Rituals of Repentance and Testimonies at Rabbinical Courts in the 15th Century

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Because the Jewish legal system is a system of precedents based on the laws of the Halakha, the laws of Torah and Talmud, we are in the lucky situation that the legal decisions of famous rabbinical authorities in the Middle Ages have been transmitted from generation to generation by their students as a source for further judgements which consider Halakha, tradition, local customs and the actual demands of the presence. These so-called *teshuvot*, answers, Hebrew Responsa, are written decisions about legal questions posed to rabbis, mostly by their rabbinical colleagues. The greatest part of them deals with concrete cases, but some are also theoretical questions. The institution derives from Roman law and is still alive today, comparable to the *littera* written by the canonists of the papal curia.[1] Thousands of Responsa from the high and late Middle Ages have been preserved and are still used by rabbis as precedences for their own legal decisions.[2]

Three main different types of oral statements appear in these sources: Firstly, ceremonies like rituals of repentance (*mehila*) and oaths (*shevua)*, partly with traditionally fixed *formulae*, either in vernacular or Hebrew or, in most cases, both. Secondly, vernacular testimonies at rabbinical courts, where the witnesses spoke freely, but still in a formal atmosphere. In most of the cases the author of the Responsum translated them into Hebrew, often shortened the reports or made conclusions, but cited the most important statements at full length. The third kind of oral statements are vows (*neder*) and spontaneous statements in a situation of anger, outrage or distress. They only come before a court when they contain insults of a fellow Jew or when somebody has taken a rash vow that he regrets afterwards and needs a rabbinical dissolution.

This paper does not deal with the wide field of formula statements of and at Jewish courts such as judgements, the different types of ban (*herem*) and especially the oath. Taking an oath was not an extraordinary and rare event in Jewish life and the living together of Christians and Jews. It was a necessary, everyday part of the

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[1] See Peter Herde, *Audientia litterarum contradictarum. Untersuchungen über die päpstlichen Justizbriefe und die päpstliche Delegationsgerichtsbarkeit vom 13. bis zum Beginn des 16. Jahrhunderts*, 2 vols. (Rom: Deutsches Historisches Institut, 1970).

[2] See Salomon Freehof, *The Responsa Literature* (Philadelphia: The Jewish Publication Society, 1959), and Bernhard Weinryb, "Responsa as a Source of History," in *Essays Presented to Chief Rabbi Israel Brodie on the Occasion of his 70th Birthday*, ed. Bernhard Zimmels (London: Soncino, 1967).

administrative, juridical, and commercial contacts between Jews and Christians and of course of the inner Jewish community life as well.

It is no coincidence that the two Jewish oath formulas preserved from the 15th century deal with the declaration of taxable possessments. The existence of Jewish communities under Christian rule was dependent on their financial capacities, therefore tax administration was the main task of the medieval community organisation. The oath to declare possessments, income, redeemed and outstanding loans was indespensable for this procedure.[3] The Hebrew oath of Rabbi Yacov bar Shimon of Mestre (died ca. 1480) is cited in the book of R. Isserlein's Responsa and *minhagim*, written by his student and servant Yoseph bar Moshe of Höchstadt. Compared to the oaths Jews were – at least theoretically – supposed to take at Christian courts, the curse formula is quite harmless:

> And so we stand before the Place (*makom* = God), blessed be He, and you take upon yourself the heavy oath, the oath of the Torah who shattered the entire universe in the hour when the Lord, blessed be He, said: 'Thou shalt not take the name of the Lord thy God in vain!' (Lev. 19, 12) And it is written (Ex. 20, 7) that the Lord does not leave unpunished the one who takes His Name in vain. And if you tell us the truth, you will be blessed by the Lord, blessed and praised be He, but if, God forbid, you don't say the truth, then the shame will come upon your head and we (the community) and the entirety of Israel will confirm it. And the man says '*amen*.'[4]

The minutes of a rabbis' conference in September, 1415, in Austria, probably Wiener Neustadt transmit another oath, this time in German. It is appended to ordinances of Austrian community leaders and rabbis concerning an onerous tax imposed by Duke Ernest the Strong of Inner Austria to pay the "third penny" to Emperor Sigismund. It contains the curse that the perjured person will not be assisted by God any more, that he has to give his soul to the devil and his life and possessions to his prince without mercy:

> *Vnd swer das auf die zehen gepott Moysy, die mir derselbe Moyses gepotten und aufgeseczt hat von des lebendigen gots wegen, also sol mir derselbe got nymmer anders zuhilff kömen, hie vnd dortt, und ob ich darueber anders tue oder erfunden würde, so gib ich dem tewfel mein Seel, meinem herren leib vnd guet an alle gnad.*[5]

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[3] See Eric Zimmer, *Harmony and Discord. An Analysis of the Decline of Jewish Self-Government in 15th Century Central Europe* (New York: Yeshiva University Press, 1970), pp. 30-66.

[4] Joseph bar Moshe, *Leket Yosher*, ed. Jakob Freimann (Berlin: Itzkowski, 1903, repr. Jerusalem: Wagshal, 1964), part 2, pp. 36 f.

[5] Arthur Zuckerman, "Unpublished Materials on the Relationship of Early Fifteenth Century Jewry to the Central Government," in *Salo Wittmayer Baron Jubilee volume: on the Occasion of his 80. Birthday*, ed. Saul Lieberman (Jerusalem: American Academy for Jewish Research, 1974) pp. 1059-1095, p. 1090. The original document is preserved in the Haus-, Hof- und Staatsarchiv Vienna, HS blau 5, fol. 77a-78b.

The oath has to be taken in the yard of the synagogue or in the synagogue itself by holding or at least touching the Pentateuch or the Torah scroll. The ceremony takes place in the presence of a congregation of ten men (*minyan*), the *boni homines* of the community (*tove ha-kahal*) or the tax administrators. The space, the sacred objects, the witnessing community, the solemn atmosphere, and the significance of the formula make the ceremony to a public performance of highest importance.

Oaths that Jews had to take before Christian courts usually consisted of similar formulas and ceremonies because Christian authorities were interested in the credibility of this legal act. That is why many municipial ordinances ask the oathtaker to put his arm between the corresponding pages of the book Exodus or Leviticus, as in the following Jewry law of Cologne:

> *Primo intret Judeus synagogam cum judice et actore et exutus calciis nudis pedibus stet et imponat dextram manum totam usque ad membrum brachii in librum Levitici, et claudatur liber.*[6]

The curses in case of a false oath are threatening with punishments out of the Torah, like the extermination of Korah (Num. 16) or, in the oath of the Jews in Vienna, the destruction of Sodom and Gomorrah (Gen. 19).[7] The increasing mistrust towards Jews led to humiliating self-curses like the cruel example in a Viennese manuscript of 1466: " ... if I swear a false oath and step back from my place, I will fly into such a rage that I have to tear my wife and children into pieces and devour them instead of bread" (*und ob ich unrecht swer, wenn ich von meiner stelle trete, das ich also wueten muess werden, das ich mein weyb und chind zureiyssen musse und fressen fuer das prott*).[8] We do not know if and where this formula was used, but at this time certainly not in Vienna, because after the Viennese *gesera*, the extermination of the Jewish community in 1421, no Jews lived there any more. Beside that, another Jewry oath of Vienna is preserved "which is characterized by shortness and dignity."[9]

Formulas like that and humiliating ceremonies like standing on the bleeding skin of a sow ("Sauhaut"), the main symbol of impurity, as ordered in the *Sachsenspiegel* and other legal books, were probably never or only rarely applied. Remarkably enough, in Nurenberg the "Sauhaut" was inserted into the oath in the year 1364 as a consequence of the persecutions of the Black Death in 1349, when

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[6] Cited in Guido Kisch, "Studien zur Geschichte des Judeneides im Mittelalter" in idem, *Forschungen zur Rechts- und Sozialgeschichte der Juden in Deutschland während des Mittelalters*, 2nd ed. (Sigmaringen: Thorbecke, 1978), vol. 1, pp. 137-165, p. 151.

[7] See Ruth Schmidt-Wiegand, "Eid und Gelöbnis, Formel und Formula im mittelalterlichen Recht," in *Recht und Schrift im Mittelalter*, ed. Peter Classen (Sigmaringen: Jan Thorbecke, 1977) pp. 55-90, p. 84, and Hans von Voltelini, "Der Wiener und der Kremser Judeneid," *Mitteilungen des Vereins für Geschichte der Stadt Wien*, XII (1932), pp. 64-70, p. 70.

[8] Cited in Voltelini, "Judeneid," p. 67. The curse also has a base in the Torah, in Leviticus 26, 27-29, where God announces terrible punishments in case the people of Israel do not obey His commandments.

[9] Voltelini, "Judeneid," p. 69.

562 Jews were murdered. Before that catastrophe, a short oath without any self-curse was in use.[10]

It is hard to decide which legal proscriptions were applied in the legal practice and which of them stayed theoretical. Many historians and even contemporaries had their doubts that ceremonies like that were ever applied or, like Jacob Marcus, they at least stated other, "milder and more dignified" versions.[11] Michael Toch gives examples of a number of cities where, beside the "Sauhaut" ceremony and extensive self-curses, a second ceremony without any contemptuous attributes existed. He concludes that these ceremonies do not describe a real oath situation but express a "radical anti-Jewish discourse [...]. His task is inner-Christian and refers to Jews only in their function of objects for the projection of aggression, feelings of guilt and fears."[12]

I. Rituals of Repentance

Insults and injuries

During a longlasting quarrel in Ulm, which started 1435 and ended with a heavy punishment in 1440, the *ḫawer* (title of a scholar, but not a rabbi) Simlin Walch[13] went to the Christian mayor to complain about his fellow Jews. This act alone was a heavy sin against the rules of a Jewish community in the Middle Ages because a denunciation to the Christian authorities endangered the whole community. A traitor like that was called *mosser*, deliverer, or *malshin*, traitor, and he was usually punished by the *ḫerem*, the Jewish ban, which meant religious and social excommunication and, in consequence, loss of property and protection.[14]

The quarrel started with Simlin's refusal to pay his part of the collective tax Emperor Frederick III imposed on his Jews. Simlin refused to accept the judgement of the community's rabbinical court and charged several individual members in the municipal courts. During the conflict, the community split into two

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[10] See Walter Röll, "Zu den Judeneiden an der Schwelle der Neuzeit," in *Zur Geschichte der Juden in Deutschland des späten Mittelalter und der frühen Neuzeit*, ed. Alfred Haverkamp (Stuttgart: Anton Hiersemann, 1981) pp. 163-204, p. 191.

[11] See Jacob R. Marcus, *The Jew in the Medieval World. A Source Book: 315-1791* (New York: Atheneum, 1938), pp. 58 and 59, where he gives the translation of the Jewry oath in Frankfurt/Main at about 1392.

[12] Michael Toch, "Mit der Hand auf der Tora: Disziplinierung als internes und externes Problem in den jüdischen Gemeinden des Spätmittelalters," in *Disziplinierung und Sachkultur in Mittelalter und früher Neuzeit*, ed. Gerhard Jaritz (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1998), pp. 155-168, p. 166.

[13] His Hebrew name was Simon or Samuel bar Menaḫem, son of Menly of Mellingen. He represented the Jewish community of Ulm in tax negotiations with Konrad von Weinsberg in 1438 and 1439. See *Germania Judaica*, eds. Arye Maimon, Mordechai Breuer and Yacov Guggenheim (Tübingen: J. C. B. Mohr/Paul Siebeck, 1963-1995), vol. III/2 (1995), p. 1507, n. 26.

[14] See *Encyclopaedia Judaica* (Jerusalem: Keter 1970 f.), vol. VIII, cols. 344-355.

parties; the majority was held by Rabbi Seligman, rabbi of the community and wealthy moneylender.[15] His party also asked the municipal authorities for support to force Simlin to accept the rabbinical judgement. The municipal courts got deeply involved in the case; more than 170 documents dealing with this process are preserved. Simlin was even imprisoned until he swore "Urfehde" on 1440 VIII 27. Then he swore to accept the severe punishments the two famous rabbis Yakov Weil[16] and Salman Katz of Nuremberg had imposed on him: the deprivation of his *ḫaver*-title, forty lashes of the whip or, instead of that, the paying of 40 florins to the *zedaka*, the charity fund of the community, and one year of severe repentance.[17]

Simlin, however, not only violated the collective balance by breaking the rules of the community, he also attacked the honour of Rabbi Seligman as a Jew and as a scholar. He insulted him as a "Mamser", a bastard, which means an illegal – not necessarily illegitimate – descent and compared his erudition with that of a child of three years. Further, he expressed his doubts about the honesty of the witnesses and judges of the rabbinical court. For these insults he had to ask openly for forgiveness in the synagogues of Ulm, Constance, and Nuremberg. Ceremonies of this kind usually took place in the synagogue during the Shabbat service, after the reading of the Torah – a public performance par excellence![18]

By doubting his legal descent, Simlin had not only offended Rabbi Seligman himself, but also his parents Abraham and Mina. Therefore, he had to ask for their forgiveness as well. They were already deceased, so he had to go to their graves at the Jewish graveyard of Ulm.[19] Rabbi Yakov Weil of Erfurt (died 1453) deals with this case in a long response, six pages in two columns, citing several letters and

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[15] See *Germania Judaica*. III/2, pp. 1506 f. n. 25. He was also active in Treviso and Constance, where he was imprisoned with the other Jews of Constance because of a blood libel. After having paid a quarter of the enormous ransom of 20.000 florins he was released and moved to Ulm. His admission to the town took place in 1431 VI 22.

[16] Yakov Weil, one of the most famous scholars of his time, was born around 1390, studied in Mainz, was rabbi in Nuremberg from around 1422 till 1429, then in Augsburg till 1438, then probably in Bamberg and finally, at the latest in 1443, he moved to Erfurt where he died in 1453. See *Germanie Judaica*, III/1, p. 46, n. 12.

[17] *Germania Judaica*, III/2, p. 1503. See the details in F. Strassburger, "Zur Geschichte der Juden von Ulm nach Resp. 147 des Jacob Weil," in *Festschrift zum 70. Geburtstag von Theodor Kroner* (Breslau: Fleischmann, 1917), pp. 224-236.

[18] See Martha Keil, "Bet haKnesset, Judenschul. Die Synagoge als Gotteshaus, Amtsraum und Brennpunkt sozialen Lebens,"*Wiener Jahrbuch für jüdische Geschichte, Kultur und Museumswesen*,.4 (1999/2000), pp. 71-90, esp. pp. 83f., and Toch, "Mit der Hand," p. 161, where he calls the synagogue the "public space par excellence".

[19] Seligman's father Abraham was the richest Jew in Coburg in 1418. See *Germania Judaica*, p. 1519, n. 240. Mina died in 1435 XII 27. Her gravestone is published in Markus Brann, "Zur jüdischen Geschichte – Jüdische Grabsteine in Ulm," in *Festschrift zum 70. Geburtstag von Theodor Kroner*, p. 182. Brann wrongly considered her the wife of R. Seligman. See Israel Y. Yuval, *Scholars in their Time* (Hebr.) (Jerusalem: The Magnes Press, 1988), p. 223, n. 2.

minutes of both sides.[20] Finally he wrote his judgement over Simlin, and there he cited the formula of repentance in full length in, as he calls it, "ashkenasic" language (Hebrew words in italics and h for the letter *het*):

> Ich hon *moreinu ha-rov* Selikman ein *mamser* geheissn, damit hon ich *pouge ve-nouge* gewesen an *ha-nikhbad rov* Avraham *s'l koved* und seins weip *marat* Mina *s'l. Hatosi, ovisi, poshosi.* Ich bitt den *boure yis'(borekh)*, das er mirs *mohel* sei un' daer noch *ha-nikhbad rov* Avraham *s'l* un' fur Mina *s'l.*
> (I have called Rabbi Seligman a Mamser, that's why I was beating and touching the honour of the honoured Abraham of blessed memory and his wife Mina of blessed memory.)

The formula itself is in Hebrew: *chatati, aviti, pashati*, taken from the *vidui*, the confession of sins at the Yom Kippur service: "I have sinned, commited an outrage and failed. I ask the Creator that He will forgive me and also Avraham and Mina of blessed memory."

In case the reader does not understand German, or Western Yiddish, "Judendeutsch" or simply German with Hebrew loanwords (here is not the place to discuss this topic), Yakov Weil translates the whole statement into Hebrew. On the *bima*, the Torah desk in the synagogue, Simlin also has to speak his public confession and repentance in German (this statement is also cited in Hebrew):

> Hort zu *rabbousai*, ich hon *mesires* geton, ich hon gebrochen di *haskomes* di *rabbonim* hon gemacht da ich of *gehasem(e)t* bin, ich hon oich *pouge ve-nouge* gewesen an *koved mishpohe shel moreinu ha-rov* Selikman. Ich hon oich *mourenu ha-rov* Selikman an sein *koved* geret das ich geshprochen, er sei nit ein *rov*, ein kind kon me wen er, da mit hon ich oich den *rabbonim* ubel geret, di (*MhaR*) *moureinu ha-rov rebbi* Selikman *gesamkhet* hot (sic!) zu *Rov*. Ich hon oich (*MhaR*) *moureinu ha-rov rebbi* Selikman me ubel geret un' oich *kahl*. Ich hon oich den *dayyonim* un' ein teil *eidim* ubel geret. *Hatosi, ovisi, poshosi.* Ich bitt den *boure yis' (borekh)*, das er mirs *mohel* sei un' di *rabbonim*, die (*MhaR*) *Moureinu ha-Rov Rebbi* Selikman *gesamkhet* hot (sic!) un' oich (*MhaR*) *moureinu ha-rov rebbi* Selikman un' oich *kohl* un' oich di *eidim* un' oich di *dayyonim*, ich bitt si al *mehile*.[21]
> (Listen, gentlemen, I have committed delivery, I have broken the decisions the Rabbis have made and that I myself have signed as well, I have also insulted and touched the honour of the family of Rabbi Selikman. I also insulted the honour of Rabbi Selikman as a Rabbi and said that he does not know more than a child, and by that I also insulted the Rabbis who have ordained him to a Rabbi. I also insulted the community and the judges and some of the witnesses. I have sinned, commited an outrage and failed. I ask

[20] Yakov Weil, *She'elot u-Teshuvot*, ed. Izhak Sela (Venice,1549, repr. Jerusalem, 1988), pp. 94-100, nr. 147.

[21] Many thanks to Yacov Guggenheim, Hebrew University Jerusalem, who helped me with the ashkenasic pronounciation of the Hebrew words and the transcription into English! See also Werner Weinberg, *Lexikon zum religiösen Wortschatz und Brauchtum der deutschen Juden* (Stuttgart-Bad Cannstatt: Frommann-Holzboog, 1994).

> the Creator, He shall be praised, that He will forgive me and also the Rabbis who have ordained Rabbi Selikman to a Rabbi and also the community and also the witnesses and also the judges, I ask them all for forgiveness.[22])

As Yakov Weil stated, during the three days after this judgement arrived in Ulm, the Rabbis there would let Simlin know about it, and he had to do the ritual of repentance at the graves of Seligman's parents, as stated above. In the next three days he had to fulfill the other ritual in the synagogue, and within 30 days he had to repeat it in the synagogues of Constance and Nuremberg. Beside that, he had to pay all the costs of the process.

As we are talking about a judgement, it is obvious that these sentences are supposed to be spoken by the repentant, but it is not known if he really did so. At the end of his responsum R. Yakov Weil threatens to ban Simlin if he does not fulfill the judgement – so he himself is not sure if his words will become "oral history" in the proper sense of words.

The formula *chatati, aviti, pashati* (here given in their ashkenasic pronounciation *hatosi, ovisi, poshosi)* – "I have sinned, commited an outrage and failed" – also appears in other ceremonies of repentance of 15th-century responsa material, at least when a man is the defendant. All the other elements of the ritual follow a certain order, but the words are added according to the situation.

Yakov Weil also judges a case where a certain Shimon hurt his fellow Jew Ruben (both common pseudonyms in *teshuvot*) with a stick of wood, "until the blood ran down from the forehead to the chin." Shimon had to ask for repentance in the synagogue during the morning prayer with these words, spoken or at least cited in Hebrew:

> I have sinned before the laws of Israel and before Ruben, and I have increased the shame because I have beaten him with a wooden stick until the blood ran down from the forehead to the chin. I have sinned, commited an outrage and failed, and I ask the Lord, He shall be praised, that he will forgive me, and I also ask Ruben to forgive me.[23]

Like the other defraudant, Simlin, Shimon has to suffer lashes in the public space of the synagogue and he has to pay a certain sum to Ruben and bear the costs of the doctor.

The case of an adulterous woman

Because the marriage bond (*kiddushin*, which means "holy") is divinely sanctioned and the prohibition of adultery is of biblical – in the eyes of religious

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[22] Yakov Weil, *She'elot u-Teshuvot*, p. 99, col. 2, nr. 147.

[23] Yakov Weil, *She'elot u-Teshuvot*, nr. 28. In a similar case of physical attack during the *hoshana rabba* procession in the synagogue of Graz at the feast of tabernacles, the formula of the repentant is a little bit simpler. He just says: "I have sinned before the Lord and before you because I have insulted the Holiness of the synagogue [...] and therefore I ask the Lord of Israel for pardon and repentance and then you for forgiveness." Isserlein bar Petahya, *Pesakim u-Khetuvim* (see note 29), nr. 210 (cited in Hebrew).

Jews, divine – origin, not only the husband is offended by adultery, but also God (see Gen. 20, 6; 39, 8-9). The gravity of this transgression is underscored by its punishment by death for both the man and the woman (see Lev. 20, 10; Deut. 22, 22). It is probable that even in biblical times the adulterer could buy himself off by paying the husband a certain sum of money as compensation. In talmudic and post-talmudic times, the adulteress could be punished by strangulation or burning, in the case of a Cohen's daughter, imprisonment and, commonly, public flogging.[24] Medieval Jewish courts had to judge in tension between the strength of Jewish law and the restrictions Christian authorities imposed on Jewish jurisdiction. They also had to be concerned about their good reputation. We can assume that these punishments were sentenced and executed under exclusion of the Christian neighbourhood.[25]

A very cruel ritual of repentance is transmitted to us by Rabbi Israel Bruna of Brno and Regensburg, who died in the 1480s, and by Rabbi Yakov Weil of Mainz (died 1453):[26] A woman, probably living in Regensburg or its surroundings, who committed adultery and wanted to make *teshuva* (repentance) had to appear before Rabbi Salman Kizingen of Regensburg. He ordered her to take off her bonnet (*kipa*), to cover herself with a veil and to disarrange her hair like the *sota* (adulterous woman) in the bible whose hair was "loosened" (Num. 5, 18). Then, her husband should order her to enter the winter house in the presence of the men, and he should say to her "in this language" (German): "Kumst du *pruze*, du *soine*, du *eshet ish soine*, wos willstu?" ("Do you come, whore, prostitute, wife of a husband who betrayed him, what do you want?"). And she had to answer: "Ich beken mein suend, ich bin ein *pruze*, ein *soine*, ich will *teshuve* tun oif mein suend." ("I confess my sin, I am a whore, a prostitute, I ask for repentance!")

Then she had to sit in cold water in wintertime until she fainted, before they should take her out and warm her up. A glossa explains that the judges must act according to her state of health, and they can make it easier for her. Afterwards she has to fast for a year, which means neither meat nor wine.

The second judge Rabbi Yakov Weil, who in the introduction of his decision complains that "the violation of this adulterous woman is great like the sea, who will heal her?" ordered some other details of the ritual which followed the rules of R. Yehuda he-Ḥassid of Regensburg (beginning of the 13th century): now, she must confess in the *Frauenshul* what she had done: "I sinned before the Lord, my God, I brought shame on myself and I feel ashamed, and so I return and make *teshuva*."

This, she must also repeat in German (*leshon Ashkenas*), unfortunately not cited in the original. The asked repetition in German seems to prove that this

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[24] *Encyclopaedia Judaica*, il, cols. 313-316, article "Adultery."

[25] On corporal punishments at rabbinical courts see Eric Zimmer, *Harmony and Discord* (see note 3), pp. 90-93. He points out two different ways of flogging: The hard beating to cause severe pain to the transgressor was only imposed on murderers. The common flogging, imposed on informers, offenders and slanderers, in the synagogue in front of the public was meant to subject the guilty to humilation and disgrace.

[26] Israel Bruna, *Sefer She'elot u-Teshuvot* (Stettin, 1860), nr. 225 and Yakov Weil, nr. 12.

woman was able to speak at least a little Hebrew. Yakov Weil adds that she had to do this repentance in the synagogues of Ulm, Augsburg, and Pappenheim as well.

Yehuda of Regensburg gives cruel details for punishment, like sitting naked in the snow and in summer in the middle of bees and mosquitos. After one year of total fasting and two years of partly fasting and separation from society, dressed in black like a mourner, the defendant woman is stigmatized for her whole life – this lifelong consequence replaces the capital punishment ordered in the Torah for adultery.

It must be added that the Jewish Law makes it very difficult to find a woman guilty of adultery. Two male adult Jews must see the adultery with their own eyes. If the husband is suspicious, he must warn her, and only if she is found in an obvious situation with this specific man is she taken to court. In most of the cases divorce was the necessary consequence, but the woman was not forced to undergo such a humiliating and painful procedure. The point in the cited case is that the woman herself was eager to make *teshuva*, repentance, to „heal the violation" she committed between herself and her husband, her society and her God.

We do not know why the sources on adultery cases from the Middle Ages are so rare: Either the level of morality was quite high, or husbands simply divorced their unfaithful wives or – also probable – such information was suppressed by inner-jewish censorship.[27] So, the cited ritual with its deterrent parts certainly was not executed very often in the Middle Ages, and to call a woman *soine* or *pruze* gave her the right to appeal to a Jewish court.[28]

II. Eyewitness reports

Many responsa contain eyewitness reports. The oral testimonies are marked by the expression *"se leshono"*, "This is his statement", at the beginning and "*ad kan leshono*" "Up to here his statement" at the end, although often the author does not cite the original vernacular statement, but only a Hebrew translation which apparently shortens the report of the questioned person. Sometimes the author cites the German testimony, marked by the explanation "*bileshon Aschkenas*", "in Ashkenasic language", and he translates the whole statement into Hebrew. We can

[27] The author of the standard work to medieval Jewish matrimonial law does not mention any rituals of repentance for adultery. Ze'ev W. Falk, *Jewish Matrimonial Law in the Middle Ages* (Oxford: Oxford University Press, 1966). The most actual publication which appeared in June 2001 in Hebrew, is not yet in my hands: Avraham Grossman, *Pious and Rebellious. Jewish Women in Europa in the Middle Ages* (Hebr.) (Jerusalem: The Magnes Press, 2001). On censorship in Responsa see Mordechai Breuer, "Die Responsenliteratur als Geschichtsquelle," in *Geschichte und Kultur der Juden in Bayern. Aufsätze*, ed. Manfred Treml et al. (Munich and New York: K. G. Saur, 1988), pp. 29-38, see especially p. 32 and n. 22.

[28] Israel Bruna, nr. 76. He makes a distinction between an intentional offense and an expression of outrage. Zimmer, *Harmony and Discord*, p. 93, cites a case of Rabbi Menahem of Merseburg (14th century) where someone, who had called a woman "immoral," was punished by 40 lashes.

assume that later copists of some Responsa also shortened the original testimonies and transmitted only the important information.

The following case again happened in Regensburg and is mentioned in a *teshuva* of Rabbi Isserlein of Wiener Neustadt (who died in 1460) on a question that Rabbi Israel Bruna (of Brno and Regensburg) posed to him and R. Yakov Weil, at this time in Erfurt:[29] The wife of a Cohen was the maid of an hounorable widower and raised his small children. These children and another young girl were sleeping in the same room with her. This girl (*na'ara*, 12 years old) told the head of the household that she saw an unmarried servant come into the room at night. So, in the middle of the night, the housefather went to the room of the servant together with another young man, because according to the Halakha you need two male eyewitnesses to find a woman guilty of adultery. He called for the servant, but he did not answer. After a while the married maid left her room and said to the young man: "Who is shouting, he is here in my room" – she probably spoke in German, but Israel Bruna cited the sentence in Hebrew. After being questioned by his employer, the servant admitted that he had whored with the married maid and that he wanted to make *teshuwe*, repentance. The maid first denied everything but then, confronted with the confession of the servant, she a"dmitted that he had been with her, but "*Er hot nit recht bei mir gelegen*" – "He did not really lie with me," „without making her words more concrete", as Isserlein writes.

At the beginning, the whole affair remained in the privacy of the house, but then the rumour spread and when the husband, the Cohen, returned, he said openly in the presence of many people and some rabbis that he did not believe a word of this slander and that he was convinced of his wife's honesty. As mentioned above, a Jew, and particularly a cohen, is forced to give his unfaithfull wife the divorce letter, even if he has forgiven her.

The wife herself and her father asked the rabbis to question the witnesses under the threat of ban, and the young girl, who legally could not be a witness for adultery, stated that she once lay in a bed in the room and that the maid was lying in another bed, a candle was burning, the servant came in and fell fully dressed on the feet of the maid's bed. The maid got up and left the room, that was all that she had seen. After this evidence all the present parties started to quarrel, and nobody was questioned further. Rabbi Isserlein decided that the suspicious wife did not admit at all that she had committed adultery. "*Er hot nit recht bei mir gelegen*" could mean, in his opinion, that the servant put his arms around her, or that he got totally crazy and was lying upon her and breathed deeply, but that they did not do the core of the thing (*guf ha-ma'ase*). For this reason it was clear to him that she was allowed to her husband, which means that he was not forced to give her the letter of divorce.

[29] Isserlein bar Petahya, *Sefer Terumat ha-Deshen*, ed. Shemuel Abitan (Jerusalem, 1991), part 2: *Pesakim u-Khetuvim* (further: *Pes.*), nr. 222; Israel Bruna, *Sefer She'elot uTeshuvot*, nr. 4-8 and 56.

This legal decision is a good illustration of the cramped living space of a Jewish household in the Middle Ages and of the tensions that could arise between its members. Michael Toch showed, based on lists of debts at the end of the 15th century, that the size of Jewish households in Nuremberg depended on their economic status: In the year 1489, seven of 15 households had two to three male persons of 12 years and older, six had five to six and the two top families eight and eleven. Including women and children, the households consisted of four to 44 members. One quarter of the households accommodated servants and most of them illegal fellow occupants.[30] We can imagine the atmosphere of attraction, jealousy, hate or perhaps just the fun of gossip, even if it could seriously harm someone. The role gossip played in a world without much diversion and entertainment is not to be underestimated: "Shabbat is the wound of the week, where all the servants and everyone is free," sighed Rabbi Yakov Molin when he was confronted with the case of a *kidushe lazon*, a joke betrothal of a young, high-spirited talmud student and an elderly widow who was greedy for money. In spite of the triviality of the case, the rumours had spread out on Shabbat, when the whole *kehile* met in the synagogue or in the yard of the synagogue, in such a fast and intensive way that he immediately had to consult his rabbinical teachers in Austria to restore the good reputation of his community members.[31]

It is not surprising that in his testament, written around 1357, Rabbi Eleasar of Mainz seriously admonished his children: "Let me repeat my warning against gossip and scandal. And as ye speak no scandal, so listen to none; for if there were no receivers there would be no bearers of slanderous tales; therefore the reception and credit of slander is as serious an offense as the originating of it. The less you say, the less cause you give for animosity, while (Prov. 10, 19), 'in the multitude of words there wanteth not transgression'."[32]

Corresponding to the task of the rabbi who watches over the moral decency of his community, the head of the house plays the role of an internal judge, as long as no law is seriously violated. In the case of the maiden's affair the father of the woman and she herself are concerned about the honour of the family and ask for a clear proof. The words of the young girl, who is perhaps full of fantasies at her age of eleven or twelve, are believed, although she is female and not an adult, and she is able to first get the maid into trouble and then to clear her of her charge. Further, we can ask why the servant first admitted that he had "whored", although he did not "really lie with her," probably the sense of morality was very strong. Finally, it is remarkable that all the men present believed the women, including the husband

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[30] See Michael Toch, "Die soziale und demographische Struktur der jüdischen Gemeinde Nürnberg im Jahre 1489," in *Wirtschaftskräfte und Wirtschaftswege. Festschrift für Hermann Kellenbenz*, ed. Jürgen Schneider (Stuttgart: Klett-Cotta, 1978), pp. 79-91.

[31] R. Yacov Molin (Maharil) of Mainz, died 1427, relies on at statement in the Talmud, Kiddushin 81a: "The wound of the year is the feast". Yacov Molin, *She'elot u-teshuvot*, ed. Yzhak Saz (Jerusalem, 1980), nr. 96 (101). Also in this decision we find a few statements in German.

[32] See Marcus, *The Jew in the Medieval World*, p. 315.

who openly confessed his trust in his wife, and the rabbis. She could defend herself and was not forced into humilating interrogations. But Rabbi Isserlein did not decide carelessly. For his justification, he cited several authorities of the Talmud and the 12th and 13th century, among them the great Maimonides and Rabbi Meir bar Baruh of Rothenburg. Although his arguments had a solid base on the decisions of his forerunners, he asked Israel Bruna for a third rabbinical decision beside his own and that of Yakov Weil.

III. Vows and spontaneous statements in times of anger, grief or distress

These cases can only arise halakhic problems if a person is taking a rash vow that he cannot keep afterwards and/or, as in the following case, if he denies his Jewish religion, which means apostasy. In a response to Abraham Katzenellenbogen of Ofen, Isserlein of Wiener Neustadt has to judge someone who said in rage: "Er sol sich toifen oif sein Schwieger in sein Hois sol gen."[33] "He will get baptised if his '*Schwieger*' should enter his house." "*Schwieger*" can mean every relative by marriage. We later get to know that the mother-in-law is meant. Abraham Katzenellenbogen cites Mordehai ben Hillel of the 13th century that someone who is denying his Jewishness is to be punished, but many other rabbis share the opinion that vows like that, spoken in anger or grief, should not be taken seriously. The Talmud (Shevuot 36a) forbids vows that bring harm with them and vows of joke, but, says Isserlein, many old people make jokes and no court will take notice of them.

In another case of Rabbi Israel Bruna, a woman says on the way to a marriage party: "As ich ein Juedin bin, ich will nit tanzen zu der *hassene*!" – "I won't dance at the marriage party or I am not a Jewess anymore!"[34] This is also not to be taken seriously, "It's the way of the women to say things like that, this sentence is not considered a vow", Israel Bruna states. If a person takes a vow in an hour of distress, however, like in illness or captivity, the rabbis do not cancel it; it is seen as a sort of duty towards God, who heard the prayers. Moshe Minz cites a decision of Rabbi Yehuda he-Hassid of Regensburg where a sick man promised to study a whole year if he should recover. Although this promise was not made in the way of an official vow or oath, it was valid.[35] Many people promised to pay a certain sum to the *zedaka*, the welfare organisation of the community. When the person gives a promise that is impossible to keep, it is cancelled at Yom Kippur during the *kol nidre* ritual. Rabbi Yosman Katz of Wiener Neustadt cancelled the vow of a woman who promised to make a pilgrimage to Jerusalem, but on the way she was attacked and raped and could not continue her journey. With permission of

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[33] Isserlein bar Petahya, *Pes.* 192. The same teshuva in the *Leket Yosher,* part 2, p. 27 gives the variation: "*So sol ich sich toifen*" – "I shall get baptised".

[34] Israel Bruna, *She'elot u-teshuvot*, nr. 24.

[35] Moshe Minz, *She'elot u-teshuvot*, ed. Yonathan Shraga Domav (Jerusalem, 1991), p. 374, nr. 79.

his teacher Rabbi Isserlein, he freed her without further discussion.[36] The general opinion was not to be too strict about vows taken in an emotional situation; here the Rabbis of the Middle Ages acted more leniently than the Talmudic scholars.

I tried to take my task seriously and to look for real spoken works, oral history in the true meaning of the word. What interested me was not only the use of the languages in the different settings, but also the private and public space where the statements were made, the characteristics of both speakers and listeners and the relationships between them. The rabbinical *teshuvot*, citing formalized and spontaneous oral statements in Hebrew and German, are a unique source for our purpose to trace oral history in the Middle Ages.

[36] *Leket Yosher*, part 2, p. 24.

ORAL HISTORY OF THE MIDDLE AGES
THE SPOKEN WORD IN CONTEXT

Edited by Gerhard Jaritz and Michael Richter

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VOLUME 3

Oral History of the Middle Ages
The Spoken Word in Context

Edited by Gerhard Jaritz and Michael Richter

Krems and Budapest 2001

GEDRUCKT MIT UNTERSTÜTZUNG DER ABTEILUNG KULTUR UND WISSENSCHAFT DES AMTES DER NIEDERÖSTERREICHISCHEN LANDESREGIERUNG

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Cover illustration: The wife of Potiphar covets Joseph: "... erat autem Joseph pulchra facie et decorus apectu: post multos itaque dies iecit domina oculos suis in Ioseph et ait dormi mecum." ("... And Joseph was [a] goodly [person], and well favoured. And it came to pass after these things, that his master's wife cast her eyes upon Joseph; and she said, Lie with me."), Gen. 39: 6-7 (KJV). Concordantiae Caritatis, c. 1350. Cistercian abbey of Lilienfeld (Lower Austria), ms 151, fol. 244v (detail). Photo: Institut für Realienkunde des Mittelalters und der frühen Neuzeit (Krems an der Donau).

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Preface

Oral culture played an instrumental role in medieval society.[1] Due to the lack of any direct source evidence, however, research into the functions and importance of oral communication in the Middle Ages must confront a number of significant problems. Only indrect traces offer the opportunity to analyze phenomena that were based on or connected with the spoken word. The 'oral history' of the Middle Ages requires the application of different approaches than dealing with the 20th or 21st century.

For some decades Medieval Studies have been interested in questions of orality and literacy, their relationship and the substitution of the spoken by the written word.[2] Oral and literate culture were not exclusive and certainly not opposed to each other.[3] The 'art of writing' was part of the 'ars rhetorica' and writing makes no sense without speech.[4] Any existing written statement should also be seen as a spoken one, although, clearly, not every oral statement as a written one. Authors regularly wrote with oral delivery in mind. 'Speaking' and 'writing' are not antonyms.

It is also obvious that "the use of oral communication in medieval society should not be evaluated . . . as a function of *culture populaire* vis-à-vis *culture savante* but, rather, of the communication habits and the tendency of medieval man

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[1] For the late Middle Ages and the early modern period, cf. Willem Frijhoff, "Communication et vie quotidienne à la fin du moyen âge et à l'epoque moderne: réflexions de théorie et de méthode," in *Kommuniation und Alltag in Spätmittelalter und früher Neuzeit*, ed. Helmut Hundsbichler (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1992), p. 24: "La plupart de gens vivait encore pour l'essentiel dans une culture orale et les procédés d'appropriation des idées passaient de préférence par la parole dite et écoutée, quand bien même on était capable d'une lecture visuelle plus ou moins rudimentaire."

[2] See Marco Mostert, "New Approaches to Medieval Communication?" in *New Approaches to Medieval Communication*, ed. Marco Mostert (Turnhout: Brepols, 1999), pp. 15-37; Michael Richter, "Die Entdeckung der 'Oralität' der mittelalterlichen Gesellschaft durch die neuere Mediävistik," in *Die Aktualität des Mittelalters*, ed. Hans-Werner Goetz (Bochum: D. Winkler, 2000), pp. 273-287.

[3] Peter Burke calls the construct of "oral versus literate" useful but at the same time dangerous: idem, "Mündliche Kultur und >Druckkultur< im spätmittelalterlichen Italien," in *Volkskultur des europäischen Spätmittelalters*, eds. Peter Dinzelbacher and Hans-Dieter Mück (Stuttgart: Alfred Kröner Verlag, 1987), p. 60.

[4] Michael Clanchy, "Introduction," in *New Approaches to Medieval Communication*, ed. Marco Mostert (Turnhout: Brepols, 1999), p. 6.

to share his intellectual experiences in the corporate framework."[5] Oral delivery was not "the sole prerogative of any socioeconomic class."[6]

For all these reasons, it is important to analyze the extent of and context, in which 'speech acts,' auditive effects, and oral tradition occur in medieval sources .[7] Research into the use of the spoken word or references to it in texts and images provides new insight into various, mainly social, rules and patterns of the communication system. It opens up additional approaches to the organization and complexity of different, but indispensably related, media in medieval society, and their comparative analysis.[8]

The spoken word is connected with the physical presence of its 'sender.' Speech may represent the authenticity of the given message in a more obvious way than written texts or images. Therefore, the use of 'speech acts' in written or visual evidence also has to be seen in context with the attempt to create, construct, or prove authenticity. Moreover, spoken messages contribute to and increase the lifelikeness of their contents, which may influence their perception by the receiver, their efficacy and success. Being aware of such a situation will have led to the explicit and intended use and application of the spoken word in written texts and images – to increase their authenticity and importance, too.

If one operates with a model of 'closeness' and 'distance' of communication with regard to the level of relation of 'senders' and 'receivers,' then the 'speech acts' or their representation have to be seen as contributors to a 'closer' connection among the participants of the communication process.[9] At the same time, however, speech might be evaluated as less official. One regularly comes across 'oral space'

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[5] Sophia Menache, *The Vox Dei. Communication in the Middle Ages* (New York and Oxford: Oxford University Press, 1990), p. 19.

[6] Ibidem, p. 21. Cf. also Jan-Dirk Müller, "Zwischen mündlicher Anweisung und schriftlicher Sicherung von Tradition. Zur Kommunikationsstruktur spätmittelalterlicher Fechtbücher," in *Kommunikation und Alltag in Spätmittelalter und früher Neuzeit*, ed. Helmut Hundsbichler (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1992), p. 400: "Offensichtlich sind schriftliche und nichtschriftliche Tradierung von Wissen weiterhin relativ unabhängig voneinander, nachdem die Schrift längst dazu angesetzt hat, Inseln der Mündlichkeit oder praktisch-enaktiver Wissensvermittlung zu erobern. Die Gedächtnisstütze kann die Erfahrung nicht ersetzen, sondern allenfalls reaktivieren. Sie ist sogar nur verständlich, wo sie auf anderweitig vermittelte Vorkenntnisse stößt."

[7] Cf. W.F.H. Nicolaisen, ed., *Oral Tradition in the Middle Ages* (Binghamton: Center for Medieval and Renaissance Studies, 1995).

[8] See, esp., Horst Wenzel, *Hören und Sehen, Schrift und Bild. Kultur und Gedächtnis im Mittelalter* (Munich: C.H. Beck, 1995), passim.

[9] See also Stefan Sonderegger, ">Gesprochen oder nur geschrieben?< Mündlichkeit in mittelalterlichen Texten als direkter Zugang zum Menschen," in *Homo Medietas. Aufsätze zu Religiosität, Literatur und Denkformen des Menschen vom Mittelalter bis in die Neuzeit. Festschrift für Alois Maria Haas zum 65. Geburtstag,* eds. Claudia Brinker-von der Heyde and Niklaus Largier (Bern et al.: Peter Lang, 1999), p. 665: "Jedenfalls darf man sich bewußt bleiben, daß auch in den Texten des deutschen Mittelalters die Reflexe gesprochener Sprache eine bedeutende Schicht ausmachen, die besonders dann immer wieder hervortritt, wenn es um einen direkten Zugang zum Menschen geht, um einVerstehen aus unmittelbarer Partnerschaft heraus ..."

that has become institutionalized or more official by the application of 'written space.'[10] Simultanous employment of such different levels and qualities of messages must often have had considerable influence on their efficacy.[11]

The papers in this volume are the outcome of an international workshop that was held in February, 2001, at the Department of Medieval Studies, Central European University, Budapest. Participants concentrated on problems of the occurrence, usage, and patterns of the spoken word in written and visual sources of the Middle Ages. They dealt with the role and contents of direct and indirect speech in textual evidence or in relation to it, such as chronicles, travel descriptions, court and canonization protocols, sermons, testaments, law-books, literary sources, drama, etc. They also tried to analyze the function of oral expression in connection with late medieval images.

The audiovisuality of medieval communication processes[12] has proved to be evident and, thus, important for any kind of further comparative analysis of the various levels of the 'oral–visual–literate,' i.e. multimedia culture of the Middle Ages. Particular emphasis has to be put on methodological problems, such as the necessity of interdisciplinary approaches,[13] or the question of the extent to which we are, generally, able to comprehend and to decode the communication systems of the past.[14] Moreover, the medievalist does not come across any types of sources in which oral communication represents the main concern.[15] Instead, she or he is confronted, at first glance, with a great variety of 'casual' and 'marginal' evidence.

We would like to thank all the contributors to the workshop and to this volume. Their cooperation made it possible to publish the results of the meeting in the same year in which it took place. This can be seen as a rare exception, at least in the world of the historical disciplines. The head, faculty, staff, and students of the Department of Medieval Studies of Central European University offered various help and support. Special thanks go to Judith Rasson, the copy editor of

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[10] This, e.g., could be well shown in a case study on the pilgrimage to Santiago de Compostela: Friederike Hassauer, "Schriftlichkeit und Mündlichkeit im Alltag des Pilgers am Beispiel der Wallfahrt nach Santiago de Compostela," in *Wallfahrt und Alltag in Mittelalter und früher Neuzeit*, eds. Gerhard Jaritz and Barbara Schuh (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1992), pp. 277-316.

[11] Cf. Bob Scribner, "Mündliche Kommunikation und Strategien der Macht in Deutschland im 16. Jahrhundert," in *Kommunikation und Alltag in Spätmittelalter und früher Neuzeit*, ed. Helmut Hundsbichler (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1992), pp. 183-197.

[12] Wenzel, *Hören und Sehen*, p. 292.

[13] Cf. Ursula Schaefer, "Zum Problem der Mündlichkeit," in *Modernes Mittelalter. Neue Bilder einer populären Epoche*, ed. Joachim Heinzle (Frankfurt am Main and Leipzig: Insel Verlag, 1994), pp. 374 f.

[14] Frijhoff, "Communication et vie quotidienne," p. 25: "Sommes-nous encore en mesure de communiquer avec la communication de jadis?"

[15] Michael Richter, *Sprache und Gesellschaft im Mittelalter. Untersuchungen zur mündlichen Kommunikation in England von der Mitte des elften bis zu Beginn des vierzehnten Jahrhunderts* (Stuttgart: Anton Hiersemann, 1979), p. 22.

this volume, who took particluar care with the texts of the many non-native speakers fighting with the pitfalls of the English language.

Budapest, Krems, and Constance
December 2001

Gerhard Jaritz and Michael Richter