Malshinim and Milieu

Reconsidering the Jewish Informer in Medieval Europe

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In the Book of Exodus, the God of Israel, having delegated law into the hands of Moses on Mount Sinai, concludes their audience with a mandate: "And these are the ordinances that you shall set before them." Writing in Europe near the end of the eleventh century, Rashi, one of medieval Jewry's foremost commentators on Torah, qualified this statement, adding:

But not before gentiles. Even if you know that they [gentiles] judge a certain law similarly to the laws of Israel, do not bring it to their courts, for one who brings Jewish lawsuits before gentiles profanes the [Divine] Name and honors the name of idols.¹

That Rashi chose to make this point at such a critical juncture in the Old Testament was, of course, no accident. In narrating the tale of an enslaved people's divinely orchestrated attainment of sovereignty, Exodus repeatedly emphasizes the divide between the "children of Israel" and other ethnic groups in order to reinforce the latter's separate identity. Following the flight from Egypt, Exodus takes up the task of codifying that separateness in both religious and legal terms, a labor in which it is ultimately successful, despite inconsistencies—the Egyptian name of Moses, Jewish lawgiver par excellence, not to mention the statement that this supposed descendant of the house of Levi was raised by Egyptians—that reveal the ambiguous nature of that separateness. The action of Exodus also reflects internal disagreement between Jews over the precise definition of their separate identity. Moses' proclamation of the commandments is anything but uncontested when he returns to the Jewish encampment, and Rashi's own reference to idols anticipates the subsequent events of Exodus, in which Moses takes retribution on the Jews for their appeals to an alternate divine authority, the "idol" of the golden calf.

Similarly, the near prohibition against taking Jewish cases to Gentile courts set forth in Rashi's marginal gloss was simple enough in theory, but much more problematic in application, in Rashi's own medieval Europe. The concept of the "personality of the law" that the Franks bequeathed to the early medieval legal system, wherein each individual was judged by the law applicable to his tribe or ethnic group, was in theoretical harmony with the aims of a religious and ethnic minority whose members always took care to secure the right to live by their own laws in charters of settlement.² Since the distinctive religious beliefs that set Jews apart from both Christians and Muslims translated into differences in everything from dogma to dietary strictures, a matter as serious as litigation between two Jews could, by definition, be properly addressed only in a Jewish court. On purely practical grounds, Jewish law required two qualified witnesses in order to pronounce a valid verdict, whereas testimony from only one witness was considered sufficient in non-Jewish courts,³ leaving their rulings, from a Jewish standpoint, open to question. There is, moreover, a certain logic in imagining that a minority community, segregated and subject to sporadic persecutions, would prefer to deal with its problems internally, whether out of simple mistrust of outsiders or specific fears that it could provide a pretext for exploitative intervention. On a symbolic plane, the Jewish need to affirm communal solidarity against external threats of both conversion and violence created a need to maintain boundaries so urgent that Rashi characterized their violation, in the act of bringing a fellow Jew before a Gentile court, as a profanation of holiness.


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It is therefore not surprising to find Jews who did so stigmatized as informers (malshinim)—at least in the rabbinical writings and responsa that comprise the primary written sources of Jewish history from the period. In fact, the distinction between those who might be referred to as criminal informers (Jews who knowingly made false claims against other Jews to Gentile authorities) as opposed to technical informers (Jews who lodged valid claims against other Jews in the Gentile legal system) is not at all clear in the use of the term malshinim. Although different degrees of culpability were recognized, for a Jew to initiate suit against another Jew in a Gentile court was consistently equated with criminal informing, and was viewed as a negative act in itself. Writing in the twelfth century, Maimonides equated the act not only to blasphemy, as Rashi had done, but to treason against the law of Moses, stating, "Those who voluntarily submit for adjudication before 'their' judges cause the walls of the Law to fall."

This defensive stance, in which the informer against an individual Jew, having breached the community's legal boundaries, was construed, at least symbolically, as an informer against the entire community, has led later scholars such as David Kaufmann and David Shohet to assume that informing in the criminal sense was endemic among the Jews of medieval Europe, although they can offer isolated examples, at best, of specific incidents where this was the case. While superficial readings of the few related documents that survive—in particular a Takkanah (ruling) issued at Troyes in 1150, as well as reconstructions of a slightly later Takkanah issued in the Rhineland, together with comments made in the correspondence of Maimonides and Rabbi Asher ben Yehiel and various responsa of Rabbi Meir ben Baruch—might initially confirm this impression, concluding that the medieval Jewish community was rife with traitors on the basis of the rabbis' often harsh words ignores a much more complex reality. Certain inescapable facets of Jewish life in medieval Europe, including the absence of a centralized Jewish authority, Jewish communities' corporate construction and effective lack of executive power, economic competition between individual Jews, and Jewish integration with and dependence on their non-Jewish neighbors, would have contributed to a decision to bypass rabbinical jurisdiction in favor of "outside" courts.

Whether as recipients of charters that gave them the status of resident aliens, or as paternalistic subjects of the 'royal chamber,' Jewish communities were directly dependent on Gentile patrons not only for protection, but for the resolution of disputes that could not be settled internally. That Gentile courts would occasionally have to serve as a court of appeals for Jews was recognized not only in most medieval charters to Jews, but also, paradoxically, in many of the rabbinical pronouncements against the "informers" who resorted to them. The qualifications and penalties they called for to limit such recourse at the same time they condemned it are a tacit admission of both its inevitability and its relatively routine nature, and further proof that the crime of the malshinim was, above all, a symbolic transgression, and rarely an actual threat to communal survival. It is doubtless true that a share of the accusations made by Jews against other Jews in Gentile courts—just like a portion of the accusations made in any legal system—were spurious, motivated by greed, vengeance, and other commonplaces in the repertoire of human behavior. One

4 Shohet, The Jewish Court, 151.
6 Shohet, The Jewish Court, 96.
7 Shohet, The Jewish Court, 97.
9 Shohet, The Jewish Court, 151.
10 Cohen, Under Crescent, 43.
11 Cohen, Under Crescent, 45.

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example survives in the records of the Crown of Aragon, in which a poor Jew is accused of blackmailing rich ones by threatening to accuse them of heresy and miscegenation. But it is also likely that a substantial number of Jews viewed and treated an appeal to Gentile authority as a legitimate means of seeking justice which, although not wholly free of risk, would be more effective than litigation before rabbinical courts. Viewed in this way, the rabbis’ comments on informers shed light on the rabbinical struggle to maintain their own power in Jewish communities, a power that depended on preserving their status as judicial as well as religious experts. At the same time, insofar as the rabbis functioned as guardians of communal coherence, the concerns they voiced about Jews litigating in Gentile courts arrested to both the permeability of the social boundaries between Jews and Gentiles and a defensive wish to seal off these boundaries as a reaction to persecution, segregation, and conversion.

It is worthwhile to begin by noting that “informer,” the usual English translation for *malshinim*, is a charged and highly relativistic term. Its perspective is that of a group whose proscribed activities have been revealed by an insider to the (implicitly unjust) system of authority that proscribed them. The connotations of treacherous disloyalty inherent in the word, as well as in the related terms “denunciation” and “defamation,” which are sometimes substituted, render its neutral usage very difficult. Moreover, the word “informer” is strongly associated with the idea of monetary compensation awarded to the person who provides inside information, contributing to the conception of an informer as one who places self-interested materialism above adherence to either group loyalty or any “higher” ethical system that dictates that the group’s proscribed activities are morally correct or at least permissible. Gentile rulers did not need access to any privileged information in order to locate Jewish communities or to implicate them in real or imagined crimes. A quick survey of both Jewish and Gentile sources covering major persecutions—ranging from the First Crusade chronicles of Solomon bar Samson, and Ephraim ben Jacob’s account of the ritual murder accusations at Blois, to Richard of Devizes’ hostile report on similar accusations at Winchester, and the anonymous Gentile chronicle of the supposed Passau host desecration,—reveals that the individuals accusing the Jewish community of crimes, when specifically identified, were overwhelmingly Gentiles, and not Jews. In such an environment, there was no real incentive for material bribes to purchase information from Jewish insiders. Those Jews who provided such information seem to have done so on their own initiative. For example, the Jewish convert Nicholas Donin, who by rabbinic law was still considered a Jew, and hence an informer, when he “denounced” the Talmud to Church authorities, leading to the famous “trial” of the Talmud at Paris in 1240, was an excommunicated opponent of rabbinical authority, almost certainly influenced by

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Karaism, who did not hesitate to level severe criticism against the Franciscan order later in life. Exemption from or cessation of torture, which often played a role in the confessions of Jews implicating other Jews, might be considered a bribe in the broadest sense of the term, but was recognized as a form of duress by the rabbis, who excluded such confessions from the category of informing. In cases where Jews testified against other Jews of their own free will, their normal compensation was probably no more than a chance to obtain the justice they regarded as their due.

The small size as well as the devolution of power among the Jewish communities in medieval Europe limited internal opportunities for Jews to pursue legal satisfaction against each other. As a patchwork of settlements founded by individuals in search of economic opportunity, their basis was often no more than a single family group. Although some of these settlements experienced considerable growth over the following centuries, even the largest remained very modest in size. No more than 1,500 Jews ever lived in a single settlement in Latin Europe during the whole of the Middle Ages. The “great” settlement at Mainz, considered a seat of learning, consisted of 85 families at the time of the First Crusade massacre. Not forming part of any systematic plan of colonization, none of them reported to a central authority. Each individual Jewish community, although bound to others by a powerful religious and ethnic identity, exercised theoretical autonomy in its own jurisdiction. However, due to its status as a dependant of Gentile rulers, this was a restricted autonomy, very different from the autonomy of a sovereign state. The fact that the Palestinian courts, although defunct, remained the nominal center of Jewish judicial authority, was cited by later rabbis in Europe as an after-the-fact justification of their lack of executive powers, such as the inability to inflict capital punishment or to impose fines, that had been the prerogative of Palestinian judges. The reality was that even as Jewish communities grew in size, and rabbis as well as communal councils claimed increasing judicial powers for themselves, such executive power effectively remained with the Gentile patrons who either granted initial permission for the Jews to settle or tolerated their continued presence.

The language of the charters issued by these patrons, while leaving Jewish leaders responsible for day-to-day adjudication in their communities, clearly establishes the ultimate authority of the Gentile heads of government in legal matters. Thus, the Jewish charter issued in 1084 by the Bishop of Speyer states:

Just as the mayor of the city serves among the burghers, so too shall the Jewish leader adjudicate any quarrel which might arise among them... If he be unable to determine the issue, then the case shall come before the bishop of the city or his chamberlain.

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9 Shohet, *The Jewish Court*, 158.
16 Shohet, *The Jewish Court*, 124.
17 Shohet, *The Jewish Court*, 126.

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While deferring to the leader of the Jewish community in a manner convenient to the bishop, who had no incentive to involve himself in the more petty disputes that might arise, the charter nonetheless reserves the right for the bishop or his delegate to resolve complex cases that will default to them, by reason of their greater authority. Six years later, when Henry IV issued a similar charter confirming the privileges of the Jews of Speyer, he not only affirmed the bishop’s primacy in deciding “difficult issues or disputes,” but added that,

If any wicked one among [the Jews] wishes to hide the truth of an internal affair, he shall be forced, according to their law, by him who stands in charge of the synagogue by appointment of the bishop to confess the truth of the matter in question.39

The power of the Jewish community to compel confession from one of its members is here construed as emanating from the bishop, though exercised by his delegate in the community. Similarly, although the charter granted by Frederick I to the Jews of Worms a hundred years later is somewhat less explicit, its statement allowing the “Jews’ leader”30 to force confessions in the same manner can likewise be seen as a temporary and conditional loaning of prerogatives that ultimately resided with the emperor—who would not have needed to enumerate them if such were not the case. Even more tellingly, Frederick’s amanuensis then adds that if a Jew “be accused of a serious crime, they may have recourse to the emperor if they wish.”31 In other words, the emperor’s mediation is not contingent on a case being difficult to resolve, but available to any Jew that seeks it, meaning that any Jew who does not recognize the rulings of a rabbinical court or communal council, or simply refuses to abide by them, can resort to the emperor at will.

Rabbis and other communal leaders attempted to co-opt this power in support of their own efforts when they found that their moral authority alone was not sufficient to ensure compliance. The 1150 Tikkunah issued at Troyes, a piece of legislation directed solely at discouraging and penalizing informers who made complaints to Gentile courts, ironically closes with its signers claiming the right to employ “the power of Gentiles”32 to coerce any Jews who disobeyed their ruling. Some ordained rabbis apparently considered themselves immune to the injunction against informers, and threatened to complain to Christian authorities when their decrees were violated,33 which was a de facto recognition of Gentile power to decide disagreements among Jews, if not an admission of the absurdity of their own position. Not only did they entertain the hope that the remainder of the community “might be forced into submission by using Christian courts,”34 but they may also have been willing to use them against fellow rabbis. There is a strong possibility that rabbis who opposed the teachings of Maimonides, denounced one of his works to Christian inquisitors in southern

33 Stowe, Alienated, 170.
34 Stowe, Alienated, 173.
France, resulting in its being burned only a decade before the convert Nicholas Donin "informed" on the Talmud itself. Since rabbinic courts in Europe had no right to administer capital punishment themselves, communities whose leaders demanded the death penalty for informers, such as those in the Iberian peninsula, had to either turn the informers over to Gentile courts or obtain special royal dispensation for the sentence to be carried out.

However, the very fact that they had to employ these measures demonstrates the relative powerlessness of Jewish courts, and suggests that many Jews were able to circumvent them by appealing to Gentile authorities. A Gentile tribunal that was sympathetic to an individual Jew could easily overturn the verdict of a Jewish court, even if doing so violated the internal autonomy that Jewish communities exercised through traditional rights. One such right was the heren hayishuv, the ban of settlement, originated to protect against economic competition, which could be issued by the established members of a community to prevent Jewish newcomers from settling in the area. In 1314, the Jews of Nuremberg claimed this right in attempting to expel Zalkind of Neumarkt, a new settler with disreputable connections, but were stymied by the city's chief justice, who not only allowed Zalkind to remain in Nuremberg, but permitted an outside rabbinic authority to mediate between Zalkind and the Nuremberg Jews. Excommunication—the pronouncement of anathema against an individual, followed by their forceful expulsion from the community—was perhaps the most serious method of enforcement retained by Jewish communities, and as such, was often used against informers. Yet the Crown of Aragon canceled these excommunications in several cases where the excommunicated person directly appealed to them, nullifying the community's verdict.

The ability of Jewish communal leaders to exercise control over community members was consistently undermined by integration with the Gentile majority and the additional bargaining power available to Jews that were economically successful. In Spain, for example, wealthy Jews could purchase immunity from excommunication from the Gentile authorities. Private settlements in which individual Jews arranged to pay taxes directly to Gentile patrons rather than to the Jewish community were a consistent problem that is well-documented in Ashkenaz sources. In defense of the community's rights, Rashi ruled that even the permission of the Gentile authorities did not excuse Jews from paying taxes to the Jewish community. Meir ben Baruch concurred with him, stating, "No one has the right to negotiate with the civil authorities in such matters... For, if every member of a kahal [community] were to pay his tax as an individual, the results would be very deplorable. Everybody would throw the burden upon someone else." Meir further authorized the Jews of Stendhal, to whom his opinion was addressed, to "employ all the means at your disposal, even such severe punishments as excommunication, public rebuke, or flagellation, to enforce this

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9 Katz, Exclusiveness, 52.
11 Shohet, The Jewish Court, 137.
12 Stowe, Alienated, 181.
14 Stowe, Alienated, 172.
15 Shohet, The Jewish Court, 145.
16 Shohet, The Jewish Court, 103.
19 Taitz, The Jews, 45.
20 Shohet, The Jewish Court, 75-6.
ruling."48 That the rabbis' decrees remained something of a dead letter issue, however, is evinced by the fact that prosperous Jews were still concluding such outside agreements over a century after Rashi's death.49

Even an official position within the communal leadership did not ensure that a Jew would abide by the rulings of rabbis or councils. The parnas, an individual of some standing who, in larger communities, served as delegated spokesperson to the Gentile government,50 could take advantage of connections both inside and outside of the community to determine outcomes. The thirteenth-century Sefer Hasidim describes one such parnas in Germany, whose influence rendered the Jewish authorities powerless to proclaim excommunication or pursue other sanctions against members of his family or other favorites.51

These cases illustrate the limitations of the separation that, in the legally idealized realm of communal and rabbinic legislation, would have been absolute between each Jewish community and the Gentiles beyond it. In reality, the Jewish community was not an island, or even necessarily a physical presence—as Shohet notes, "in many places, the Jewish element could hardly be spoken of as a compact communal unit."52 Larger settlements might have been more solidly delineated, but even the largest of them was not self-sustaining. Because the only functions available to Jews within the wider European society were extremely specialized in nature, Jews were reliant on non-Jews for their most basic daily needs.53 The frequency of interaction between Jews and Gentiles created a complex web of ambivalent relationships that could compromise the boundaries of communal loyalty altogether. This compromise was far from the exclusive province of Jews wealthy enough to purchase the consideration of Gentile authorities. Individual Gentiles could also facilitate matters for Jews of more modest means, allowing them to skirt the requirements of communal law rather than openly challenging them. Specific examples of this collusion with outsiders include a Jew who "sold" property to his Gentile business partner at a low price to evade communal taxes,54 as well as the widespread stratagem, recommended even by rabbis, of fictitiously and temporarily selling a pregnant cow to a Gentile, in order to avoid the obligation laid down in the Pentateuch to give its first-born calf to one of priestly descent.55

Given the degree of integration such examples imply, as well as the greater power at the disposal of the Gentile legal system, for a Jew to take legal matters that could not be satisfactorily resolved within his own community to Gentile authorities seems far from deviant or even unusual. It must be admitted that the religious beliefs shared by Jews did function as a strong, if intangible, mechanism of social control to give some force to rabbinical rulings. The construction of the authority of Jewish law as derived from divine revelation, rather than from either a secular state or the collective will of the people, gave Jewish law a claim to universality56 that kept it a living tradition for centuries even while it lacked effective secular means of enforcement. At the very least, by making religious authority virtually synonymous with judicial authority, it gave a certain weight to the legal opinions issued by rabbis. Nor were individual Jewish communities completely inflexible in insisting that the judgment they rendered was final. Because allowing defendants to appeal to the courts in Palestine, which theoretically remained the highest authority in Jewish jurisprudence, was not only

48 Shohet, The Jewish Court, 76.
50 Shohet, The Jews, 38.
51 Shohet, The Jewish Court, 47.
52 Shohet, The Jewish Court, 12.
53 Katz, Exclusiveness, 30.
54 Shohet, The Jewish Court, 148.
55 Katz, Exclusiveness, 55.
56 Shohet, The Jewish Court, 4.

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impractical, but would have effectively nullified local authority, tikkunot were issued to confirm the standard requirement that defendants must stand trial in either their home community or the nearest community with a regular court. However, certain precedents show that a change of venue was allowed in cases where the defendant pleaded that the plaintiff’s influence in their community was too powerful to allow him a fair trial, and occasionally in cases involving serious charges—including that of denunciation before Gentiles.

In this way, communal authorities recognized the limits of their own impartiality and attempted to promote the continuity of Jewish law by providing for appellate jurisdiction. By contributing to both the perceived and actual fairness of Jewish verdicts, this option, where it was utilized, must have led to a higher acceptance rate among Jews whose legitimate dissatisfaction might otherwise have caused them to contemplate recourse to Gentile authorities. However, to compel defendants to stand trial in their own communities remained standard practice, and the decision to either approve or deny a request for a change of venue was left to the discretion of the communal leaders. If such a request was turned down, if a change of venue was not an option, or if an individual simply disagreed with or chose to ignore rabbinical authorities, there was no means of preventing a Jew from appealing a verdict or presenting an accusation before Gentile courts. For those who were not overawed by rabbinic authority—a significant portion of the Jewish population, to judge by the complaints even a major rabbinical figure such as Meir ben Baruch voiced about his decrees being disregarded and ridiculed—such an action made practical sense. Many business-minded Jews must have found it difficult to rationalize interrupting their affairs to travel to a distant Jewish court when Gentile courts with greater powers of enforcement were more readily available. Gentile courts were also a familiar realm to Jews who gained experience of them during litigation with Gentiles, and if they felt they had been treated fairly by Gentile authorities (as Kisch has concluded they often were in municipal courts), this might have increased the inclination to resort to them.

Despite their efforts to retain as much juridical power as possible, medieval rabbis were not blind to the exigencies of reality, to which they often capitulated. They exercised considerable mental agility in justifying practices that were dictated by current necessity but contradicted the centuries-old strictures of the Tanakh and Talmud. Even these classic codes of law, which had arisen under dramatically different conditions, sometimes contained principles which were quoted in support of contemporary situations, such as the concept of dina demalkutha dina (“the law of the land is law”) first formulated by third-century scholars in Babylonia. A millennium later, the German rabbi Isaac ben Eliezar concluded that the principle validated all enactments and judgments emanating from courts that were trustworthy and functioned under the supervision of the civil government. Other rabbinical opinions did not grant Gentile courts such wholesale legitimacy, but their specific allowances are an instructive reminder of the limitations faced by Jewish jurisprudence. The responsa of Meir ben Baruch, for example, not only permitted Jews to testify in secular courts in order to confirm the verdicts of Jewish courts (and thus enable execution if the defendant ignored the verdict of the Jewish courts). They also allowed the decisions of a Gentile court to take precedence.

59 Finkelstein, Jewish Self-Government, 381.
60 Finkelstein, Jewish Self-Government, 381.
61 Shohet, The Jewish Court, 27.
62 Cohen, Under Crescent, 49.
63 Katz, Exclusiveness, 30.
64 Katz, Exclusiveness, 48.
65 Shohet, The Jewish Court, 115.

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over the decisions made by Jewish laymen, even prominent ones, if they did not have experience in law, thereby placing a higher value on professional legal expertise than on membership in the Jewish community.66 The role of premeditation in cases where Jews brought complaints against other Jews directly to Gentile authorities was also the subject of debate. On one occasion, Meir ben Baruch refused to excuse a son who had denounced his father's attacker to Gentile authorities from the penalties for informing, even on the grounds of filial indignation. "Even if his father had bidden him denounce the other," Meir ruled, "he should not have done so."67 However, he was hesitant to apply full penalties in another case where the defendant against a denunciation charge argued that a denunciation had been made in his behalf "while his heart was hot."68 As support for his position, Meir cited an alleged Takanah of the Rhineland communities, no longer extant but referred to in other sources as excusing acts, including informing, "committed in passion."69

His contemporary Chaim Ezekiel, another Rhineland rabbi, was more unequivocal, stating that he would neither convict an informant nor require him to pay damages for a denunciation committed in anger.70 The multiplicity of extenuating circumstances for informing found in rabbinic sources tend to characterize it, in strictly legal terms, as either an undesirable but necessary expedient, or a rash but intelligible overreaction—but not a monstrous crime.

The mention of penalties raises the question both of the sanctions applied against informers, and their effectiveness. Some Spanish communities claimed the right to impose the death penalty on informers, an assertion given its most extreme formulation by Rabbi Asher ben Yehiel, who held that, in spite of the dissolution of the Sanhedrin, medieval communities regained the right to administer capital punishment as a preventive measure in cases of clear and present danger, including those involving potential informers. However, Asher concedes that such capital punishment would involve the consent of the Gentile authorities.71 He also makes the somewhat puzzling statement that, although, upon becoming their rabbi, he allowed the Jews of Toledo to continue the "custom" of executing informers after denunciation had already been committed, he himself had "never sanctioned such executions"—possibly on the legalistic grounds that to do so would be to encroach too far on prerogatives that still technically resided with the Sanhedrin.72

It is worth noting that surviving sources refer much more frequently to the theoretical right of communities to either execute informers themselves or declare a death sentence meant to be carried out by Gentile authorities, than they do to its application in against identified individuals in specific cases.73 Maimonides laid down in his law code that it was lawful to put informers to death,74 but his correspondence does not refer to any executed informers by name. Even in cases where the death penalty was documented as having been carried out in Spain, it does not seem to have gone unchallenged. Although in 1379 a royal tax farmer was executed in Seville with the express permission of the king of Castile, the right of adjudication in criminal matters was withdrawn from the Jewish community as a result.75 The family of an informer executed in Barcelona circa 1270 later challenged the community's right to proclaim the death sentence (carried out by Gentile authorities)

66 Shohet, The Jewish Court, 83.
68 Finkelstein, Jewish Self-Government, 152.
69 Finkelstein, Jewish Self-Government, 151.
70 Finkelstein, Jewish Self-Government, 152.
71 Shohet, The Jewish Court, 136.
72 Shohet, The Jewish Court, 137.
73 Shohet, The Jewish Court, 136.
75 Kaufmann, "Jewish Informers," 219.

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on the same grounds cited by Asher ben Yehiel—that the community had forfeited that right with the dissolution of the Sanhedrin.\textsuperscript{76} In sum, the extent to which the death penalty was actually applied against informers is "rather hinted at than fully described"\textsuperscript{77} in the sources, as even D. Kaufmann, who is convinced that criminal informers posed a real and constant threat in medieval Jewish communities, is compelled to admit.

Excommunication and expulsion from the community through the application of the herem hayushin\textsuperscript{78} is cited in rabbinical sources as the preferred sanction against informers to Gentile courts where there are no extenuating circumstances.\textsuperscript{79} However, given the instances already cited in which Gentile governments simply overrode the herem in cases of appeal, the thoroughness of expulsion was not always guaranteed, nor was it always possible to carry out against individuals who had a strong following in the community. Meir ben Baruch argued that those who had been excommunicated from one community were effectively excommunicated from all others as well,\textsuperscript{80} but since many legal as well as religious ordinances were differently observed across the widely scattered Jewish communities,\textsuperscript{81} and since Rashi himself had ruled that each court had authority in its own jurisdiction,\textsuperscript{82} the practical scope of excommunication might be much more limited. At least in theory, an excommunicated person might be able to join another community that was either distant enough from the community which had expelled them to have no knowledge of the excommunication, or in which previous contacts could serve as guarantors on their behalf.

Excommunication, however, may have been a penalty as thoroughly idealized in Ashkenaz as capital punishment was in Spain. In some cases, Jewish communities were required to pay a considerable sum to their Gentile overlords to compensate them for the lost income the excommunicated individual represented.\textsuperscript{83} They could not pay this amount out of any remaining property of the excommunicated person, which was typically subject to royal confiscation.\textsuperscript{84} Beginning in the early thirteenth century, the proliferation of non-retention treaties between Christian nobles also crippled the effectiveness of the herem by placing severe limitations on Jews' freedom of movement.\textsuperscript{85} However, the even more basic fact that excommunication disadvantaged the Jews who remained in the community—by making them each responsible for a larger share of the taxes for which the community was collectively responsible—may have been the most important limit on excommunication in reality. Taxation was one of the points around which Jewish communal government had first coalesced,\textsuperscript{86} and the need to ensure that the community retained sufficient resources to pay the duties leveled on it, which led communal leaders to ban private tax arrangements with Gentiles, also dictated that the community could ill afford to lose a tax-paying member, even if legitimately considered a criminal informer, unless that person represented an extreme threat to its continued survival.

Given this ironic restraint, which may have forced communities to retain even those members who were considered to have violated internal solidarity, it seems to have been more feasible for communities to impose pecuniary sanctions on informers, although excommunication

\textsuperscript{76} Kaufmann, "Jewish Informers," 224.
\textsuperscript{77} Kaufmann, "Jewish Informers," 221.
\textsuperscript{78} Taiz, The Jews, 128.
\textsuperscript{79} Shohet, The Jewish Court, 154.
\textsuperscript{80} Shohet, The Jewish Court, 154.
\textsuperscript{81} Shohet, The Jewish Court, 50.
\textsuperscript{82} Taiz, The Jews, 66.
\textsuperscript{83} Parkes, The Jew, 252.
\textsuperscript{84} Parkes, The Jew, 253.
\textsuperscript{85} Taiz, The Jews, 117.
\textsuperscript{86} Taiz, The Jews, 65.

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remained the ideal, and was probably applied in cases where both culpability and consequences were extreme. It is significant that the legal opinions issued by Meir ben Baruch and Chaim Ezekiel regarding acts of informing "committed in passion" are concerned with the defendants' responsibility for paying fines, rather than their liability to excommunication. Moreover, rather than being rendered to the community, these payments typically took the form of direct remuneration to the individual who had been harmed by the act of informing. This type of restorative justice makes intuitive sense from an individualistic standpoint, but in the context of communal authorities' insistence on the primacy of the community—which extended to the idea that the community, rather than its residents, enjoyed juridical standing—and took precedence over their interests—it deserves a closer look.

The Takkanah issued in 1150 by Rashi's grandson Jacob Tam, the most thorough piece of surviving legislation that deals with informers, takes particular care to stipulate the conditions of this indemnification. From beginning to end, it reveals the quandaries and limitations of Jewish communal power, as well as how communal leaders tried to resolve the former and justify the latter without sacrificing their own authority. The narrative of the Takkanah constitutes its own reality, a virtual one in which the rabbis dictating its terms are in total control. Like the Book of Exodus, it reveals surprising inconsistencies even in its claims to the absolute; but like Exodus, it is ultimately successful in overcoming those inconsistencies with the accumulated force of language, so that the reader comes away with an impression of the group unity that is emphasized, rather than the individualistic fragmentation that is also represented. Although the steps it outlines are aimed at reestablishing the violated boundaries of the community and ensuring they are not breached a second time, it reserves excommunication only as a last resort, focusing on lesser financial penalties, as well as qualifications and concessions, aimed at keeping the community intact.

The actual scope of this Takkanah's acceptance and application cannot be determined, and for that reason, its importance may have been overemphasized by scholars. Its authoritative tone derives from its endorsement and probable origination by Jacob Tam, one of the most eminent rabbis of the twelfth century, as well as the signatures it carries of respected rabbis from as far away as Cologne. These signatures, and the chain of historical coincidences which make it the sole surviving piece of legislation from the entire synod Tam convened at Troyes, have fostered the idea that Tam called together an "international" synod expressly to deal with the problem of informing.

In reality, as Finkelstein takes care to stress in his discussion, such an interpretation gives the Takkanah a significance out of proportion to the context in which it was issued; as he comments, "It can hardly be believed that the rabbis would have undertaken all the dangers that were encountered in travel from country to country, merely to publish a Takkanah against informers." Tam was also a powerfully autocratic personality who frequently either issued decrees on his own authority or insisted other rabbis ratify them through countersignature—a possibility which, in this case, cannot be ruled out. Finally, the synods had no actual claim to intercommunal powers or jurisdiction, limiting their pronouncements to what Stowe calls "indicators of ideal Jewish behavior," which, while backed by the moral authority of the rabbis, would not necessarily have been enforced or even accepted given the piecemeal heterogeneity of Jewish jurisdictions at the time.

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87 Shohet, *The Jewish Court*, 18.
88 Shohet, *The Jewish Court*, 33.
89 Finkelstein, *Jewish Self-Government*, 42.
90 Werblowsky, "Denunciation," 197.
It is within such limitations that the *Takkanah* clearly strives to establish itself, a state of affairs to which its own words attest. By anticipating every situation in advance and either dictating or seeming to permit a course of action, its rabbinic authors retain control of a theoretical discourse imposed on a reality in which they had much less agency. They do so even in the *Takkanah*’s first article, which begins with the statement that the authors have "voted, decreed, ordained, and declared that no man or woman may bring a fellow Jew before Gentile courts or exert compulsion on him through Gentiles," but amends this statement, in the same sentence, to exclude cases where the parties have mutually agreed to take the case to Gentile authorities in the presence of witnesses.96 In Katz’s opinion, this is likely to have been a concession to accepted usage which communal authorities could not prevent, rather than a *bona fide* derivation of any principle found in the classic sources of Jewish law.97 The *Takkanah*’s second article makes the informer responsible for securing the life and property of the other Jew while he is in the custody of Gentiles, but with an interesting twist—the "informer" is actually never referred to as such, since the language of the clause treats a hypothetical incident of inadvertent denunciation. Thus, if the matter "accidentally" reaches the Gentile government, "the man who is aided by the Gentiles," is enjoined to "save his fellow from their hands, [and] secure him against the Gentiles who are aiding him."98 This phrasing not only upholds a fiction of idealized communal solidarity, in which no Jew would proceed against another Jew in Gentile courts without communal consent. It also suggests a pretext that even those who had deliberately made denunciations could employ to claim that they had not intended to infringe the rights of the community, and therefore should not be subjected to the harsher means of punishment (especially excommunication, which as we have seen might have strained the resources of the community).

The remainder of the *Takkanah*’s second article, as well as its third and fourth articles, is concerned with the role of the "seven elders," or communal council, in mediating between the individuals on opposite sides of a denunciation. The council is given the authority, indeed the responsibility, to determine the extent of damages and stipulate the financial compensation necessary to "satisfy" the individual who had sustained a loss from or been otherwise mistreated by Gentile authorities due to the statements of another Jew.99 The informer’s role in submitting to this authority is portrayed as a surprisingly proactive one, another indicator that the *Takkanah*’s narrative is situated in an idealized realm of perfect communal solidarity: the actions the informer is required to take prior to denunciation are, in effect, a recipe for expiation that must be followed on individual initiative. It is incumbent on the informer, for example, to either apply to the communal council for mediation on the "first possible day" after an incident, or to seek out and apply to the nearest council with the authority to perform such mediation if there is no council in his own community.99 While leaving no loopholes for an informer to evade responsibility, it also assumes a high degree of scrupulousness on their part, and an active desire to reassimilate into the community after transgressing its boundaries. Providing for the informer to repay the complainant directly is a concession to practical individuality, in that it serves not only as a punishment for the informer, but a settlement to the complainant insuring against the possibility of counter-denunciation, a frequent occurrence98 that further eroded Jewish communal authority. As the *Takkanah*’s concern with obedience to the council clearly show, allowing the council to determine the amount of compensation due was just as important a component of reparation as paying the compensation.

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98 Tam, "Takkanah Regarding Defamation," 156.

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itself. In effect, by submitting to the process outlined, informers were able to "undo" the act of informing, and cancel its legal as well as its material ramifications, by paying compensation to the individual harmed while simultaneously recognizing communal leaders' ultimate authority.

Only after this process of repentance and reintegration is outlined does excommunication appear, as an admittedly serious, but still secondary option. The sixth article boldly states that, "He who transgresses these [decrees] shall be excommunicated, [and] all Israel shall keep apart from him," including, somewhat problematically, "those who sign (this decree) as well as those who do not sign." Apart from the question of practical applicability raised by this ending, and, of course, the problem of enforcing the decision of a synod which had no recognized permanent authority, this assertion is then qualified almost immediately in terms that underscore the small and internally interdependent nature of most medieval Jewish communities. The Takkanah's eighth article provides dispensation for other community members "because of the fear of the government" (an excuse that could also be alleged to cover more mundane reasons), to speak occasionally with the informer without being subject to the excommunication that would otherwise fall on them, "provided [they do] not use this pretext to multiply words with him." Although justified on the basis of practical need, this is a generous modification to the previous command that "all Israel shall keep apart from him" that lessens the impact of excommunication considerably.

Moreover, the following article informs us that the excommunication does not apply at all to a plaintiff who uses Gentile courts to collect a claim against a Jew who has refused the summons of the Jewish court, thereby constituting disobedience to communal authority, rather than transgressing the legal boundaries of the community, as the truly serious crime. If there is any ambiguity on this point, the Takkanah's tenth and final article eliminates it by requesting all those in contact with the government "to coerce through the power of Gentiles" anyone who violates their commandments. This establishes the paradoxical position, probably rather ineffectually insisted on by communal authorities, that, as Ta'itzi says, "Gentile power could be [legitimately] used in the service of the Jewish community, but not in the service of the individual Jew."

From livelihood to law enforcement, the power of medieval Jews both began and ended with the larger Gentile communities who supported, tolerated, and (sometimes) persecuted them. Jewish communities as embodied in their communal representatives, as well as individual Jews, who often challenged the authority of those representatives, competed for access to this power on a variety of fronts. The severity of the tensions that accompanied conflict over an individual Jew's choice of Gentile — as opposed to Jewish legal jurisdiction — is well-documented in surviving rabbinical legislation that characterizes such Jews as traitors to their people, worthy of excommunication or worse. But, as Ta'itzi notes, "the main goal of this legislation was not merely to protect the individual against these 'informers.' It was to protect the community's inherent right to judge its members and legislate for the entire group in spite of the influence or self-interest of individuals." Jewish communities were, however, limited in the sanctions they could impose to protect this right by the very dependence on Gentiles which facilitated its violation. This undoubtedly contributed to both the harshness of the invective against informers in medieval rabbinical sources (creating the mistaken impression that Jewish communities were fraught with Judases) and the much more limited penalties that seem to have been applied in reality. In the final

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Tan, "Takkanah Regarding Defamation," 157.
Tan, "Takkanah Regarding Defamation," 158.
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Tan, "Takkanah Regarding Defamation," 158.
Ta'itzi, The Jews, 111.
Ta'itzi, The Jews, 111.

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reckoning, rabbis and other communal leaders, like Rashi, often had to content themselves with denouncing informers, while invoking the divine moral authority of the scriptures. Thus Rashi's grandson Jacob Tam also quoted Nehemiah and Ezekiel in his Takkanah against informers, which allowed him the comfort of both an illusory divine consensus and a vision of a Jewish separateness that, in medieval Europe at least, was no longer possible:

If a man sin against man, let him be judged by proper judges, but let not the hand of a stranger pass among them, and let them behave themselves with sanctity and purity, separating themselves from the peoples of the land.107

107 Tam, "Takkanah Regarding Defamation," 158.