second month, he must fast every week one day and eat one day. After each fast he must confess and give money to charity. Till the end of the first year, he is forbidden from lying in a bed, on a quilt or pillow; to wash himself, except once a month; to shave off his beard unless it grows so long that he can not bear the pain of the filth in it: then he is allowed to trim his beard a little with scissors. He is prohibited from attending even a meal which is a *mizvah*, a wedding or circumcision, except the blessing. He is required to do so in the first year.

From then on, he must fast on Mondays and Thursdays for the rest of his life. At the end of each fast, he must do as previously regarding confession and charity. He is prohibited from lying in a bed, on a quilt or pillow, except on the Sabbath, on festivals, on the first day of the month, Hanukkah and Purim. He is allowed to attend a meal which is a *mizvah*. He is no longer allowed to wear colored clothes, only black or gray, even on the Sabbaths and on holidays. He is not allowed to sit together with the mockers of his generation who speak unbecomingly; he is prohibited from laughing; he must be ready to do good to everybody for the sake of the *mizvah*. Any ungodly man, who despises and disgraces the penitent, either by deeds or words, either in his presence or in his absence, for his sin committed, should be punished, and should bear the consequences. The penitent should keep silence, bear his disgrace and shame, depart, and raise his eyes and hands towards Heaven, and say: 'Sovereign of the Universe, I bear the disgrace and shame with patience, because they are atonement for my sin.' And his sin will be atoned for and pardoned. Says Zahav b. Shoham.'

II.C. Divine Justice in the Sources

Though not an innovation of *haside Ashkenaz*, divine justice is a central problem of the SHP: the questions related to the suffering of the righteous in this world and the wellbeing of the wicked. The answer to these questions is the judgment (divine reward and punishment) in the hereafter. Transposing it to the terminology of sin– punishment – atonement, the balance is perfectly equated only in the other world, but the religious, pious sinner has the duty in this world to strive to accomplish the atonement for the sins committed and to be pure and saintly in this world. Not everyone can attain this status in this world, and for the metaphysical plane an additional component was introduced into the doctrine of atonement of *haside Ashkenaz* – originally contained in the bSanh. ch. 10 and other midrashic interpretations –: after death the souls who are not completely good or wicked, but have merits and sins so that they can still earn the world to come – are judged first for one year in *Gehinnom* – the Jewish counterpart of the Purgatory. Here the soul receives the punishments through tortures for sins which he or she did not atone for in his or her life, and after having atoned for them in *Gehinnom*, he or she can earn eternal life. On the basis of these interpretations one can explain the medieval customs of fasting, praying, and charity giving for the souls of the dead in the first year so as to lighten their sufferings in this intermediary stage. In the SHP 34, it is stated that one can pray and fast for the dead so that they may atone for their sins and be saved from the tortures of *Gehinnom* if they had merits in this world. At the end of the text of the DT (Maharam Prague par. 1022) there is an exemplum about merits and sins, reward and punishment in the world to come. According to this story, the *Gehinnom* is an intermediary place for a punishment of one year after death. *Gehinnom* is the place which is meant for those whose sins are more than their merits and received reward for their merits in this world. The *Gan Eden*, on the contrary, is the place, which is deserved by those whose sins are less than their merits and they will (or could) be punished for them in this world in order to reduce the punishments in *Gan Eden*. In the vision, which is shown to the man led by Eliyyahu to the next world, *Gehinnom* is the place of punishment for various sinners in various ways, according to what they committed during their life. However, there are exceptions in this system, like the example of the wicked tax-collector who did only one good thing during his life: he saved the life of a poor man. The wicked man earned the world to come due to this single merit (Sources for the story: yHag. 2.2 (11a), ySanh. 6.6 (28b), Hibbur Yafeh 3–4., DT Maharam Prague ed., p. 1022, end). See: Soloveitchik: "Topics".

SHP 18

“[...] One shall not say that ‘crooked can not be made straight’ and that there is no benefit in *teshuvah* [...] On the contrary, the man must take into consideration that the [measure of] sins are to be considered on the basis of their consequences [*garma*’]. Can consequences not be corrected¹⁹⁵⁰. [Surely, they can be], and the penance must be commensurate with all the consequences, because that is why one must multiply the penances. And if the teacher considers the man who asks for penance that he will not perform them all, it is better not to impose on him all the penances. [...]”

HTR 28

“My son, be attentive to the negative commandments, lest you transgress one of them and receive forty lashes or flogging for disobedience (*makkat mardut*). If you have transgressed a negative commandment, especially a negative commandment punishable with *karet*, you shall fast for forty days at least, and you shall receive flogging each day, and you shall give thanks to Him”.

AZ 20b

“[...] R. Pinhas ben Yair said: Study leads to precision, precision leads to zeal, zeal leads to cleanliness, cleanliness leads to restraint, restraint leads to purity, purity leads to holiness, holiness leads to meekness, meekness leads to fear of sin, fear of sin leads to saintliness, saintliness leads to [possession of the] holy spirit, the holy spirit leads to life eternal, and saintliness is greater than any of these [...]”

II.C.1. Suicide for Sins, Death Penalty SHP 19

“And when he repents, he must be instructed to sit in icy water [...] Because he takes to his heart and asks penance by himself, he shall not be instructed to kill himself. And it is written: ‘Seek me, and you will live’ (Amos 5,4); but he must sit in cold water. And also he shall not come and go so as not to have the opportunity to sin with women, because: ‘playing and easy going accustom one to prohibited relations’ (Avot 3,10). [...]”

RJH

“Question: if one kills himself for his sins, does he transgress the commandment: ‘I truly shall make you responsible for your blood’ (Gen. 9,5). Answer: It is good for a man to kill himself for his sins, because thus we have found about R. Eleazar b. Dordia that when he killed himself for his sins, a heavenly voice came forth and said ‘you are blessed etc.’ (A. Z. 17a). And also in the Bereshit Rabbah, we have found that when the son of R. Yosi b. Yoezer’s sister killed himself with many deaths¹⁹⁵¹, it was counted to him as righteousness (Ber. R. par. 65). And there was once an apostate who said that he had sinned by water (of Christian baptism), so he drowned himself (in water) in order that his sin might be atoned for.”

HTR 29

“This is the rule concerning him who returns with all his heart and with all his soul to be attached to his Creator: he shall ponder on what has been written, ‘I shall be sanctified among the sons of Israel’ (Lev. 22, 32). If he were in danger [in other versions: in time of persecution] he should let himself be killed or receive heavy tortures for the sake of his Creator. Consequently, [when he returns] he shall say to himself: ‘Can I not overcome my instinct for one hour for the sake of my Creator? Now shall I take delight in fornication for a short hour? [...]”

¹⁹⁵⁰ Qoh. 1,15: ‘That which is crooked can not be made straight’. On bHag. 9a it is explained that if the festival-offering was not brought earlier, it can still be offered up on the last day of Tabernacles, but if the festival passed, he is not bound to make it good. It is not a ‘crooked that can not be made straight’. This applies to forbidden relations and begets from her bastard. Nd does not apply to a thief or robber. But on BQ 94b it is stated: ‘Our Rabbis taught: ‘If robbers or usurers [repent and of their own free will] are prepared to restore [the misappropriated articles], it is not right to accept them, and he who does accept [them] from them does not obtain the approval of the Sages’.

¹⁹⁵¹ With the four death penalties of the *Bet din*.

"קידוש השם במאות הי"א והי"ב", The reasons of Grossman

The reasons are (Grossman, "קידוש השם במאות הי"א והי"ב"): 1. the influence of the Christian and Islamic ideals of martyrdom on the Jewish one (passive/active martyrdom) 2. the relation to the Christian and Islamic religion (apostasy to Christianity has been considered idol-worship, whereas to Islam not) 3. the relation to the Christian and Islamic culture (The Jews in Arabic lands adopted Arabic culture, but the Jews in the lands of the Latin Christendom adopted not Latinity); 4. the process of apostasy and the status of the apostates (act of baptism/one word; individual who became excommunicated from the community and family/mass conversion, they kept the commandments secretly) 5. the relation to the *aggadah* – the *aggadah* played a role in the *halakhic* practice in Ashkenazi *halakhic* works (which was not so in the Islamic countries), in which the *aggadah* could not form basis for *halakhic* decision; 6. the relation to rationalism – this was not a characteristic of the Ashkenazi culture, but that of the Jewish culture in the Islamic lands; 7. the relation to the Palestinian tradition. Grossman argues that the *Sefer Yosippon* – containing scenes of mass martyrdom in the Jewish war – which was known in the Middle Ages among Jews of both the Islamic and Christian countries, and even translated to Arabic, had from the beginning of the 11th c. a great impact on the Ashkenazi culture as a whole, which was not so in the case of the Lands of the Islam, according to Grossman. However, this latter named 'reason' could be also a consequence of the above mentioned attitude towards *qiddush ha-Shem*.

II.C.2. Physical Self-Mortification Gloss in the MH Ms. Mos. 103 fol. 127a

"And there is a story about R. Mordehai who once hit with his fist a Jew, and he said "The arm which has hit a Jew shall be broken"¹⁹⁵², and put his hand in a hole in which there was a latch and broke it, because it is said: "If I have raised my hand against an orphan"¹⁹⁵³ (Job 31,21) and "Then let my shoulder fall from the socket"¹⁹⁵⁴ (Job 31,22). R. Tam, however, decided that his fist should be cut off."

HTR 17

"He who hits his fellow man [...] is called an evil-doer. (Ex 3) 'And he said to the evil-doer 'Why do you beat your fellow?''; Rav Huna said: 'His hand shall be cut off', as it has been said in the Sanhedrin in the chapter 'Arba' mitot' (Sanh. 58) 'He who hits the jaw of his fellow man it is as though he had hit towards the Divine Presence. He who raises his hand against his fellow man, although he has not hit him, is called an evil-doer (or criminal) and is called a sinner. Rav Huna said that his hand had to be cut off."

Sefer Minhag Tov

"[...] (29) And it is a good custom for everyone in whom God's spirit abides to bring a woven wool cloth [*beqed*, it can also be a prayer shawl, or a kind of *tallit qatan*], called in Italian '*stamina*'¹⁹⁵⁵, which is thick and tortures their bodies so that they should not be enticed to pursue the vanities of those who err, and that they should not forget God because of the evil instinct [play on words: *Yozer* – *yezer*]¹⁹⁵⁶ and that should not descend to destruction and lack their bread. And thus it is proper for him who refrains himself from wearing thin linen cloth, and dedicates himself [volunteer – *mitnaddev*] to wear only clothes of wool, except on the Sabbath and holiday, [days on] which self-mortification is prohibited. And then being thick and rubbing his body all the time, he shall remember his Creator, because he will be like a man who remembers and is aware of the fear of God, may He be exalted. [...] ¹⁹⁵⁷ [...]

(34) And it is a good custom not to warm oneself at all by the fire on the Sabbath, even in the houses of the Gentiles, because the Gentiles will surely put wood on the fire while a Jew is there, or stir the embers in

¹⁹⁵² Allusion to the verse in Job 38,15: "The wicked are denied their light, and their upraised arm is broken".

¹⁹⁵³ The second part of the verse: "knowing that I had influence in the court".

¹⁹⁵⁴ Second part: "and my arm be broken off at the elbow". The story about R. *Mordehai* who broke his own arm as penance for beating is from SHP 631. See Sanh. 58b.

¹⁹⁵⁵ שטמיניא See p. 218, in the introduction of Weiss, among the Italian words of the composition. Wearing rough cloth near the body is the instruction of Eleazar to the penitent for grave sins (murderer, apostate); the instruction to wear it regularly, not as a law for penitents, shows the ascetic direction of this composition.

¹⁹⁵⁶ The teaching about the evil instinct, as the center of sinful existence, which must be fought, that being the life task of the *hasid*, is an authentic *haside Ashkenaz* doctrine.

¹⁹⁵⁷ According to the SHP and the Roqeah, self-mortification is prohibited on the Sabbath and festivals for penitents, (see below C2).

order to make them burn.¹⁹⁵⁸ And if the Jew said, 'I shall warm by the stove or kiln', it is also not good because he becomes accustomed to do so and loses the reward.¹⁹⁵⁹ [...]

(66) And it is a good custom to fast and mortify oneself in many ways written in this book, after Pesah, before Nissan ends, three times, to atone if they have erred or sinned in the laws of Pesach [...]

(68) And it is good to go barefoot on each day of the year on which one takes it upon himself (or herself) to fast*¹⁹⁶⁰, and if he can not go barefoot all the day long because of those who see him, at least he shall go barefoot from morning when he gets up until he comes out from the synagogue. And [on fasting days it is also prohibited to] wash oneself in warm water and to grease oneself [...].

(73.) And it is a good custom to [...] undergo all kinds of self-mortifications on the days between *Rosh ha-Shanah* and the fast of Yom Kippur [...] It is a good custom to be stringent regarding meals after the fast of the 9th of Av [...] and [before the 9th of Av] not to lie in a bed, but in an upper room on the ground, wearing his clothes and the belt on his waist [...] And it is a good custom on the night of 9th of Av [...] to lie on the ground, sit only on the ground, beat one's breast, and gird sackcloth on his waist. [...]"

II.C. 3. Flogging *Siddur Shlomo bar Shimshon*

“At the time of the *Minḥa* prayer, which is said instead of the daily sacrifice [in the time of the Temple] offered in the evening, we say, ‘And He is merciful, He will forgive the sin’, as the law requires. And [we have the tradition] from R. Eliezer the Great¹⁹⁶¹ that transgressors¹⁹⁶² receive flogging at the time of the *Ma‘ariv* prayer, because the congregation says [the ‘And He is merciful’ prayer] for the person who has received punishment [flogging]. After flogging, the prayer leader says, ‘And He is merciful’ [three times, because the executor of the flogging must say three times, ‘And He is merciful’¹⁹⁶³], these are thirty-nine lashes, because thirty-nine lashes comprises the forty lashes¹⁹⁶⁴. And we say in the evening prayer, ‘And He is merciful’ also because during the day a man commits many sins, therefore in the evening he or she must say, ‘And He is merciful, He will forgive the sins’.”

Sefer Minhag Tov

“(66) And it is a good custom to fast and mortify oneself in many ways written in this book, after Pesah, before Nissan ends, three times, to atone if they have erred or sinned against the laws of Pesach [...], and to receive flogging publicly [in the synagogue] in the evening. [...]

(69) [...] I think it is a good custom, during these fasting days from the first of the month Elul until the fast of Yom Kippur, to receive flogging [or: to flog oneself]¹⁹⁶⁵ [gloss: there is an allusion [to the requirement of flogging in the verses] ‘blow the *shofar* on the New Moon’ (Psalms 81,3) in the *gematria* [the numeric value of the word *shofar* it is equal to] ‘*malqut ’arbai’ im be-‘asarah*’ – forty lashes in the presence of ten adult Jews] in *minyan* in the evening [in the presence of at least ten adult Jews in the synagogue]¹⁹⁶⁶ [...] It is a good custom to [...] flog oneself [or: to receive flogging] during the days between *Rosh ha-Shanah* and the fast of Yom Kippur in the presence of ten Jews in the evening [...]

¹⁹⁵⁸ And in this case it is considered as though the Jews had used the Gentiles as instruments for their own purpose, and the Jews had thereby transgressed a commandment.

¹⁹⁵⁹ I.e. the reward in the world to come. The warming on the Sabbath at a kiln or oven, even in the winter, was regarded prohibited by some Northern French and German Tosafist sages in the 12–13th centuries, even if the fire was made by a Gentile or Gentile servant or maidservant, who was instructed or asked to do this before the Sabbath.

¹⁹⁶⁰ For the instruction to go barefoot on the days of fasting and penance see also below no. 72 add**.

¹⁹⁶¹ R. Eliezer b. Isaac, (990–1060); he was the disciple of R. Gershom, R. Judah ha-Cohen; he stood at the head of the *yeshiva* in Mainz, together with R. Jacob b. Yaqar; R. Isaac b. Judah and R. Isaac ha-Levi were his disciples. See Grossman, *חכמי אשכנז הראשונים*, 211–233.

¹⁹⁶² ‘*Avraynim*’. This was the name of those who have committed a crime or transgressed a community enactment and have been liable to flogging.

¹⁹⁶³ Such is the law of flogging: the 39 lashes are divided into three parts, according to bMak. 23a.

¹⁹⁶⁴ The forty lashes of the Torah are according to the rabbinic institution 39 (mMak. chapter 3).

¹⁹⁶⁵ The difference between self-flagellation and receiving flogging by the hand of a fellow Jew is not always clear, because the same word – ללקה – is used for both actions.

¹⁹⁶⁶ Flogging on the *Erev Yom Kippur* was an Ashkenazi custom (see below B2.4), but in other sources it is not accentuated the public character of flogging, as a special requirement. But to flog each day in public in the forty days from the beginning of Elul, is not mentioned in other sources.

(74) And [on the eve of Yom Kippur] in the period of the *Minḥa* [in the last quarter of the day] one shall immerse ritually, if he can, confess and flog oneself publicly [or receive flogging] and eat and go to the synagogue [...]"

II.C.4. Fasting

Commentary on *Shi'ur Qomah* and *Seder Pe'ulat ha-Yezirah* – Fasting and Ritual Immersion

CShQ

"[...] He has to fast for 40 days [by regular fasting] and [additionally] 3 days consecutively [days and nights]. If he commits a grave sin, for example, he fornicates with a Gentile woman or a married woman or with a menstruating woman, or commits sins which are similar to these transgressions, when he atones for them, he is pure, as it is said, 'Because on this day atonement will be made for you and you will be purified in God's presence from all your sins.' (Lev. 16,30).

Pain: he must afflict himself with hunger, that is to say when he wants to eat, he should not eat to be satisfied [...]

Ritual immersion: it is good to immerse three times a day, if he can, but at least in the first three days he must immerse three times daily, and also on the three last days [three times daily], while during the rest of the 40 days [it is enough] once a day. After the 40 days he shall do everything as I have written above, in the same order as I have written above. If he [considers that he] can not perform the whole [order of penance], he should not begin it."

SPY, fol. 88b

"One must fast for 40 days continuously, immerse on each day, also on the Sabbath, and in the evening he is only allowed to eat the 'bread of siege and the water of oppression' [or: 'bread of adversity and water of affliction', Is. 30,20; 1Kings 22,26; 2Chron 18,26; Sanh. 81b). When he has completed the 40 days of fasting, he must fast three more days continuously in such a way that he is not allowed to eat in the night either, and on the third day he shall go to immerse during the day [...]"

"Esther's Fast"

Ms. Parma 2999

"If one desecrates the Sabbath intentionally [this is his penance]: if [the desecration] has been committed by carrying something from the private space to the public space, he or she shall fast for three days continuously, if he or she can, or for forty days and is allowed to eat in the nights [...] If one desecrates the Sabbath by working, he or she shall fast for forty days continuously, then for three days and nights the 'fast of Esther' [= three days continuously days and nights], [...] If one desecrates the Sabbath unintentionally, he or she shall fast on Monday and Thursday, and give eight *dinars* to charity."

Examples for the Influence of *Ḥaside Ashkenaz* on the Customs of Fasting in the Three Subsequent Centuries

According to *responsum* No. 157 of the collection of *responsa* of R. Mollin, one has to fast every year on the day of his father's death; if somebody's father or mother dies in Adar, he or she has to fast only in the first month of a 'leap-year', as R. Weil maintains (Weil DvH 5). If the day falls on the Sabbath or on the first day of the month (Colon 31), this type of fast is prohibited (Weil DvH 8). The forty fasting days and the saying of *seliḥot* during these forty days before Yom Kippur, in the whole month of *Elul* and in the first ten days of *Tishri* (as ruled for example in the *Sefer Minhag Tov*) are mentioned in later sources, for example, in the *Sefer Mordehai*, *Yoma* no. 723 and in Aaron ha-Kohen of Lunel's *Orḥot Ḥayyim* p. 100d. Like in the rulings of *ḥaside Ashkenaz*, fast days listed at the end of *Megillat Taanit* were not regarded as obligatory and they found little acceptance among the medieval Jews. The list of the fast days in the *Shulḥan Arukh* is the same (with a few differences) like that given in the *Kol Bo*, *OH* 580.2 (25 days): Nissan 1,10, 26; Iyyar 10, 28 (29); Sivan 23, 25, 27; Tammuz 17; Av 1, 9, 19; Elul 7 (17); Tishri 3, 5, 7; Marḥeshvan 6 (7); Kislev 7 (28); Tevet 8, 9, 10; Shevat 8, 23; Adar 7, 9. In the *Kol Bo* there are about 30 days of fasting ("No. 61: It is a custom in Narbonne to fast from Pesach to Shavuot and from Sukkoth until Hanukkah each Monday and Thursday." No. 63: The fast days: Nissan 1, 10, 28; Iyyar 10,28; Tammuz 17, Av 1,9,18,19; Elul 7; Tishri 3,5,6,7,17; Marḥeshvan 6; Kislev 5; Tevet 3 days and 9,10; Shvat 5,23; Adar 7,9. According to the *Shulḥan Arukh*, like the SHP, it is advisable to fast on every Monday and Thursday. The order of fasts is other than in the Talmud, according to a *responsum* of R. Weil (157); it is prohibited to fast until the 17th of Marḥeshvan in this month (Weil DvH 14). On the first days of the month Nissan there is a custom to fast. Besides these fixed fast days the synagogue frequently imposed a

fast-day upon the community when great calamities threatened the people. This right of the synagogue had its origin in the fasts described in the bTaanit as having been instituted in early times when rain was late in coming. If it did not rain on or before the seventeenth of Marḥeshvan, the learned and pious men of the community fasted for three days – Monday, Thursday and Monday. In case of continued drought, three more fasts were proclaimed, and finally seven fast-days on successive Mondays and Thursdays were instituted. These fasts were accompanied by many solemn ceremonies, such as the taking out of the Ark to the market place while the people covered themselves with sackcloth and placed ashes on their foreheads, and impressive sermons were delivered (Tan. 18a). Fast-days were subsequently instituted whenever a misfortune befell the people, as pestilence, famine, evil decrees by rulers etc. (Taan. 19a). Further laws of the fast days are discussed in the following 15th century *responsa*: on the fast days it is a custom to learn (Weil DvH 56); R. Weil discusses whether it is allowed to cook for others on the fast day (Weil DvH 55); there is a custom of three or two days of fasting on *Rosh ha-Shanah* (PuK 180); two days fasting for dreams on *Rosh ha-Shanah* (ThD 278); it is allowed to ‘borrow’ and ‘pay’ the fast, according to the decision of R. Isserlein, but in this case one has to fast three days continuously in order to ‘pay’ the ‘borrowed’ fast (PuK 180); fasting for three days continuously (= ‘Esther’s fast’ of Judah Ḥasid, ThD 154); fasting for dreams and borrowing and paying the fast (Bruna 63); borrowing and paying the fast for one who vowed to fast for an entire year on Mondays and Thursdays (Isserlein ThD 275); release of the vow of a woman for fasting (ThD 279); vow of fasting for the individual and community, in time of trouble; a woman (ThD 279); a father for his son (Isserlein ThD 277); community for another community (ThD 280).

II.C.6. *Niddui* and *Ḥerem* *Kol Bo* 139

“The text of the *ḥerem*: ‘By the curse of the guardian angels, and by the malediction of the saints [or archangels], we ban, damn, excommunicate, fulminate, curse and imprecate with the agreement of God and with the agreement of the community, with this Torah Scroll, by the 613 *miḥvot* that are written in it, by the ban by which Yehoshua has banned Yeriho (Josh. 6,26; 1Kings 16,34), and by the curse by which Elisha has cursed the children, and by the curse by which Gehazi has cursed his servant, and by the imprecation by which Baraq has cursed [the city of] Meroz (Judges 5,23)¹⁹⁶⁷, and by the imprecation by which the men of the Great *Knesset* have damned, and by the imprecation by which Rav Judah bar Yehezqiel has cursed a certain servant (Qid. 70a) and by all the bans, imprecations, curses, excommunications and damnations by which curses were issued from the days of Moses, our master, until now. In the name of Akatriel YH, the Lord of the Hosts, in the name of Michael, the great Prince, in the name of Meṭatron, whose name is the same as the name of his Master, and in the name of Sandelaphon, who makes crowns for his master [...]. That person should be cursed by all the damnations written in this Torah Scroll, his or her name should be erased from Earth; the Lord shall cut him off from all the tribes of Israel by all the curses of the Covenant written in this Torah Scroll.

You, who are attached to the Lord, your God, today you all [are blessed to] live. He who has blessed Abraham, Isaac, Jacob, Moses, Aaron, David, Solomon, the prophets of Israel and the *ḥasids* of the world, He shall bless this holy community, together with every holy community, except those who transgress this ban. God with His mercy shall keep them and save them from all tribulations and depressions, He shall lengthen their days and years, shall send them blessing and success in all their works, and shall redeem them soon together with every Jew who is our friend. So may be His will, and say Amen.”

***Maharam Lvov* 492 – Ra’avan, Avigdor b. Menaḥem**

“Concerning one who calls his fellow Jew ‘bastard’: [...] if he does it frequently, the prefects of the community [*tovei ha-ir*] must punish him severely by excommunication. They have the power to impose fines, to force criminals, to ‘build fence’ around the Torah so that those who lie in the dust should not be hurt [the dead]. Ra’avan.”

“I have punished in the presence of the Rabbis of my community a Jew who has called his fellow Jew a ‘bastard or like a bastard’ [...] I warned my community after I had come here, because they had never punished [cursers beforehand]. And also he who calls his fellow Jew ‘legally disqualified’ is liable to excommunication for seven days, and he must behave himself as an excommunicated person during the prayer. [...] [Avigdor b. Menaḥem]”

NMM

¹⁹⁶⁷ See bMQ 16a; bShev. 36a.

“[...] One who calls his fellow a ‘slave’, shall be excommunicated [...] Measure for measure. ‘Slave’, [by calling the fellow a ‘slave’] the offender wanted to put him into the category of the cursed ‘Kena‘ani’, therefore the curser must be excommunicated [...]”

NMM

“[...] she [a woman who has slandered another woman] must be excommunicated for thirty days [...] she is liable to flogging, but we lighten the punishment: she is [only] required to sit outside the synagogue for eight days. And those thirty days during which she is excommunicated must be divided into four weeks: she shall remain at one place only for seven days, and at the second place [also] seven days and at the third place seven days and the rest at her own place. And she [the offender] shall ask for forgiveness from her [the offended woman] in the synagogue of the women. And if her [the offender’s] husband does not want his wife to be disgraced in the *bet din* by excommunication, and wants to commute her excommunication by money, then he shall do so according to the decision of the judges.”

Weil 147

“[...] You shall take it upon yourself to sit in your house for thirty days, and you shall conduct yourself as a rebuked one [in *nezifah*¹⁹⁶⁸], as you yourself have decided about yourself in our enactment¹⁹⁶⁹; and these thirty days shall begin in the second half of the month of *Marheshvan*, in the [...] [it is missing] year of the sixth millennium.”

Colon 32

“Regarding those Frenchmen whom you have asked me about, my dear friend, those who use to buy big vats full of trodden grapes from the Gentiles, that you do not know what their *halakhic* basis is for allowing themselves to do that, since R. Tam himself intended to excommunicate Jews [for having bought vats of trodden grapes from the Gentiles] etc. [...] You ought to know that in my opinion even R. Tam, who prohibited to tread [the grapes] together with the Gentiles in the vats [...] [would let us to buy from them grapes trodden] in tubs on the carriages, which are afterwards ladled out with buckets from the tubs and poured into vats, as in our places the custom is, since [the Gentiles] do not run must [or wine through a channel, that would be *hamshakha* and forbidden], from those tubs [...]“

Weil 152¹⁹⁷⁰

“[...] R. Eliyyahu did something very wrong when he pushed the prayer leader during prayer, [...] he harmed publicly the honor of the Divine Presence, and the honor of R. P. and the honor of his students. If R. P. had not excommunicated and excluded him from his *yeshivah* for an entire [learning] period, we would have had to decide his case stringently. But because he has suffered punishment for his shame, he has been pardoned. [...]”

Shibbole ha-Leqet 60

“This is the decision that R. Kalonymus and R. Shabbatai he-Ḥazan z”l decreed in the land of Hungary concerning the case of R. Abraham bar Ḥiyyah of Regensburg and his brother, R. Jacob, who have come from Russia with loaded wagons on the eve of the Sabbath [...] If they [the transgressors], God forbid, had committed the transgression willingly, they [the judges] would have punished them more stringently: they would have forbid them to shave [their hair and beard] and would have excommunicated them for thirty days.”

Ms. Parma 86 par. 189

“[...] It is written in the name of Rav Paltoi Gaon that from the moment that a man says, ‘I will go and betray a certain Jew’, he is considered an evil-doer and disqualified from giving a testimony, as it is proven in the story of Rav Kahana, who has torn out the windpipe [of an informer]. Because in this case there is enough

¹⁹⁶⁸ ‘Rebuke’, a milder form of *niddui*. See M.K.16a.

¹⁹⁶⁹ The community enactment of Nürnberg which was undersigned by him as well.

¹⁹⁷⁰ See quotation from this *responsum* also in II.B.14 (desecration of the synagogue).

evidence for that [for threatening with murder], since [proper] witnesses testify that he [the suspect murderer] has threatened him [the murdered Jew], since that moment he has been disqualified from giving a testimony, and has been considered an evil-doer. I, the wretched one, agree with the Rabbis to excommunicate, ban and disqualify him from giving testimony. Ḥayyim bar Isaac, may his soul be bound together with the livings.”

Ms. Parma 86 par. 190

“Concerning that evil case which that evil man has committed, the spirit of the Name does not abide in him: he deserves to be hit with thorns and be tortured. [...]In [his commentary to] the first chapter of *Ketubbot* Ri [R. Isaac b. Samuel of Dampierre] writes regarding the case when ‘one says, ‘I have a *mane* in your hand’, and the other one says, ‘You have nothing in my hand’, that he [the second one] is exempted [from taking an oath that he has nothing in his hands]’. Rashi comments: ‘a rabbinical oath is required of him’. But Ri writes [commenting on another place in the Talmud] that he agrees with the first opinion in the *Baba Mezia* (2b), namely, that he [accused one] is required to take a rabbinical oath, even if there is no fear that the decision will cause loss of property to one of the parties. But Rav Hai Gaon writes that he is not required to take an oath, but he is excommunicated, and if he owes money to his fellow, he must repay [if not, he must take an oath]. And I say, if for a doubtful financial loss they [the rabbis] excommunicate someone, so much the more in this case [murder]. It is even more important, what is said in the chapter *Nigmar ha-din*, ‘once happened that one rode on his horse on the Sabbath etc’, [arguing on the basis of this story] that the *bet din* [is empowered to] flog and punish [even in cases when it is not lawful according to] the Torah’. And I agree with everything the Rabbis decide [i.e. with every punishment imposed on the offender], and I say to him: ‘Go out, you murderer, violent man’ (2Sam. 17,7). And if he humiliates himself, obeys the rebukes, and repents humbly [it seems that here some words are missing in the manuscript]. Shabbatai bar Samuel.”

Bruna 265

“[...] Concerning that evildoer, Nahman, I shall not prescribe penance for him, because he does not want to repent, to regret his sin and mend his ways. Therefore, as long as he is not willing to do penance, you shall publicly proclaim in the synagogues that he is disqualified from giving testimony and from taking an oath, and he can not take part in anything holy, until he regrets his sin and asks for penance and atonement.”

Maharam Prague 81

“[...] As to somebody who beats his wife, I have received this tradition that we must judge him more stringently than somebody who beats his fellow Jew, because he is not required to honor his fellow Jew, but he is required to honor his wife. And that is the way of the Gentiles [to beat their wives], but God forbid a Jew to do that! And he who does that must be banned, excommunicated, flogged and punished [...].”

Mintz 83

“[...] At the beginning of the *Ha-gozel qammaḥ*, Rabbah says that the messenger of the *bet din* is as trustworthy as two [witnesses] for excommunication, namely, on the basis of his testimony, the defendant can be excommunicated if he does refuse to appear in court when he is summoned. And thus it is in the *Sefer Or Zarua*: ‘If the messenger of a *bet din*, which summons a man to the court, returns [to the judges and the defendant does not want to appear in the court], he is as trustworthy as two [witnesses], i.e. the accused person can be excommunicated on the basis of his testimony. But a verdict [that he lost the suit] can not be issued unless there are two witnesses.’ That means that if the summoned person does not hearken to the words of the messenger, he will be excommunicated, and if there are witnesses, they are authorized to issue for him a written verdict.

Especially in this case when after appearing in court the defendant has run away, certainly they can excommunicate him and issue a written verdict, because there are witnesses. Further, because he is known to the ‘crown of the Torah’ [Rabbi Yuzman Kaz] and to all the community [as an evil-doer]. Also because he has transgressed the ban of R. Gershom and broken the fence; it is written, ‘He who breaks the fence shall be bitten by the *naḥash* [snake]’. Also because he has disregarded the summoning which he himself has brought. Thus it is in the enactment of R. Gershom: ‘In the place where there is a ban and a man comes to that place and his fellow summons him to the *bet din* before witnesses, even in the market, the ban is binding on him [that is, he is due to appear under threat of excommunication] until he comes to the *bet din* for judgment. [...] I am sure that when the case will become known to the Rav Yuzman Kaz [the local rabbi who is responsible for his punishment], he will immediately agree with me that the accused person must be excommunicated because he has refused to appear in

court in due time, and Rabbi Yuzman Kaz will count this transgression [of the offender] to his other transgressions [...]"

Bruna 284

"Regarding that [Jew, called] Meir Levi who has been so insolent that he has publicly threatened the Rav with killing him in his bed [at night]: although our sages say (bShevuot 46a), 'There are persons who only threaten but do not fulfill their threat' [and therefore it is not to be considered an offense], there is no greater disgrace, disobedience and indecency than this [offence committed by Meir Levi]. Consequently, he shall be punished by *nahash* [*herem, niddui ve-shamta*, major excommunication, meaning 'serpent'], and it [the 'serpent'] should be at his heel and should not be removed [from there] until he repairs his crookedness according to the instructions of the Rav or the great, good and wise Rabbi, my friend R. I. Bruna [...]"

II.C.8. Pilgrimage SHP 630

"It happened in the time of Rav Hai and R. Abyatar Kohen Zedek when they were in Jerusalem [on *Hoshanah Rabbah*] that a murderer came to them. Rav Hai and R. Abyatar ordered [the executors] to flog him on the Mount of Olives until his blood spills out. The murderer cried, 'Hit me, do not have mercy on me, so that I shall not be called to judgment before the Holy One.' And they hit him until his body became swollen and he almost died. Then [Rav Hai gaon] ordered [the executors] to leave him. They [the executors] waited three weeks, and then buried him in the ground, only a small hole was left, and they tortured and flogged him until he was close to death. They did that three times, and then knew that he had atoned for his sin, because he received all that with love, and said that he had not atoned for yet". They answered him that the Holy One had already mercy on him. Rav Hai went on a pilgrimage every year from Babel to Jerusalem, and he was there at the time of Sukkoth, because they circled the Mount of Olives [...]"

Ms. Ox. 1102 (Catalogue Neubauer) fol. 112a

"I have seen engraved [i.e. written] that the Jews of *Erez Israel*, since the Temple has been destroyed, gather on the Mount of Olives on the day of *Hoshana [Rabbah]*, and circle it seven times. During the first circle, they turn their faces toward the Temple and say, 'Foundation-stone [*Even Shtiyah*], Foundation-stone, save [us], please, [our] Master!'. Then they perform circles as is customary [on *Hoshanah Rabbah*], till the end of the whole ritual. I have heard that from the mouth of R. Zechariah, who went into exile [or: went on a pilgrimage] to Jerusalem to atone for his sins, and heard the order of the supplications (*'seder shihot'*) on that day on the Mount of Olives".¹⁹⁷¹

Mintz 79¹⁹⁷²

"[...] It is written in the *Tashbez* that sometimes the performance of a *mizvah* leads to sin: 'You have asked me to inform you about the commandments for those who go to *Erez Israel*. I only know that thing which is written at the end of *Ketubbot*, namely that they [those who go there] will be pardoned for all their sins, on condition that they depart from sin, are careful [no to commit] any transgression and fulfill all the commandments which are to be fulfilled in the Holy Land, because if one sins in *Erez Israel*, he or she will be punished more severely than for sinning outside the Holy Land. For it is written, 'the land which eats his inhabitants' (Num. 13,32). But now it is waste, there is no city there surrounded by a wall etc., and there are Jews who only go there to live an easy-minded life, [about them it is written], 'Who has asked you to parade through my courts?' (Is. 1,12). But for those who go there to live a life of purity and sanctity, there is no end of their

¹⁹⁷¹ "גם זה ראיתי חרות, שאנשי ארץ ישראל, מאז שחרב בית המקדש מתקבצים על הר הזיתים ביום הושענא ומקיפין אותו שבע פעמים. בהיקף ראשון הופכים פניהם כלפי בית המקדש ומתחילים ואומרים "אבן שתיה, הושעה נא רבא". ואחר כך מסובבים כדרכם עד שגומרים כל הסדר. זאת שמעתי מפי ר' זכריה, שגלה לירושלים לכפר על עוונותיו ושמע סדר תפילות באותו יום על הר הזיתים".

¹⁹⁷² See also II.B.10 (transgressing a vow) for translation from this *responsum*.

reward. But they must provide for themselves etc. And what you have asked whether the dead are exempted there from the pains of the grave [*hibbot ha-qever*]¹⁹⁷³, I don't know.”

Bruna 77¹⁹⁷⁴

“[...] those Jews who have had the intention to enter the Land of Israel and have been forced [not to continue their way or have died] on the way, are considered as though they had entered the Land of Israel. Maybe they [these dead persons] do not even need the [underground] channels [for the bones to roll]”¹⁹⁷⁵.

II.C.11. Humiliation and Shame Sanction **SHP 1010**

“[...] If someone can stand a great test, he or she shall not be conceited, because maybe he or she can not stand a greater test and will commit a lesser transgression. Because who can stand the test of shame? If someone, delivered to a ruler, were told: ‘You have to choose one of two: either you will be punished by shaving half of your hair or by another shame sanction, or you shall steal from your friend something, or transgress a negative or positive commandment’, who knows whether he or she can stand the test.”

SHP 1009

“‘Man’s fate is like that of the animals’ (Qoh. 3,19) (*motar he-adam min ha-behemah*) which is ‘shame’ in the *gematria* (*boshet*), ‘is nothing’ (Id.) (*’ayin*) that is to say the shame is not recognizable, and the animals have not the instinct (or feeling) of shame and that of honor, only the instinct for pleasure; consequently, he who deprives [them] of pleasure takes vengeance on them. The instinct of shame and honor has been born by eating from the tree of the knowledge [of good and evil] so that man should not commit sin. He who stands the test of shame will be greatly rewarded, and his enemies will be shamed. Honor has been created for the sake of the Holy One and His fearers, as it is written, ‘[who] honors those who fear the Lord’ (Psalms 15,4), and it is written, ‘Those who honor me I will honor’ (1Sam. 2,30).”

SHP 1008

“One is not allowed to attribute merits to him- or herself, because if the Holy One had not created shame, man would not be clean from sin. You should know this, because to kill publicly a man is more general a sin than to transgress with an unmarried woman publicly, and even [to have intercourse] with his wife, because anger is to be found in children as well as old and weak men. Behold, Adam has ceased to transgress because of shame. Therefore do not attribute merits to yourself. When you were a child, you ceased [to transgress] because of shame and [out of fear] in order not to be beaten; then you abstained from sinning out of shame.”

SHP 991

“‘You shall love God your Lord with all your heart and with all your soul and with all your strength’ (Deut 6,5), [that is] with all the deepness of your thoughts, as it is written, ‘how profound are your thoughts [Lord]!’ (Psalms 92,6). R. Jacob Berabbi Yaqar, may he rest in the *Eden*, stooped to clean the floor in front of the Holy Ark.¹⁹⁷⁶ And when the community went to welcome the king or ruler, he took off his shoes, and said: ‘I am poor, they go with their money, and I am going with supplications to ask for mercy. They with theirs, and I with mine’. The *hasidim* followed his custom after him.”

SHP 65

“It is written, ‘Now take off your ornaments and I will decide what to do with you’ (Ex.33,5); this shows us that the penitent is not allowed to wear prideful clothes. On Yom Kippur, since it is a holiday, He has not forbidden the Jews to wear prideful clothes, because of two things that have been added to [the commandments concerning this day]: the *musaf* sacrifice and the prohibition from working. And it is written:

¹⁹⁷³ According to the medieval Jewish belief, the dead body suffers pains in the grave during the first 12 months when it is judged in the *Gehinnom* if he has not been a perfectly righteous Jew.

¹⁹⁷⁴ See also II.B.10 for translation from this *responsum*.

¹⁹⁷⁵ bKet. 111b.

¹⁹⁷⁶ See on this D. Berger: “Heqer Rabbanut Ashkenaz ha-Qedumah”, *Tarbiz* 53 (1984) 486–7. Cited in E. Kanarfogel, *Peering*, 37 n. 12.

‘You have enlarged the nation, o Lord, you have enlarged the nation. You have gained glory for yourself’ (Isa. 26,15). When there are two additional [commandments] on this day, the *musaf* sacrifice and the prohibition from working, then it must be honored with prideful clothes, because it is written: ‘For honor and glory’ (Ex. 28,20); therefore it is said, ‘enlarged, enlarged’ [twice]. Also because on those days when we do rend our garments [as sign of mourning], every Jew is required to wear ‘sackcloth’, as it is written, ‘When the king heard the woman’s words, he tore his robes. As he went along the wall, the people looked, and there, underneath, he had sackcloth on his body’ (2Kings 6,30), that is to say, the sack underneath and the cloth above. But on Yom Kippur the Jews are not required to tear their garments, therefore they do not have to wear sackcloth. It is written, ‘Turn ye unto me with all your heart, and with fasting, and with weeping, and with mourning, and rend your heart, and not your garments’ (Yoel 2, 12–13); ‘Turn ye’, this is Yom Kippur, on which there is no tearing of the cloth. ‘and leave a blessing behind Him’ (Yoel 2, 14), behind Him and not before Him, that is the Yom Kippur on which there is no blessing on the wine before it, but there is *havdalah* prayer on the cup. For if it does not refer to Yom Kippur, why is it written, ‘Rend your heart and not your garments’; do we not find that the righteous people rend their garments because of pain? But surely it refers to Yom Kippur on which one must rend his heart and not his garments.”

Sefer Minhag Tov

“[...] (24) It is a good custom to behave humbly, modestly and patiently with everybody [...]

(32) It is a good custom to put on phylacteries in the intermediary days of the feasts. Thus I have seen R. Moses and R. Meir z”l in the intermediary days of Pesach of the year *lamed gimme*¹⁹⁷⁷ when he was here with us that he put on and he said to me that the majority of the Gaons of the world put on [phylacteries]. And R. Yeshayah also [put on]. [...] ¹⁹⁷⁸

(61) It is a good custom [for a Jew] not to shave and not to wear a new dress and any new things and to enjoy the bathhouse and to cut his fingernails after Pesach until Shavuot, in the honor of the pious and innocent who have died a martyr’s death. But on the *Lag ba-Omer* all these are allowed because of the wonder which has happened. And from *Lag ba-Omer* until Shavuot, it is also forbidden. [...] ¹⁹⁷⁹

(63) It is a good custom for every Jew not to wear prideful clothes, i.e. colorful dresses with roses and *morello* [in Italian], and to wear only humble and modest clothes, clothes of the disgraced [penitent person] who [abstains himself or herself] from the delights of the world. That is called *umiliato* in Italian. Consequently, the fear of God will be in him. He shall not walk proudly, because the [prideful] clothes express pride and vainglory. The proof is that our ancestors did not use to make sleeves for their overalls on the left side (or maybe: for their clothes¹⁹⁸⁰) and did not wear *vergato*, as it is proper for disgraced and humiliated persons and for an exiled nation under an oppressor¹⁹⁸¹ The [two] principle[s] of this tradition [of humbleness] is [are]: ‘Listen, O Heavens etc.’ (Deut. 32,1), all the time the spirit of God is awake in one’s soul, the spirit of God shall [lead] one’s life, and withheld him or her from wearing prideful clothes, except modest and humble ones. [...] The second tradition is that one shall wear [on the Sabbath] more beautiful clothes than on the other days of the week [...] But even if his clothes [for Sabbath] are beautiful, they must be of a modest color, which is called *camellino* in our language, but not of other colors. [...]

(68) It is good to go barefoot on each day of the year when one takes upon himself to fast [...]

HTR 24

“He who has denies God [i.e. apostate] has transgresses the whole Torah. Consequently, he shall take off all his proud clothes, and it is not allowed to put on any embellishment. He shall mourn, cry, and regret his sins and fast on each day for some years. He shall humiliate himself [...]; it is not allowed to wash himself at all, except before the Sabbath and before the holidays. He is not allowed to wash his head, except once or twice a

¹⁹⁷⁷ 5033 of the Jewish Era, 1273 of the Common Era.

¹⁹⁷⁸ There were places in which on the intermediary days of the festivals the phylacteries were not worn.

¹⁹⁷⁹ The observation of mourning customs between Pesach and Shavuot is a pious Ashkenazi custom, in the memory of the Jewish martyrs.

¹⁹⁸⁰ Maybe instead of לשמאלות must be לשמאלות

¹⁹⁸¹ To bear a rod or staff in the hand was the sign of the exiled and penitent person in medieval Europe. It was a sign of humiliation meaning the interdiction to bear arms (the sign of the free men) and to be a wanderer and outcast from home.

month [...]. If people say to him, ‘Wicked apostate!’, he shall keep silent. All his thoughts must have good purpose.”

DT

“And he must wear sackcloth on his body, wear and wrap himself in black clothes, fast on Mondays and Thursdays for the rest of his life. He is only allowed to wear shoes of cow [leather], which are tied with a strip [...].”

NMM

“[...] Mrs. Peninah [...] has said about Mrs. Rishka’s father that he has converted and has been buried in abomination [in a Christian cemetery]; behold, about this there is a writ from our rabbis that he has done penance [returned] and died as a Jew. Therefore, she has transgressed the commandment: “you shall not disgrace your fellow Jew’, and if he has been a penitent [*ba’al teshuvah*], one shall not say to him “remember your previous deeds’; and she has spoken about those who lie in the dust [dead] etc. For that reason she shall go to his grave with ten men, and say, “I beg your pardon” [...].”

II.C.12. Other Prohibitions

Sefer Minhag Tov

“(69) It is a good custom to deal with the matters of *teshuvah* from the first day of the month Elul until the fast of Yom Kippur more [intensively] than on the other days of the year; for example, to mortify the body in many ways, to refrain from shaving the hair and beard and from cutting the fingernails and having sexual intercourse (except the Sabbath), from washing the body in warm water and from smearing oneself with ointment [...].

It is a good custom on the 9th of Av not to leave one’s house or the synagogue, till evening, because so is the custom of the mourner. One shall not come and go anywhere and shall not speak at all, but sit at one place, sing dirges from the *Eikha* and the evil things in Jeremiah [...].¹⁹⁸² It is a good custom not to shave from the 10th of Av until the day before the Sabbath *Naḥamu*, and to abstain from washing, shaving and hearing news [...].”

II.C. 13. *Viddui*, Prayers

MH Ms. Parma 2600

“*Viddui*: Please, Lord, the God of Abraham, Isaac and Israel, I know, my Creator, who have created me, brought me up, fed me, supported me, provided me with everything that I have needed, till this very day, and that I, in my foolishness, have paid with wickedness and I made You angry with my bad deeds, day by day I have done evil things in Your eyes.

I have sinned before You so and so.

My merciful Father, I tear my heart in my sorrow before You, and my soul cries secretly. I beg your mercy and generosity, like a poor man in the door, to help me to return through perfect repentance to You. Guard the heart of Thy servant against the evil inclination one forever. Prepare his heart to love Your great Name and to be a trustworthy servant all his life. So may be Your will. Amen.”

II.E.3. Common Rituals

Ritual Immersion for all Transgressors, OZ I.112

“In the *Seder ‘Olam* of R. Simḥa of Speyer, I read that according to his opinion¹⁹⁸³ all who repent must undergo ritual immersion. For there is a *baraita*¹⁹⁸⁴ in the *Avot de-Rabbi Natan*, about a maiden who has been captured etc., and after she had been redeemed, she has ritually immersed, because while she was among the Gentiles, she ate and drank from theirs, and now they have immersed her, so that she may be purified from sin. Because although the abominations of the Gentiles do not defile the body more than other sins, [ritual immersion is required] in order to return [to Judaism] in purity.”

Mordeḥai, end of the *Yoma*

¹⁹⁸² The mourning customs of the 9th of Av are especially stringent.

¹⁹⁸³ I.e. the according to the opinion of R. Simḥa of Speyer.

¹⁹⁸⁴ Tannaitic source, not incorporated in the Mishna. Here a story is told. *Avot de-Rabbi Nathan*, 1st recension, 8.8.

“We enter the synagogue and allow praying with all those who have transgressed a decree enacted by the community, even if they do not request it”

Tur, Bayit Ḥadash, Yoel Sirkes (to Ṭur 619)

“And I have found the reason for this saying in “*Zedah le-Derekh*”, namely that [the permission to pray together with the transgressors] is only a declaration, so that the community may not wonder. And it is announced that also in the heavenly *yeshivah* it has been agreed [to pray together with the transgressors], on the basis of the saying of R. Simon Ḥasida. And in the earthly *yeshiva*, in all places, where there is a permanent court [*bet din*], it has been declared and allowed to pray with the transgressors [offenders and transgressors of community enactments] on Yom Kippur, with the permission of God and with the permission of the community. This [declaration is made not in order] that they should not think that they have already been pardoned for their crimes, because they have been allowed to pray with the others. That is not so. They have only been allowed with the permission of God to return to the synagogue, in order not to return to their offenses. And since it is only a declaration, there is no need for two persons [for the release of the ban, as in the case of the release of vows and oaths – *nedarim, shevu'ot*]; as it is written in the *Minhage Eizik Tyrnau*: ‘the community leader declares [the permission for the transgressors to enter]’. And so it is written in the *Minhage Maharil*: ‘before the prayer leader [at the beginning of Yom Kippur] stood before the Ark, he (Maharil) was standing there and saying “in the heavenly *yeshivah*...”’

Ra'avyah 528

“We enter the synagogue and release the ban to pray with all those who have sinned and transgressed the decree of the community, even if they do not ask to release for them, because Rav Simon Ḥasida has said: ‘A community fast in which there is no one from the sinners of Israel is not a community fast, because, behold, the birch smells bad, and [despite this] it is mentioned in the Scripture as [burning it for] incense [...]’”

Weil DvH 60

“R. Ḥayyim *Or Zarua* has explained the reason [for the requirement to ask the prefects of the community to interdict a transgressor from praying together with the community on Yom Kippur] in the following way: there are those who [ab]use [this right] to such an extent that the individual protests without reason. And they attribute the decision [i.e. about the right of the individual to protest] to our Rabbi, his father z”l [i.e. R. Ḥayyim’s father, R. Isaac b. Moses], and he has gotten terribly angry and rebuked them [i.e. those who attribute the decision about the right of every individual to protest to his father, R. Isaac b. Moses], because God forbid, his father has not permitted to protest without reason. Instead [he has decided that the individual] should present his reason and arguments to the prefects of the community [*tove ha-‘ir*]. If they see in his words true reason for protesting, they should [interdict the transgressor from praying with the community on Yom Kippur] on the basis of the [reasons and arguments]’. And to this, R. Shabbatai – who was a leader of his generation – has added ‘I, the little one, also think, that it is not good and proper [*kasher*] to hold to this custom and allow every individual to protest without good reason’.”

SR 214

“...After eating, all Israel performs ritual immersion in order to purify themselves, and there are some who wash themselves after eating. And it is the custom to receive flogging before eating, some of them once, some of them twice. And in the evening they ask for forgiveness from each other...”

Kol Bo 68

“[...] It is a custom to purify themselves in the river or in nine *qabs* of drawn water, and R. Meir [Maharam] writes that it [i.e. immersion] does not need blessing, because it is only for cleansing¹⁹⁸⁵. [...] And they receive flogging after immersion, and R. Meir says that every Jew may receive flogging and immerse when he or she wants, preferably before night. [...] And they make the whip from calfskin. Then they go to the synagogue to pray the *Minḥa* prayer. [...] After the *Birkat ha-Shalom* he or she shall confess, and this *viddui* is not a duty, but it has been introduced lest his or her mind should be confused. [...] And R. Asher writes that they

¹⁹⁸⁵ Ritual immersion for the sake of ritual purification or *giyyur* needs blessing.

light, everyone at their own place, candles on the Day of Atonement to atone for the sins of their parents [...] And we have already explained that it is not good to say *Kol Nidre* [...] And R. Meir writes that on the eve of the Day of Atonement, before saying *Kol Nidre*, we say [the prayer leader says], ‘In the upper and the lower *yeshivah* we allow to pray with the transgressors’.”

Yom Kippur, Mollin 204

“And what you have asked, namely, whether he who has had pollution [*qeri*] on the Great Day [*Yom Kippur*], [must immerse] during the night or [during] the day? Of course, there is no difference [regarding immersion]. [...] And what you have asked concerning ritual immersion [*tevilah*] on Yom Kippur, they [i.e. the rabbis] instruct him considering the case [whether in this case he must perform ritual immersion on Yom Kippur or not]. And what you have asked whether he has to examine his deeds and mend his ways and mortify himself, thus I heard from the decisors [*ba‘ale hora’ah*] that they instruct him to do these things [i.e. repentance and mortification] [...]”

III.A.2.

Oxford, New College Ms. 94, fol. 12v–13r Goering, ‘The Internal Forum’.

“The sinner of your parish will come to confession, I tell you, only during Lent, and not in the first or the second or the third week, but in the sixth week or on Good Friday or Saturday or on Easter, drawn by the necessity of keeping a custom rather than by the compunction of true penance”.

III.B.1. Murder

“The Letter of a Bishop of Utrecht” MGH. *Die Briefe* VII p. 77, no. 2 [my translation, EK]

“The letter written by a bishop to a penitent, sending him to the Pope with the following words: ‘O. [abbreviation of a name] by the mercy of God, the bishop of Utrecht to everybody of the Christian faith to whom this writing arrives, greetings etc. A contrite heart deserves pardon, and full shame is treated with the highest compassion. This criminal has come to me, and while he has described to me his old murder committed against the human race, as an introduction to his confession, he has revealed to me his guilt of arson. But he has regretted his sin and with a sorrowful heart and with sighs asked whether I am ready to impose on him a sufficient and proper punishment. Being of less capacity than this exceptional case has required of me, I have instructed him to go to the Pope in Rome, who can give him a suitable remedy. Whoever reads this letter should accept his need generously and support him with whatever help he pleases.’”

“The Letter of Pope Clemens III” Id. p. 66, nr. 14 [my translation, EK]

“The letter of the Pope written to a penitent on whom he has imposed penance: ‘Clemens, the bishop [i.e. pope], the servant of all the servants of God, to everybody of the Christian faith to whom this letter arrives, greetings and apostolic blessing. If in the heart of a simple offender [the willingness to do] penance emerges, the Lord remits both his offence and the punishment for the offence. This criminal, who is an arsonist and, as he claims, a murderer of many people, has asked humbly and with contrition in his heart to be loaded with the burden of the penance by which he can reconcile the eternal judgment. Considering that he has come to us with a sorrowful heart, saying that he condemns all those disgraceful things, which he has done, we intend to impose on him this punishment: he shall go barefoot and in *cilicium* [covering of goat’s hair] through the world and shall not remain in a locality more than one night; he is not allowed to greet anyone on the way unless he asks for lodging or for alms, but if he is perchance greeted he shall return the greeting; on his arms and on his belly he shall wear rings; on Monday, Wednesday and Friday he shall fast on bread and water, and on the remaining days he shall not refuse to get or buy something modest; he shall also visit not more than once the Sepulcher of the Lord in those seven years¹⁹⁸⁶; and once he shall go on pilgrimage to the shrine of St. James. If an ecclesiastical man of admirable piety is ready to take over his part of work, we will absolve the penitent murderer from his penance and nobody can charge him with anything afterwards.’”

Penitential of Bartholomew Iscanus, Bishop of Exeter *MedH* p. 348

“If anyone commits homicide [...] let him not have permission to enter a church in those first forty days; he shall go barefoot and use no carriage; he shall be in woolen garments, excepting drawers; he shall not bear arms; and he shall take no food in those forty days except only bread and salt, and drink pure water [...] He shall

¹⁹⁸⁶ Seven years is the duration of penance for murder in the traditional penitentials before the 12th century.

be near a church and shall bewail his sins before its doors; and he shall [not?] go from place to place but be in one place those forty days. [...] Thus, the forty days being completed, he shall wash in water, receive his clothing and shoes and cut his hair. [In the year following he is to abstain from mead, honeyed beer, flesh, cheese and fat fishes, except in festivals, long journey, military service or illness when these may be partially redeemed by payments or alms. To the remainder of the five-year period further provisions are added.]”¹⁹⁸⁷

Sources for Punishment in Prison Chained in Iron Shackles’ [my translations, EK]

(1) (8–9th century) SS (Merov. 7) p. 885: *Vita Willibrodi archiepiscopi traiectensis auctore Alcuino* (735–804): ‘Tied with iron shackles’; (2) SS (Merov. 7) p. 174: *Miracula Tullensia Gangulfi Martyris Varrennensis*: ‘a captured man, with great crimes, was surrendered in iron shackles’; (3) (11th century, 1049) Epistola (Briefe d. dt. Kaiserzeit, 4,1), p. 308: *Die Briefe der Petrus Damiani no. 31 (Liber Gomorrhianus)* ‘... in compressed iron chains of prison’; (4) (11th–12th centuries, 1045–1125) SS 9 p. 70: *Cosmae Chronica Boemorum lib. II.*: ‘Warned by iron and exhausted by pain’; (5) (11th century, Folcwinus, 965 – 990, Laubiensis, 1060, corpus Ursuari d. 713) SS (in Folio 15.2) p. 836: *Ex miraculis SS. Ursuari et Ermini*: ‘Chained with iron nods in prison’.

Sources for Penance for Murder (e.g. Patricide) through Exile with Iron Chains or Rings Tied on their Hands, Neck and Body, or Self-torture of Hermit or Monk for the Sake of Penance [my translations, EK]

(1) (6th century, 538 – 594) SS (rer. Merov. 1,1), p. 272: *Gregorii episcopi Turonensis Historiarum Liber VI*: ‘At that time near the city of Nice (Nicea, Nizza), there was an hermit of great abstinence, called Hospicius, who put on compressed iron chains on his body under his cilicium, and ate nothing but bread and fig.’; (2) (7th century Spain) *Antiquitates* (4,2.3 Poetae Latini aevi Caroloni IV), p. 767 (CXLVII): *Exhortatio poenitendi*: ‘After being removed from the throne, captured and tied with many iron chains, he appeased God through penance, and was restored to his throne and released from his chains as well as from his sins.’; (3) (11th century, 1064) Epistolae (Briefe der dt. Kaiserzeit 4,3), pp. 213–214, *Damiani no. 109*: ‘For nearly three years he atoned with iron breastwork on his body, two iron chains tied on his body, and two compressed ones on his arms and shoulders.’; (4) (11th century, 1055) Epistola (Briefe d. dt. Kaiserzeit, 4,2): *Die Briefe der Petrus Damiani* p. 38 nr. 45: ‘... according to the old canonic sentences, the penitent had to put iron chains [on himself]’; (5) (11th century, 1058) Epistola (Briefe d. dt. Kaiserzeit, 4,2): *Die Briefe der Petrus Damiani* No. 56 p. 159. ‘The breastwork is worn on the body, the members are engirdled with different iron chains of woven work, bruised on the pavement repeatedly with the palms... May it be whatever by which the flesh of the penitent is mortified, he will be purified of the filth of sin.’ (6) (11th century, 1059–1060) Epistola (Briefe d. dt. Kaiserzeit, 4,2), 66 p. 275. ‘In short, this one has already been wearing a breastwork on his body for the sake of atonement for three years, and two iron chains are tied around his waist, and two on his shoulders.’; (7) (11th century, 1059–1061) Epistola (Briefe d. dt. Kaiserzeit, 4,2), *Die Briefe der Petrus Damiani*, p. 350 no. 72: ‘In the city of Csiterna, or in Appula, he obtained a bishop’s chair and gave it up, and he wore two heavy iron chains on his breast and belly, by which he did not cease to afflict himself. He drank wine very rarely and exhausted himself with fasting frequently. This man encouraged me to renounce the bishopric both in words and in following his example.’ (8) (11th century, 1055–1057) Epistola (Briefe d. dt. Kaiserzeit, 4,2): *Die Briefe der Petrus Damiani*, p. 21, no. 44: ‘He used to do penance as long as the period of a Lenten penance, or, if he completed this penance, he frequently received a penance lasting for 100 years.’; (9) (11th century, 1057) Epistola (Briefe d. dt. Kaiserzeit, 4,2), p. 101 no. 50: *Die Briefe der Petrus Damiani*: ‘Others despise the roughest cilicium as if it were a soft or delicate garment, and put on iron breastwork close to their flesh.’; (10) (8th–9th centuries) SS (in Folio 15,1): Id, p. 130: ‘A man had iron chains tied on his naked shoulders so strongly pressed against them that on both sides the flesh nearly grew on the iron. One of his arms decomposed earlier than the other one; traces of the covered wound were displayed evidently ...Tied irons bound.’; (11) (11th century, 1067/8, Trier) SS (rer. Merov. 4, SS (= in Folio, 20), p. 818), *Annales Althanenses maiores*, p. 73: ‘Then we have seen those murderers locked in iron chains, doing penance.’; (12) (11th century, Bertha, 1056, Adelaida, 970, d. 1015, 986, Benedictine rule Cologne) SS (in Folio 15.2) p. 763: *Vita Adelheidis abbatisae Vilicensis auca Bertha* Coloniensi: ‘Among whom has come a noble man, who has been bound by iron chains, because of penance for some crime, imposed on him by the papal authority.’

Sources for Penitents Released from the Iron Chains by the Saints’ Miracles at their Shrines [my translations, EK]

¹⁹⁸⁷ For prostrating oneself before the doors of the church see III.B.1.2.5.

(1) SS (in Folio 4) p. 652: *Ex syri vita S. Maioli*: A man of God, with iron chains ...obtained the release from the iron shackles; (2) (8th – 9th century) SS (in Folio 15,1) p. 121: *Vita Leobae abbatissae biscofesheimensis auctore Rodolfo Fuldensi*: ‘His corpse has been transferred to Fulda and buried there. A man with iron chains locked on his shoulders, faithfully prayed at his grave (sepulcher) and deserved absolution.’ (3) (9th century, 12th century, 1125) SS (in Folio 15,1) p. 521 *Miracula St. Bertini* (7th century), [= (12th century, 1127) SS (in Folio, 13), p. 658: *Simonis gesta abbatum S. Bertini Sithiensium*; par. 116: *De quodam miraculo sancti Bertini* (600–607)]: ‘A woman from Lotharingia, with iron chains pressed on her both arms because of penance was in this monastery, in the year of the Incarnation 1125, in the presence of many witnesses, by many prayers said, standing beside our most holy father, Bertinus, that she had been released from her chains.’; (4) (9th century) SS (rer. Merov. 4), p. 332 c. 33 [= (9th century) SS in Folio 2, p. 28: *Vita St. Galli lib. II. c. 34*: *Vitae Galli auctore Walahfrido liber II*: ‘A poor man, because of homicide, bearing iron rings around his neck and tied on both of his arms, being afflicted by graver and graver sufferings every day, because of the wounds, which the iron cut in his flesh like a chord, [visited] many resting places of saints looking for a remedy of that torture.’ (11th century, Othlo 1010–1072, Regensburg, Wolfgang 10th century) SS (in Folio 4) p. 542: *Othloni vita s. Wolfkangi Ep.*: ‘A poor man who had committed many crimes was tied on his both arms with iron chains, and was tortured severely every day; so he went to many resting-places of saints looking for a remedy for his sufferings as well as for the annulment of the sentence for the crimes committed; thanks to the divine mercy and to the merit of Adalbertus, a holy man, the poor man deserved to be released from one of the iron chains that he had worn on one of his arms. After that, however, hearing of the fame of Saint Wolfgang from faraway regions, he went to Regensburg and stayed at his sepulcher with prayers and was released from the other chain as well.’ (5) (11th century, 1022, Tiel, Utrecht, St. Walburgo d.779) SS (in Folio 15.2), p. 765: *Miracula St. Wartburgae Tielensia* ‘In the countries of the Gallons and Aquitania, the bishops have the custom to hang a heavy stone with iron chains around the neck of those who are called to do penance, so that their stomach should be engirdled with iron chains; and they give them a letter with their crimes [written in it], and they send them to different places so that being ashamed in this way their punishment should be graver, and in order to instill into others the fear of committing such crimes; for those who commit patricide or similar crimes that is the punishment. Such a pilgrim has come to us bearing his arms locked in iron chains as punishment for a certain crime; but the chain which held his right arm – as those who were with him in the chapel of St. Othelricus [Augustus Vindelicorum] could see – fell apart; the left one, however, he still carried locked in iron. One day when the judgment of St. Waltburg was to be asked, before the mass, this penitent came and stood near the choir. As he stood there in the same way as other times, and prayed, the chain fell from his arm released by divine command to his feet; and he looked around wondering with great happiness. That iron chain, however, as memorial, hangs on the wall in the northern part of that monastery even today.’ (11th century, 1016, 1020, 1043, Hildulfus, 666 Bischof v. Trier, 700 Bayern) SS (in Folio 4) p. 92): *Chronicon Mediani Monasterio S. Hildulfi*: ‘In some regions the custom is that he who commits patricide, and then puts iron chains on his arm or neck for the sake of penance, does not fulfill the penance, instead a miracle happens as a consequence of asking the help of some saint: the [miraculous] release of the visible iron chain is considered a sign of the divine echo, namely that the invisible chain of the [sin of] patricide is also released. A man has come to the monastery who once was locked in iron chains on his both arms; the iron from his other arm fell down at the venerated sepulcher of Adalbertus, the holy martyr.’ [= (11th century, Prague, 956–997) SS (in Folio 4), p. 92: *Passio Adalberto episcopi Pragensis (Chronicon Mediani monasterii)*]; (8–9th century) SS (rer. Merov. 7) p. 136: *Vita Willibrodi archiepiscopi traiectensis auctore Alcuino* (735–804): ‘A penitent came to that church frequently, tied with iron chains as it was the custom; the chains were broken, the locks of the chain were suddenly freed. This fact is testified even today by the chains hanging in the church.’ (6) (10th century, Gerard 963–994; Adso Deruensis d. 992, Mansuetus: 485–509): SS (in Folio 4) p. 514: *Ex Adsonis miraculi S. Mansueti*: (n. 18.) ‘How a girl, locked in iron chains, has been released at the sepulcher of the holy pontiff. From an overseas region, a little woman, called Godelindis, whose both parents are of English birth, has come to us, wearing a light iron bandage not for being obsessed by a demon, but for shedding the blood of her own mother... The mentioned cleric [who has committed the murder together with the girl, his sister, against their mother], locked in ‘internal chain’ [of the sin committed], has been locked in external chain on his arm by the pontiff, and all his maimed body has also been locked in chains. Then the sister who has agreed with him in this most evil thing, has accepted two [iron chains] on her left arm in order to regretfully and lamentably could atone for her unheard-of crime. As soon as they have arrived to Jerusalem, or at the return, the brother has died.’ (7) (11th century) SS (in Folio 4) p. 852–3: *Ex Petri Damiani vita S. Romualdi* (d. 1027, Ravenna): ‘Yet, in iron chains they intended to arrive to the sepulcher of Martinus... The chains broke, and they were released.’; (8) (11th century, Berguens) SS (in Folio 15.2), p. 779: *Ex miraculis S. Winnoci Auct. Drogone*: ‘Due to the merit of the saint, his tied arms were released, the iron chains were broken.’ ‘The human members were [tied] with iron chains’. (11th century, Bergues, 1022–1070, St. Winnoc – d. 717) SS (in Folio 15.2) p. 781: *Ex miraculis S. Winnoci Auct. Drogone*: ‘That hermit, however, discovered it, and with heavy iron chains tied above and below [on his body], fixed by cogs which can hardly be removed by human force.’; (9) (14th century) SS (in Folio, 25

Gesta saec. XIII), p. 815: *Iohannis Longi chronica S. Bertini* (ed. Holdger–Egger) (1311–1334) : ‘A penitent was released from his iron chains.’

Penitential of Bartholomew Iscanus, Bishop of Exeter, *MedH* p. 360

“For intentional homicide a penalty of three forty-day periods is inflicted, the first of which is this: that one should fast, with the exception of a Lord’s day only, on water and bread or on a morsel of dried fish weighing half a pound. He shall observe the second forty-day period in this way: he shall fast on Wednesdays and Fridays on water the nights also included; he shall recite the Psalter and the paternoster; and genuflections shall be made every night. In the third forty-day period the nights are also to be counted. For three years thereafter he shall be forbidden the use of the means of grace; he shall pay a fine of nine marks for his offence. For accidental homicide a forty day period and a fine of nine marks.”

Penance for Murder in the 15th Century, F. Sauter, „Todtschläger, wie solche in Schussenried vor der Carolina bestraft werden“, in: *Württembergische Vierteljahreshefte* 3 (1880) p. 271. Schreiner p. 283 n. 58 [my translation from German, EK]

1. on the day dedicated to the murdered person they were required to pay 6 masses for the soul of the murdered person; 2. beyond that, 30 other masses were also paid by the murderers, which were to be held by the priest Claus from Michelwinaden; 3. they were required to pay for 4 candles of wax of 1 pound, and other 250 candles of $\frac{1}{2}$ *vierling* for this day for the remembrance of the murdered person; 4. Hans Merkh, the main culprit, had to go on this day barefoot and with bare legs and hands, without belt, with extinguished and reversed candles of wax in the procession, with the knife used for the murder in the hand; 5. the 4 other brothers had to follow him in the procession, also barefoot and bare-legs, in grey clothes, with covered hoods on the head, with reversed candles in the hands and with the knife of the murderers; 6. they had to lay down in the form of a cross on the tomb or grave of the murdered person, and lie there until the father of the murdered person or, if that lasted long, until the priest called them to stand up; 7. they were required to place fifty candles of wax before the altar for the saints; 8. they were required to pay 10 *schillings* (*hellers* or *pfennigs*) to the family of the murdered person yearly; 9. they had to place a cross of 5 feet long and 3 feet wide from *Roschach* stone at the place of the murder; 10. they had to avoid the church of Michelwinaden until it was allowed; 11. they had to pay the heirs of the murdered person a fine of 27 *florins* 12. they had to avoid the father of the murdered person in the church, street or market.

Penance for Murder in the 15th Century, Albert Angele, Biberach (1962, s. 118). Schreiner p. 284 n. 60 [my translation from German, EK]

1. the murderer were required to pay for a mass for the soul of the murdered person; 2. pilgrimage to Rome (to the churches and graves of St. Paul and St. Peter), or St. Compostella (St. James’ grave) or Achen or Einsiedlen (to the churches of St. Maria); 3. to go around the cross naked, with the knife in the hand; 4. to lay down on the grave of the murdered person and before the church doors, to hold a rod on the way to these places, by which the priest shall beat him on the grave and before the door of the church; 5. to bring many candles of wax as sacrifice, and carry a broken candle in the hands around the altar; others shall also take candles from a bowl before the church; to light them and go with lightened candles in the procession; the money paid for the candles had to be given to the family of the murdered person; 6. the murderer was required to give a certain sum of money to the family of the murdered person; 7. the murderer must place a big stone cross at the place of the murder.

EAF HA 17, fol. 107v, “*Absolutio homicide qui penitere vult*”, Neumann

“On a Sunday morning, when many people near the church, the murderer must appear at the doors of his parish church or of the main church in Konstanz, naked, barefoot, only in trousers, with a rope around his neck, a knife in one hand, a rod in the other; there the priest must flog him while chanting the penitential psalm *Miserere*, and the murderer must also confess his sin.”

The Anglo-Saxon Penitentials. Cultural Database. Ed. by Frantzen. Bx 8558 (B) fol. 152b

B77.04.12: If a woman kills her child as a murderer she is to fast for 15 winters and is never to turn (from) that (practice) except on Sunday; 13. If a needy woman kills her child, it is ordained that she is to fast

for 7 years; 14. If a woman conceives a child and kills it while it is in her, she is to fast for 1 year. If she kills it after 40 days, she must do penance as a murderer.¹⁹⁸⁸

III.B.2. Fornication, Adultery, Incest

The Anglo-Saxon Penitentials. Cultural Database. Ed. by Frantzen. Bx 8558, par. B77.04.01

“He who defiles his neighbor’s wife is to fast for 3 years, without (intercourse with) his own wife, and in every week 2 days or the 3 forty-day periods. 02. If she is a virgin he is to fast for 1 year without meat and ale and mead.’ 05. If a woman goes from her husband she is to fast for 1 year, if she returns to him undefiled. Otherwise, if she was taken into the home of another, she is to fast for 3 years. 06. A woman shall not enter a church during the time ordained for her menstruation nor go to Eucharist, neither nuns nor laywomen; if they presume to do this, they must fast for 3 weeks. 07. An adulterous woman is to fast for 7 years. 08. And such a woman is to repent in the same way if she enters church before the purification of her blood, that is she is to fast for 40 days.”

Penitential of the Bishops of Horlar, Jörundus, Laurentius and Egillus, *MedH* p. 359

“In the special case of those who are at fault in the fourth degree of consanguinity or of affinity or in similar cases; a fast of water during twenty nights on water and bread or other fruits of the earth, or if these are lacking, on half a pound of dried fish; and every fasting night let them recite the paternoster and the Psalter, falling on their knees at every paternoster. They shall stand without the church during the time of Lent, in Advent, and in the thorough fasts; but on festival days they shall have access to the church. They shall observe the minor thorough fasts [Rogation fasts] through the next year, that is they shall eat milk foods once a day on Mondays and Wednesdays and recite the paternoster seven times, falling on their knees each time, and the Ave Maria nine times. In the year following this they shall keep the thorough fasts taking food only once on Wednesdays, and at the same time reciting the paternoster, falling on their knees five times. In the third year they shall observe the thorough fasts by recitation of prayers and by reciting the paternoster five times with one Ave Maria. A fine of twelve ounces of silver...”

Postles: “Penance and the Market Place”

“In the Late Middle Ages the performance of ritual penance in public, in both parish church and market place, had involved bodily discipline. [...] in 1499[...] in all fourteen cases of sexual immorality for which a sentence was imposed, the penance was to be enacted in the parish church with lighted candles.”

III.B.4. Theft

Robert of Flamborough, Goering, ‘The Summa of Master Serlo’, p. 303

“Penitent: ‘Someone stole a horse. I stole the same horse from him. To whom should I make restitution?’ Priest: ‘It seems to me to the rightful owner, but in such a way that this repayment be known to the thief lest perhaps, if he repent. He be made through confession to return the horse or its price again to the legitimate owner’.”

III.B.5. Cursing and Slandering

Bernhard Diestelkamp – Klaus Flink (Hg.), *Der Oberhof Kleve und seine Schöffensprüche. Untersuchungen zum Klever Stadtrecht, Kleve 1994, p. 113. Schreiner „Verletzte“ p. 271 n. 25 [my translation from German, EK]*

“‘The words I said to the juries had been invented and I lied; I beg God and his beloved mother to forgive me’.”

Karl Metzger: *Die Verbrechen und ihre Straffolgen im Basler Recht des späten Mittelalters, Basel 1931, 1, p. 109. Schreiner “Verletzte” p. 271 n. 28 [my translation from German, EK]*

¹⁹⁸⁸ See quotation in App. III.B.1. *The Anglo-Saxon Penitentials. Cultural Database. Ed. by Frantzen. Bx 8558 (B) fol. 152b.*

“‘You shall all hear! The words I said to the guardian were false, and I beg God, Maria and the lord of the county to forgive me!’ After that he must go with a candle of 1 pound in his hands to the choir of the brothers and say, ‘Dear guardian and brothers! The words I said about you were false and I beg your pardon.’”

Id.

“‘Dear pious Christians, gentlemen and good friends! As this sir has said, I am speaking of my own free will, without coercion, and I admit before you all publicly that I have accused my fellow man falsely, I have invented everything and I lied; and I can not say anything bad about him and about you all, except that you are all honored, beloved and good, as I can say about all other pious Christians. I also beg him to forgive me for God’s sake.’”

**III.B.14. Heresy
Penitential of Cummean, *MedH* p. 109**

“1. He who takes up any novelty outside the Scripture, such as might lead to heresy, shall be sent away. 2. But if he repents he shall publicly condemn his own opinion and convert to the faith those whom he has deceived and he shall fast at the decision of his priest.”

**III.C. [‘Physician of the Soul’]
Penitential of Cummean, *MedH* p. 99—100**

“Here begins the Prologue of the health-giving medicine of souls. As we are about to tell of the remedies of the wounds according to the determinations of the earlier fathers of sacred utterance to thee, my most faithful brother first we shall indicate the treatments by the method of an abridgment.’ The first remission then is that we are baptized in water[...] the second id the emotion of charity [...] the third is the fruit of the alms [...] the twelfth is the passion of martyrdom [...] And so they determine that the eight principal vices contrary to human salvation shall be healed by these eight contrary remedies. For it is an old proverb: Contraries are cured by contraries, for he who freely commits what is forbidden ought freely to restrain himself from what is otherwise permissible.”

Penitential of Cummean, *MedH* p. 103

“A presbyter or a deacon who commits natural fornication, having previously taken the vow of a monk shall do penance for seven years [...]. After a year and half he shall take the Eucharist and come to peace and sing the psalms with his brethren lest his soul within him perish through so long a time of the celestial medicine.”

Penitential of Bartholomew Iscanus, bishop of Exeter *MedH*347

“We have spoken of the penance of the infirm and the grave but hidden sins. But now let us come down to the penances of persons in health for mortal and public sins, which are determined by the holy fathers... If therefore physicians who try to apply medicine to bodies in no wise spare on account of the respect of the person of anyone, in the use of cautery or knife or other severe measures those whom they desire to heal, much more is this principle to be observed by those who are physicians not of bodies but of souls.”

Penitential of Columban *MedH* p. 32

“Diversity of guilt occasions diversity of penalty; for even the physicians of the bodies prepare their medicines in various sorts. For they treat wounds in one way, fevers in another, swelling in another, bruises in another, festering sores in another, defective sight in another, fractures in another, burns in another. So therefore the spiritual physicians ought also to heal with various sorts of treatment the wounds, fevers, transgressions, sorrows, sicknesses and infirmities of souls. Since these [skills] are only the property of the few, namely to know how to treat all things unto cleanness to restore the feeble to the full state of health.”

**III.C. [Proportionality]
Pseudo-Cummean *MedH* p. 267**

“[...] it is to be understood that for as long as one remains in his sins, for so long is the penance to be extended. But with some this case seems grievous and difficult. Therefore some state, twelve three-day periods in one year in which he ought to do penance on bread and water (OETH I.Vii, 5) etc.”

McNeil, *MedH* p. 32

“Thus in the Old Irish *Table of Commutation* we have reference to sleeping in water, on nettles, on nutshells, with a corpse in a grave, in a cold church, and in a secret chamber. Apparently ‘sleeping’ means only lying down, as the penitent was to be engaged the while in ‘performing vigil and praying without ceasing’. Remaining all night in water was occasionally practiced as a voluntary austerity by monks, and a variety of sleep-preventing devices were used among the early Eastern ascetics. The cross-vigil was a practice requiring extraordinary concentration [...] The Irish penitent was required to stand with his arms extended, his body thus taking the form of a cross, while singing the *Beati* (176 verses) not only once, but two, or even seven times.”

III.C.4. Fasting

Penitential of the bishop of Skalholt, Thorlac Thorhallson, *MedH* p. 358

“Night fasts may never be commuted; but the other fasts may be commuted if he is willing to make a hundred genuflections for a day or to say the paternoster fifty times. [...] Men who are in good health shall so bend their knees that both the knees and the elbows touch the ground. For violation of a woman.... He shall perform the six to nine years penance [according to the circumstances]; he shall [also] sing the paternoster fifty times on the festival days or make one hundred genuflections on work days as many times as he offended. If one received the Lord’s body unworthily he shall refrain from it as many times and he shall add twelve blows. For theft he shall be punished by the restitution of what was stolen if it can be made, and he shall perform a minor penance; but for a serious theft a major penance if he cannot make restitution and if the theft was committed rather from malice than on account of need, he shall be punished for the theft with fasts and flagellations and prayers and genuflections and he shall perform other penance until what he stole is restored. [later addition to Thorlac’s work: We do not grant the sacraments in those cases in which he forbade them; we also command that penance be imposed for the same length of time as formerly, as he commanded. The thorough fasts and genuflections are henceforth to be lightened; in minor penances there shall be the same abstinence from linen and downy clothing as he enjoined and the same scourging and prayers.]”

III.C.5. Incarceration

Law of Ludwig II (845 – 50) M. G. H., *Leges* II, ii, 83 *MedH* p. 391

“Through the several parishes the people shall be diligent to observe those festivals which their own bishop proclaims to be celebrated so that they shall neither neglect those things which their priests admonish them to cultivate nor in vain superstition presume to celebrate those which are by means to be observed. If, indeed, any are found who refuse compliance to their priests they shall be detained by officers of the state and compelled to undergo the satisfaction of penance which the priests may impose.”

III.E.3. Common rituals, Community Rituals

Ritual expulsion and readmission of penitents in Lent, Hamilton: ‘The unique favor’ p. 237, from the Roman-German Pontifical, ca. 950

“On Ash Wednesday those who were about to undergo public penance were supposed to present themselves, together with their priest, before the bishop at the doors of the cathedral church. Here they were examined about their sin and a penitential sentence awarded. After awarding sentence the bishop then led them into the church where he, with the clergy, chanted psalms for their absolution, followed by a mass. At the end of the mass the priest put ashes on the heads of the penitents and said: ‘Remember, O man that you are dust and you will revert to dust.’ The penitents then put on their hair shirts. And the bishop with his clergy then drove the penitents out of the church with the words, ‘Behold today you are ejected from the bosom of your Holy Mother Church for your sin, as Adam the first man was ejected from paradise because of his transgression’. The symbolic ejection of the penitent from the Church suggests that this was a very public banishment. The penitent is to some extent a scapegoat; the community as a whole is purified through the expulsion of this sinner; and at the same time, the evocation of Adam makes the penitent stand for all mankind. The penitents, involvement in the ritual ends with their expulsion but it is not the end of the service for either the priest or the rest of the participating community. The ashes are blessed and placed on the heads of the faithful, followed by a prayer asking God to aid them in fasting and continence [...]. This final sequence echoes the previous sequence; just as

the penitent has been instructed to fast, has changed into a hair shirt, and had ashes placed on his head, so the faithful now repeat his behavior as part of their own Lenten devotions. Penance is therefore seen universal; but only the public penitents are expelled from the Church. This sequence emphasizes that the Ash Wednesday service was a communal service, directed not only at the penitent but at the whole population. Lent was a penitential period of abstinence for both the penitents and the remaining Christian community. The penitents may have performed their penance in a specific place, a monastery perhaps, or more probably their own village, for they returned on Maundy Thursday accompanied by their priest who was to testify about their conduct in the intervening period. It should be noted that the penitents' sentence might not end with their reconciliation on Maundy Thursday: someone given a seven-year penance, for example, might be reconciled at the end of the first Lent of his penance but continue it thereafter. The first part of the reconciliation took place outside the cathedral: the bishop was seated in the front of the church doors. The penitents were presented to the bishop who invited them to come into the church, chanting the antiphon *Venite, venite*, 'come ye come ye'."

Ritual of penance for every Christian before Michaelmas (29th September) in the early English *Laws of Edmund* (1008, MedH p. 387)

"VII. 2.2. [During the Monday, Tuesday and Wednesday before Michaelmas] every person shall go to the confession, and barefooted to the church and in amendment and desistence [from them] shall renounce all his sins. VIII.1. It is our desire that the whole people as a national penalty [fast] on bread and water and herbs and water for three days namely on the Monday, Tuesday and Wednesday before Michaelmas. 2. And everyone shall come barefoot to church without gold or ornaments and shall go to confession."

Solemn Ecclesiastical Rituals of Reconciliation, *Chroniken Nürnberg*, vol. 5, p. 554f.; 724f. Neumann p. 117, ns. 357–8 (Indulgence by the Delegate of the Pope, Raymundus Peraudi) [my translation from German, EK]

"On the occasion of the indulgence 316 men and 214 women, altogether 530 people did penance. They did it in this way: some of the men came naked up to their belt, some of them carried swords, others burning coals, boxes, spears, helmets, by which they had committed the murder; some of them hid their faces, some of them did not, some of them were naked and with hidden faces. The women went in women-clothes and hid their faces, one of them naked up to her belt, with a handkerchief on her breast, and four of them went with uncovered faces. Schnappenhornlein and Putz, the servants, went naked with boxes, in the middle of the church before all the priesthood, as far as the cross, both side by side."

"... the persons who presented themselves publicly: 316 men, out of which some 15 secretly lead, and 214 women."

APPENDIX 2: CRITICAL EDITIONS

See Hebrew Appendix, further.

MAGYAR NYELVŰ ÖSSZEFOGLALÓ [HUNGARIAN SUMMARY]

See Hungarian summary after Appendix 2.