

*Modalities in
Medieval Jewish Law
for
Public Order and Safety*

Stephen M. Passamanneck

MODALITIES IN MEDIEVAL JEWISH LAW
FOR PUBLIC ORDER AND SAFETY

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*For Connie
Her memory is an enduring blessing.*

*. . . R. Ya'akov bar Idi said that R. Yoḥanan said, One may
attend to matters of life and death urgency
and of communal urgency on the Sabbath and attend
Synagogues in order to deal with public matters
on the Sabbath*

Babylonian Talmud Tractate Šabbat 150a

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Introduction

The history of medieval Jewry presents one inescapable fact: the Jews were a people apart. No matter where or when we find a Jewish community in the Middle Ages, it was an “alien” enclave in a host society which was sometimes cordial to it and sometimes not.¹ Jews were a foreign element which managed its own communal affairs, creating religious, educational and charitable institutions, mechanisms for collection and disbursement of taxes to the host government, and various systems for internal governance and the administration of justice. The Jews governed themselves and dispensed justice in so far as possible according to the *halakhah*, their ancient internal legal system.² This legal system was the subject of devoted and loving study and careful enhancement over the centuries by skillful interpretation, by mixture of local customs and by local ordinances, which helped the system keep pace with changing circumstances. Presently there will be more to say on the sense in which the general term *halakhah*, Jewish law, is used here.

In the discussion of the administration of justice in medieval Jewish communities, one area of concern is probably assumed to be present, yet it has been obscured by its diffusion among treatments of various other topics falling under the general heading of communal organization and powers, for example, taxation and criminal law. This is the specific area of maintaining public safety and public order. This subject is a matter, however, upon which everything else in civil society really rests, and it is clearly of utmost concern to a people living as an alien element within an ever watchful host community. Indeed no host society would suffer a minority group that would not or could not maintain themselves in a peaceful and orderly fashion that satisfied the expectations of the majority community. Since the Jews perceived themselves and were perceived by others as a separate (and special) nation, they did not want any host government mixing into internal Jewish governance. Therefore, it behooved the Jews to set and maintain a standard of internal peace and order that did not require implicit or explicit involvement of the host government. Some exceptional circumstances arose in which Jews did require host assistance, but the dominant attitude appears to have been to keep internal matters in Jewish hands. The hosts after all could rob and expel the Jews at will if the Jews did not meet

1 The term alien, set off in quotation marks here, underscores the fact that the Jews were simply “other,” the basic meaning of alien. It has nothing to do with foreignness since the Jews of a particular area might have lived there for generations. No matter: Jews were the “other” either despised for their faith or a tolerated sub-class.

2 The extent to which the Jews could control matters of internal safety and order will become clear in the course of this essay.

the expectations of the government. Internal peace and order were always in the Jews' very best interest.

Although the Talmud refers to "needs of the people" (*tsorke rabbim*) and "public emergencies" (*piquah rabbim*), these terms do not rise to the level of a separate rubric comprising public order and public safety as such in the *halakhah*, *piquah rabbim* being very rare indeed. The absence of such a discrete category in medieval rabbinic writing should therefore cause no surprise since the various subheadings of *halakhah* closely adhere to the ancient nomenclature of the Mishnah and the Gemara.

Public order and public safety involve the realities of power. Various Jewish communities in medieval Spain, particularly in Castile, enjoyed the broadest such powers, including from time to time and place to place, jurisdiction in capital cases.³ Yet all Jewish communities possessed some degree of authority to maintain internal peace and order. The cases to be reviewed here are not, however, limited to material from medieval Spain.

As has been noted, Jewish communities used their own internal legal system, *halakhah*. The Jewish law in our own day is often understood as benign and substantially in conformity with modern western ethical ideals. *Halakhah* requires us to care for the poor, the sick, the orphan, to do justice and eschew fraud and falsehood. All that is so, but the realities of power bring another aspect of Jewish law to the forefront. The modalities for maintenance of peace and order were often harsh and extremely cruel compared to the legal standards of today. The medieval authorities were of course very well aware of the high ethical principles embedded in the *halakhah*, but the tasks of governance and the maintenance of peace and order also made other demands: there were realities that had to be faced and problems that had to be resolved. How the medieval authorities, however, dealt with these realities is as much a part of the

3 The secondary sources on medieval Jewry are myriad. Some of the classic works that touch upon the matters addressed here are Yitzhak Baer, *A History of the Jews in Christian Spain*, trans. Louis Schoffman (2 vols.; Philadelphia: Jewish Publication Society of America, 1961–66) (trans. from the Heb.); Shlomo Eidelberg, *Jewish Life in Austria in the XV Century* (Philadelphia: Dropsie College, 1962); Isidore Epstein, *The Responsa of R. Solomon b. Adret* (New York: KTAV, 1968); Louis Finkelstein, *Jewish Self Government in the Middle Ages* (New York: Feldman Publishing Co., 1964); Abraham Hershman, *Rabbi Isaac b. Sheshet Perfet and His Times* (New York: Jewish Theological Seminary of America, 1943); Aaron Kirschenbaum, *Self-Incrimination in Jewish Law* (New York: Burning Bush Press, 1970); Abraham A. Neuman, *The Jews in Spain* (Philadelphia: The Jewish Publication Society of America, 1942); Emanuel Quint and Neil S. Hecht, *Jewish Jurisprudence* (2 vols.; Chur, Switzerland: Harwood Academic Pub., 1980–86); the articles and essays on the matter form a considerable library in themselves. Though somewhat out of date, Prof. Nahum Rakover's *Multi-Language Bibliography of Jewish Law* (Jerusalem: Library of Jewish Law, 1990) is extremely useful. Public order and safety do not appear as subheadings in any of these works.

Jewish tradition as the ethical and moral idealism they also espoused in other contexts. Modern fashion may be more inclined to overlook these difficult problems of power or to mask them utterly and speak of the ethical high road as if it were the whole of the matter; this is vaguely dishonest. It is also a misreading of history. Dismissing some of the material that is presented especially in the punitive modality section as a series of medieval horror stories does not reckon with its origin and context. This material comes from the most distinguished and respected Rabbis of their age. Beside their learning and piety which no one questions they also possessed power and authority. They were towers of rabbinic authority, and their writ ran in Jewish communities with a force that the rabbinate anywhere has not wielded for generations.

Their decisions and suggestions do not by any means represent a present day view of the application of Jewish ideals and ethics to modern problems in public order and public safety. Certainly I do not present any brief that they should. Nevertheless they do demonstrate, as we shall presently observe, an aspect of Jewish law that is as real and as authentic as any other. Men with power take strong action, and that is as true of our rabbinic ancestors as it is of any other group. We are well advised not to suffer an amnesia in this regard. People who govern and guide and exercise real power simply have to make certain kinds of decisions according to their lights, whether we might applaud them or not in our own day, from our present point of view. Indeed, modern Jewish leadership, whether rabbinic or lay, does not and cannot exercise power in the fields of public safety and order as a regular aspect of their duties: they do not suppress or investigate crime, adjudicate criminal matters or fight fires.

This essay does not by any means suggest that medieval Jewry had a significant element of ruffians and lawbreakers. That is surely not so. But there were some who did disturb the peace of the community, and even a small number of such persons could seriously upset the tenor of life, particularly in the rather small (by modern standards) Jewish settlements in medieval Europe. Such communities did not have the anonymity of tens or hundreds of thousands of people living over a large area; medieval towns were small and quite cramped, even the largest of them. Further, the Jews of those bygone centuries were people of vigor and passion, fully possessed of the entire range of human strengths and weaknesses. The very precariousness of Jewish life as an alien element in a host society arguably enhanced the possibility of friction among Jews — as well as their need for internal solidarity and cohesion. It is not pleasant perhaps to contemplate disrupters of the public peace, but neither is it proper to ignore them as though such people never existed.

The expression “public order” as it is used here is in its broadest sense an aspect of maintaining the social (and political) balance between the host society and the Jewish community. The present interest focuses on the internal peace