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Author(s): Joseph Davis

Source: *AJS Review*, Vol. 26, No. 2 (Nov., 2002), pp. 251-276

Published by: [Cambridge University Press](#) on behalf of the [Association for Jewish Studies](#)

Stable URL: <http://www.jstor.org/stable/4131697>

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THE RECEPTION OF THE *SHULḤAN 'ARUKH* AND THE FORMATION OF ASHKENAZIC JEWISH IDENTITY

by

Joseph Davis

Codification and Identity

The story of the composition and reception of the sixteenth-century code of Jewish law, the *Shulḥan 'Arukh*, has been told by many scholars, including my late teacher, Professor Isadore Twersky.¹ It is intertwined with a second story, namely, the formation of Ashkenazic Jewish identity.²

Efforts to codify a body of law are tied necessarily to questions of political

This article was written in memory of my teacher, Professor Isadore Twersky. It was first presented as a lecture at the conference on “Ashkenaz: Theory and Nation,” sponsored by the Jagiellonian University of Cracow and Ohio State University. Neil Jacobs’s questions in his keynote address on the geography of Ashkenaz shaped the exposition in this article. A later version was presented as a lecture at the Jewish Theological Seminary of America. I thank the audience at both lectures for their useful questions and suggestions. Elhanan Reiner, Adam Teller, and Jeffrey Woolf helped clarify for me some of the issues discussed in the article. I thank Ernest Davis and Joel Hecker for bibliographical assistance. I also thank the staffs of the Gratz College library and the library of the Center for Judaic Studies in Philadelphia (the former Dropsie College). The errors are, of course, my own.

1. Isadore Twersky, “The *Shulḥan 'Arukh*: Enduring Code of Jewish Law,” *Judaism* 16 (1967), 141–158, reprinted in *The Jewish Expression*, ed. Judah Goldin (New Haven, 1976), pp. 322–343. Cf. Isadore Twersky, “Ha-Rav Yosef Qaro ba'al ha-*Shulḥan 'Arukh*,” *Asufot* 3 (1989), 245–262. See also Chaim Tchernowitz, *Toledot ha-Posqim*, vol. 3 (New York, 1947); Yizhaq Raphael, ed., *Rabi Yosef Qaro: 'Iyunim u-mēḡqarim be-mishnat Maran Ba'al ha-Shulḥan 'Arukh* (Jerusalem, 1969); Menachem Elon, *Ha-Mishpat ha-'Ivri: toledotav, meqorotav, 'eqronotav*, 2nd ed. (Jerusalem, 1978); Asher Siev (Ziv), *Rabeinu Mosheh Isserles (Rema)* (New York, 1972); R. J. Zwi Werblowsky, *Joseph Karo: Lawyer and Mystic*, rev. ed. (Philadelphia, 1977); Meir Benayahu, *Yosef Beh'iri: Maran Rabi Yosef Qaro* (Jerusalem, 1991); Israel Ta-Shma, “Rabbi Joseph Caro and His *Beit Yosef*: Between Spain and Germany,” in *Moreshet Sepharad: The Sephardi Legacy*, ed. Haim Beinart, vol. 2 (Jerusalem, 1992), pp. 192–206 (the article originally appeared in Hebrew in *Tarbiz* 59 [1990]: 153–170); Eric (Yizhaq) Zimmer, *Gaḥalatan shel Ḥakhamim: peraḡim be-toledot ha-rabanut be-Germanyah ba-me'ah ha-shesh-'esreh uva-me'ah ha-sheva '-esreh* (Jerusalem, 1999), pp. 177–237.

2. An excellent recent study of identity-formation among a group of early modern Jews is Miriam Bodian, *Hebrews of the Portuguese Nation: Conversos and Community in Early Modern Amsterdam* (Bloomington, IN, 1997). The formation of Polish Jewish identity was the topic of Adam Teller’s lecture, “*Yeven Metzula* and the Formation of Jewish Self-Consciousness in Eastern Europe,” which I was privileged to hear, and which is expected to appear in *Jewish History* in a special issue on the massacres of 1648. On the treatment of Ashkenazic and Sefardic Jews in Jewish historiography, see Ismar Schorsch, “The Myth of Sephardic Supremacy,” *Leo Baeck Institute Year Book* 34 (1989), 47–66. On *halakhic* aspects of the differences between the two groups, see Hirsch Jacob Zimmels, *Ashkenazim and Sephardim: Their Relations, Differences, and Problems as Reflected in the Rabbinical Responsa* (Oxford, 1958).

identity, that is, questions of who should be bound by the same laws and who by different laws.³ Broadly speaking, legal codification can have either of two opposite effects. It can erase local differences and serve a universalizing goal. Or, by giving local differences written form and official sanction, it can serve to defeat universalizing trends in the law, and preserve and foster a sense of local or regional identity.

Throughout Europe—in France, the Low Countries, Spain, England, Germany, Poland, and the Ottoman Empire—the sixteenth century was an age of legal codification.⁴ In England, Richard Morison wrote to King Henry VIII in the 1530s, proposing that “the common laws of this your realm that now be unwritten might be written, that now be dispersed and uncertain might be gathered together and made certain.”⁵ A few years earlier, the Polish parliament decreed that “all the customs, laws, and ancient statutes should be gathered from every province, that we may begin the reformation of the entire constitution.”⁶ *Consuetudines Terrae Cracoviae* (“The Customs of the Land of Cracow”) had already been published in 1506.⁷ Five years after the appearance of the *Shulḥan ‘Arukh*, in 1569, an enormous legal code, the *Recopilación des Leyes*, was published in Castile.

Each of these efforts strengthened certain political identities and weakened others. The boundary between England and Wales was weakened in the sixteenth century by the extension of English common law to that region.⁸ In the Polish

3. The connection is made by Richard Helgerson among others; see his *Forms of Nationhood: The Elizabethan Writing of England* (Chicago, 1992), pp. 65–104. On the general question of national and group identity in early modern Europe, see Charlotte Catherine Wells, *Law and Citizenship in Early Modern France* (Baltimore, 1995); Rainer Babel and Jean-Marie Moeglin, eds., *Identité régionale et conscience nationale en France et en Allemagne du Moyen Age à l’Epoque Moderne* (Sigmaringen, 1997); Brenden Bradshaw and Peter Robert, eds., *British Consciousness and Identity: The Making of Britain, 1533–1707* (Cambridge, 1998); the special issue of *Harvard Ukrainian Studies*, vol. 10, nos. 3–4 (1986), ed. Ivo Banac and Frank Sysyn, entitled *Concepts of Nationhood in Early Modern Eastern Europe*; Orest Ranum, ed., *National Consciousness, History, and Political Culture in Early Modern Europe* (Baltimore, 1975); and note also David Bell, “Recent Works on Early Modern French National Identity,” *Journal of Modern History* 68 (1996), 84–113, and the literature cited there.

4. See Manlio Bellomo, *The Common Legal Past of Europe, 1000–1800*, trans. Lydia G. Cochrane (Washington, D.C., 1995), pp. 78–84; John P. Dawson, “The Codification of the French Customs,” *Michigan Law Review* 38 (1940), 765–800; René Filhol, “La rédaction des coutumes en France aux XVe et XVIe siècles,” and John Gillissen, “La rédaction des coutumes en Belgique aux XVIe et XVIIe siècles,” both to be found in John Gillissen, ed., *La rédaction des coutumes dans le passé et dans le présent* (Brussels, 1962), pp. 63–78 and 87–109; Richard L. Kagan, *Lawsuits and Litigants in Castile, 1500–1700* (Chapel Hill, NC, 1988), pp. 25–26; Helgerson, *Forms of Nationhood*; Gerald Straus, *Law, Resistance, and the State: The Opposition to Roman Law in Reformation Germany* (Princeton, 1986), pp. 86–87; Waclaw Uruszczak, “Essais de codification du droit polonais dans la première moitié du XVIe siècle,” *Revue historique du droit français et étranger* 59 (1981), 419–430; H. Inalcik, “Suleiman the Lawgiver and Ottoman Law,” *Archivum Ottomanicum* 1 (1969), 105–138.

5. Quoted by Helgerson, *Forms of Nationhood*, p. 70.

6. Quoted by Konstanty Grzybowski, “La loi et la coutume en Pologne depuis le X-ème siècle jusqu’à 1795,” in *Rapport polonais présenté au sixième Congrès international de droit comparé* (Warsaw, 1962), p. 51. Cf. Waclaw W. Soroka, “Historical Studies of Polish Law,” in *Polish Law Throughout the Ages*, ed. Wenceslas J. Wagner (Stanford, 1970), pp. 23–31.

7. Uruszczak, “Essais de codification du droit polonais,” p. 422.

8. Peter R. Roberts, “Wales and England after the Tudor ‘Union’: Crown, Principality, and Par-

Commonwealth, the duchies of Lithuania and Mazovia codified their laws in the sixteenth century partly in order to resist the encroachments of Polish—that is, Cracow—law.⁹ In France, customary law was codified during the sixteenth century province by province; in Spanish Netherlands, laws were codified village by village, an arduous process that was never completed.¹⁰ At the same time, some of the commentators on the great code of Roman law, Justinian's code, argued that it applied universally throughout the world.¹¹

During the century after its publication, Karo's *Shulḥan 'Arukh*, together with Isserles' notes and amplified by a group of later commentaries (particularly a number written by seventeenth-century Polish rabbis), became the normative code of law for Ashkenazic Jews. But who is an Ashkenazic Jew? To whom do the strictures of Isserles' commentary apply? Whose customs did Isserles codify?

A variety of answers, some complementary, some contradictory, were offered to these questions by sixteenth- and seventeenth-century Jews during the conflict over the reception of the *Shulḥan 'Arukh*. It was suggested that the Ashkenazim were the descendents of a group of common ancestors; that they were the Jews who lived in Germany, *Ashkenaz*; that they were those who lived throughout Central and Eastern Europe; that they were Yiddish-speaking Jews; or even, for the purposes of Jewish law, that they were exactly those Jews whose communities accepted the authority of Isserles' code.

Three Sixteenth-Century Theories of the Ashkenazic Community

It is when one goes abroad and lives among strangers that one's identity is apt to be challenged. Ashkenazic Jews living in Central and Eastern Europe in the early modern period did not frequently need to ask themselves who was and who was not an Ashkenazic Jew. Those living in Mediterranean lands, however, were forced to address this question.

Beginning in the fourteenth century, after the Black Death and the massacres of German Jews that followed in its wake, communities of Central European Jews began to be established around the Mediterranean.¹² By the mid-sixteenth century, there were communities in Mantua, Verona, Venice, Rome, and some other Italian cities; in Salonika, Constantinople, Adrianople, and a few other places in the Balkans and Greece; and in the land of Israel, in Jerusalem and Safed.¹³

liament, 1543–1624,” in *Law and Government under the Tudors: Essays Presented to Sir Geoffrey Elton*, ed. Claire Cross et al. (Cambridge, 1988), pp. 111–138. On the extension of English law to Ireland, see in the same volume, Brendan Bradshaw, “Robe and Sword in the Conquest of Ireland,” pp. 139–162.

9. See above n. 6.

10. See Dawson, “Codification of the French Customs”; Filhol, “La rédaction des coutumes en France”; Gilissen, “La redaction des coutumes en Belgique” (all above n. 4).

11. See Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain, and France, c. 1500–c. 1800* (New Haven, 1995), pp. 23, 53–60.

12. See Elanan Reiner, “Bein Ashkenaz li-yrushalayim—Ḥakhamim Ashkenazim be-'Ereṣ Yisra'el le-ahar ha-mavet ha-shaḥor,” *Shalem* 4 (1984), 27–62.

13. Zimmels, *Ashkenazim and Sephardim*, pp. 41–45; Salomon Rosanes, *Divrei yemei Yisra'el be-Togarmah* (Tel Aviv, 1930), vol. 1, n. 5 (pp. 163–175); Shelomoh Spitzer, “Ha-Ashkenazim be-ḥaṣi

In many of these cities, a new type of multi-ethnic Jewish community emerged in the sixteenth century.¹⁴ Venice, with its tripartite division into Sefardic, Italian, and Ashkenazic communities, was one example.¹⁵ In Safed, there were twelve communities of Jews: the communities of the Jews of Portugal, Castile, Aragon, Seville, Cordoba, the Maghreb, "Italy," Calabria, Apulia, the Arab lands, Germany, and Hungary.¹⁶ In Salonika, there were nearly two dozen separate communities.¹⁷

Should each of these groups of transplanted Jews continue to observe its own customs?

We may begin with Karo. The author of the *Shulḥan 'Arukh* yearned for the unification of Jewish practice, and strongly favored the customs of the Spanish Jews.¹⁸ Karo should not be seen, however, as denying the legitimacy of local cus-

ha-i ha-Balqani ba-me'ot ha-15 ve ha-16," and Leah Bornstein, "Ha-Ashkenazim ba-Imperyah ha-Othmanit ba-me'ot ha-16 ve ha-17," both in *Mi-Mizrah umi-Ma'arav* 1 (1974), 59–79, 81–104; Abraham David, "Qavim li-demuto shel ha-qehilah ha-Ashkenazit bi-Yerushalayim ba-me'ah ha-16," *Sixth World Congress of Jewish Studies*, vol. 2, Hebrew sec., pp. 331–341; Minna Rozen, *Ha-Qehilah ha-Yehudit bi-Yerushalayim ba-me'ah ha-17* (Tel Aviv, 1985), pp. 99–102; Moses Shulvass, "Dos Ashkenazische Yidntum in Italye," *Yivobleter* 34 (1950), 157–181 (also published in English as "Ashkenazic Jewry in Italy," *YIVO Annual of Jewish Social Science* 7 (1952), 110–131).

14. On multi-ethnic Jewish communities in the sixteenth century, see Kenneth Stow, "Ethnic Rivalry or Melting Pot: The *Edot* in the Roman Ghetto," *Judaism* 41 (1992), 286–296; Ariel Toaff, "The Jewish Communities of Catalonia, Aragon, and Castile in 16th Century Rome," in *The Mediterranean and the Jews: Banking, Finance, and International Trade (XVI–XVIII Centuries)*, ed. Ariel Toaff and Simon Schwartzfuchs (Tel Aviv, 1989), pp. 249–270; Salo Baron, *A Social and Religious History of the Jews*, vol. 18, 2nd ed. (New York, 1983), pp. 55–67. The Ashkenazic communities of Central and Eastern Europe were not generally divided into separate co-territorial Jewish communities. Thus, for instance, there was no community of German or Polish Jews in Prague. An exception was the Jewish community of Cracow, which in the early sixteenth century was divided for some time into separate Polish and Bohemian communities. See Bernard Weinryb, *The Jews of Poland* (Philadelphia, 1973), pp. 91–92.

15. On Venice, see David Malkiel, *A Separate Republic: The Mechanics and Dynamics of Venetian Jewish Self-Government, 1607–1624* (Jerusalem, 1991), pp. 92–113; Daniel Carpi, "'Taqanone-ha' shel qehilat Venes'ya 1591–1607,'" in *Galut aḥar golah: meḥqarim be-toledot 'am Yisra'el mugashim le-Prof. Ḥayim Beinart . . .*, ed. Aaron Mirski et al. (Jerusalem, 1988), pp. 443–469, reprinted in Carpi, *Be-Tarbut ha-Renesans u-vein ḥomot ha-gito* (Tel Aviv, 1989), pp. 168–208.

16. Amnon Cohen and Bernard Lewis, *Population and Revenue in the Towns of Palestine in the Sixteenth Century* (Princeton, 1978), p. 159.

17. Bernard Lewis, *Notes and Documents from the Turkish Archives* (Jerusalem, 1952), pp. 25–28. Cf. Rivka Cohen, *Qushta-Saloniqi-Patros: hit'argenu qehalit ve-'al-qehalit shel Yehudei Yavan taat shilton ha-'Othmani ba-me'ot ha-15 ve ha-16* (Tel Aviv, 1984), pp. 15 ff.

18. See Ta-Shma, "Rabbi Joseph Caro and his *Beit Yosef*" (above n. 1). Benayahu (*Yosef Beiri*, p. 28; cf. p. 140) suggests that Karo "wished the Sefardim to exercise hegemony" in Safed. In 1555, Karo was involved in a conflict with Moses b. Joseph of Trani (MaBIT) over a case in which Karo rejected a custom observed by the pre-Sefardic (Musta'arabic) community of Safed. See Karo, *She'elot u-teshuvot Beit Yosef, dinei ketubah* 3. Cf. Karo, *She'elot u-teshuvot 'Avqat rokhel* 32, discussed by Toledano in Raphael, *Rabi Yosef Qaro*, p. 184, and by Dienstag in the same volume, pp. 173–174. Gordon Weiner has accused Sefardic rabbis of a "double standard" that favored their own local customs over those of others. See "Sephardic Philo- and Anti-Semitism in the Early Modern Era: The Jewish Adoption of Christian Attitudes," in *Jewish Christians and Christian Jews from the Renaissance to the Enlightenment*, ed. Richard Popkin and Gordon Weiner (Dordrecht, 1994), p. 199.

toms. He accepted certain variations in customs (he could hardly have done otherwise; the principle has a firm grounding in talmudic law). Specifically, he accepted local stringencies, *humrot*, but not local leniencies, *qulot*. His hope, that is, was not for complete uniformity of practice throughout the Jewish world, but for a baseline of required behavior, to which local communities would add further details and regulations according to their desire and in keeping with local circumstances, but from which they could not detract.¹⁹

Karo's view of the multi-ethnic Jewish community, with its diverse subcommunities and their diverse customs, is less clear. In some of his responsa he endorsed the legitimacy of ethnic subcommunities. Nevertheless, in his commentary to Maimonides' *Mishneh Torah* he cast doubt on their *halakhic* status, and seemed to conclude, as Maimonides had, that in one city, one Jewish court and one set of customs should prevail.²⁰

Karo's objections to local *halakhic* pluralism took a particularly sharp form in a responsum that he wrote early in his career, before he settled in the land of Israel, when he was still a rabbi in Nikopolis (a town in what is today Bulgaria).²¹ He was asked by the Jews of Pleven, a nearby town, whether the community should follow Ashkenazic stringencies in the laws of ritual slaughter. Karo answered that they should not. He argued that even Ashkenazic Jews who had immigrated to Pleven were permitted to abandon their native stringencies and adopt the customs of their new home. Even if a *majority* of the Jews of Pleven, he added, were Ashkenazic immigrants, they were still permitted to adopt the local leniencies, because they had immigrated one family at a time, and as soon as each family arrived, it lost its former status and became part of the Pleven community.²²

That is, Ashkenazic identity, for the young Karo, was tied *exclusively* to place of residence. An "Ashkenazic Jew" was exactly one who lived in the Ashkenazic

19. See Karo's introduction to *Beit Yosef*: "If in certain lands, they are accustomed to forbid certain things, even though we shall decide the law to the contrary, they should hold fast to their custom, for they have already accepted the words of the sage who forbade it, and it is prohibited to them." Cf. José Faur in Raphael, *Rabi Yosef Qaro*, pp. 192–193.

20. See Karo's comment in *Kesef Mishneh* on Maimonides, *Mishneh Torah*, Hilkhot 'Avodat Kokhavim 12:14, and his criticism of the view of R. David ben Ḥayyim of Corfu. Contrast, however, *She'elot u-teshuvot 'Avqat rokheh* nos. 32 and 191, and see below n. 32 on the principle, invoked by Karo in these responsa, that an ethnic community may be considered a "city unto itself." There are a number of expressions by Ottoman Jews in this period of the principle that the Jews of a single locality ought to be united and observe a single set of customs. For instance, a sixteenth-century communal statute of the Jews in Sérrai in Macedonia prohibited anyone from forming a competing synagogue in that place. See Rivka Cohen, *Qushta-Saloniqi-Patros* (above n. 17), p. 148.

21. Joseph Karo, *She'elot u-teshuvot 'Avqat rokheh*, no. 212 (ed. New York, 1959, p. 193). The text is discussed by Zimmels, *Ashkenazim and Sephardim*, p. 304; Rosanes, *Divrei Yemei Yisra'el be-Togarmah* (above n. 13), p. 167; Elyakim Elinson, *Ish ve-ishto* (Jerusalem, 1981), p. 20, n. 12 and p. 24, n. 31; Asher Siev, ed., *She'elot u-teshuvot ha-Rema* (Jerusalem, 1971), p. 335, n. 2.

22. This theory of the legal status of immigrants was made more flexible by Samuel de Medina in his responsum 40 on *Yoreh de'ah*. He distinguished between immigration by isolated individuals (to whom Karo's rule would apply) and immigration en masse by a group, whose members keep their ethnic status and form a separate new community of their own. On de Medina, see Morris Goodblatt, *Jewish Life in Turkey in the XVI Century: As Reflected in the Legal Writings of Samuel de Medina* (New York, 1952), but the work should be used with caution.

lands. An Ashkenazic Jew in Pleven was, for the purposes of Jewish law, no longer Ashkenazic.

A different point of view was represented in Safed by a young scholar born in Egypt to a mixed Ashkenazic-Sefardic family: R. Isaac Luria, the Ari. In a much-quoted comment, Luria is said to have recommended that each community of Jews maintain the customs of its ancestors.

Concerning the many differences in the prayers . . . between *minhag Sefarad*, *minhag Catalonia*, *minhag Ashkenaz*, and so on . . . he said that in heaven there are twelve windows corresponding to the twelve tribes, and that the prayers of each tribe ascend through a different gate that is special to that tribe. . . . Therefore it is proper that each person hold fast to the order of the prayers according to the customs of his forefathers, for although no one living today knows who is descended from one tribe or another, it may be, since his forefathers held fast to those customs, that he is descended from that tribe . . . and that his prayers will not ascend unless they are said in that way.²³

We recall that in sixteenth-century Safed there were exactly twelve communities. For Luria, each community stood in place of, and perhaps was descended from, one of the twelve tribes of Israel. Each community was defined essentially by its ancestry and only accidentally by the region of Europe for which it was named.²⁴

A similar stress on lineage may be seen in another passage, written from a more sober *halakhic* point of view, by the second commentator to the *Shulḥan 'Arukh* (Isserles was the first), a leading rabbi of Egypt in the generation after Karo, Rabbi Jacob Castro (ca. 1525–1610). The topic of Castro's comment is the *herem* of Rabeinu Gershom, the prohibition on polygamy. Karo had taken the view that the prohibition was time-bound and no longer in effect; he also admitted, following his notion of local legal stringency, that polygamy might continue to be prohibited in certain *places*. Jacob Castro wrote, by contrast, "The *herem* of Rabeinu

23. See Ḥayyim Vital, *Sha'ar ha-Kavanot in Kol kitve ha-'Ari z"l*, ed. Judah Zvi Brandwein, vol. 8 (Jerusalem, 1988), p. 328. The passage is quoted in Zimmels, *Ashkenazim and Sephardim*, p. 116, n. 6, and also in such seventeenth-century *halakhic* works as Joseph Hahn Nördlingen, *Yosif 'omeš* (Frankfurt am Main, 1928), p. 12, and Abraham Gombiner, *Magen Avraham on Shulḥan 'arukh*, Ora ayim, sec. 68.

24. It should be noted that Luria did not see ancestral liturgical customs as *halakhically* binding. He himself used an idiosyncratic prayer text, the so-called *Nusah ha-'Ari*. Cf. the *halakhic* view of Samuel de Medina, below n. 35. *Nusah ha-'Ari* combines aspects of the Sefardic and Ashkenazic texts, and in that respect resembles Karo's efforts at *halakhic* unification (on which see Ta-Shma, "Rabbi Joseph Caro and His *Beit Yosef*"). It was promoted by Vital and later became widespread among Hasidic groups. There is no evidence, however, that Luria himself intended his prayer text to have widespread use or to replace the various traditional prayer texts (as was later alleged). On the later reception of *Nusah ha-'Ari*, see Joseph ben Ḥayyim Moses Nazir, *She'elot u-teshuvot Mateh Yosef* (Constantinople, 1717), pt. 1, no. 3; Dov Baer of Mezhiroch, *Magid devarav le-Ya'akov*, ed. Rivka Schatz-Uffenheimer (Jerusalem, 1990), p. 167; Zimmels, *Ashkenazim and Sephardim* pp. 118–119; E. Daniel Goldschmidt, "'Al nusah ha-tefilot shel qehilot ha-Ḥasidim," in his *Mehqerei tefilah u-fiyut* (Jerusalem, 1980), pp. 315–321.

Gershom applies to persons, and even if he [*sic*] leaves the city or the area, he must obey it, and likewise their children and their children's children forever."²⁵

For the young Karo, the Ashkenazim were precisely the Jews of a particular place, namely, Germany and the surrounding areas. For Isaac Luria, for Jacob Castro, and (as we will see) for Isserles as well, Ashkenazic Jews are defined by genealogy, not only geography. Being Ashkenazic was passed on from father to son.²⁶

Are a group of Jews united, are they subject to the same laws, because they all live in the same place? The notion of a territorial state, a polity that consists of the inhabitants of a certain place, all of whom must observe certain customs, exists, of course, in many cultures; perhaps it is universal.²⁷ The talmudic notion of custom is based on that thought; so is the fundamental form of the medieval Jewish community, which was a group of Jews who lived in a certain place, usually a certain town.²⁸

A competing concept, however, both in the sixteenth century and afterwards, is the ethnic state, a polity that comprises all the members of a certain ethnic group. Among sixteenth-century Jews, ethnicity was often reduced to lineage; alongside of local custom, *minhag ha-maqom*, stood ancestral custom, *minhag avoteinu*. The notion of ancestral custom could justify the continuance of the diverse ethnic Jewish communities in the Ottoman cities.²⁹

25. Castro, *Erekh lehem* (Constantinople, 1718) on 'Even ha-'ezer 1:1 (p. 55b). On Castro, see Yizhak Nissim in Raphael, ed., *R. Yosef Qaro*, pp. 64, 75-81. Elimelekh Westreich has written a series of articles on the history of the interpretation of the *herem Rabeinu Gershom*. See esp. "'Ilot le-hatarat herem de-Rabeinu Gershom be-Italyah ba-me'ot ha-hamesh ve-ha-shesh 'esreh," *Mehqere mishpat*, 9 (1991), pp. 227-256; and "The Ban on Polygamy in Polish Rabbinic Thought," *Polin* 10 (1997), pp. 66-84. In one of his responsa (*She'elot u-teshuvot Beit Yosef, dine ketubot*, no. 14) Karo reports that the Ashkenazic Jews in Jerusalem and Turkey themselves permitted polygamy. Their theory of the operation of the *herem* must therefore have been different from Castro's (although it may also have been different from Karo's). Cf. *Qsar ha-posqim, 'Even ha-'ezer*, vol. 1 (Jerusalem, 1956), p. 70.

26. Cf. Talmud Bavli, Pesahim 50a, codified in *Yoreh de'ah* 214. The *herem* of Rabeinu Gershom, as a *herem*, is said by some early modern *halakhists* to have a special status that makes it obligatory on children and children's children; whether other Ashkenazic *minhagim* are similarly inherited remained debatable. The principle that ancestors may bind future generations of descendants to a custom or practice is also stated (in regard to the celebration of a special Purim) by R. Moses Alashkar in his *Responsa*, no.49; cf. R. Joseph Furman, quoted by Rivka Cohen, *Qushta-Saloniqi-Patros*, p. 150. Samuel de Medina qualified this rule in his responsa, 1:40, children may be released from an ancestral custom unless it is an interpretation of the talmudic law that they have accepted.

27. Cf. Donald R. Kelley, "Second Nature: The Idea of Custom in European Law, Society, and Culture," in *The Transmission of Culture in Early Modern Europe*, ed. Anthony Grafton and Ann Blair (Philadelphia, 1990), pp. 150-157.

28. See Talmud Bavli, Yevamot 13b-14a and elsewhere.

29. For *minhag avot*, see Talmud Bavli, Beṣah 4b, and for the medieval development of the notion, see Yedidyah Denari, *Hakhmei Ashkenaz be-shilhei yemei ha-beinayim* (Jerusalem, 1984), pp. 190-191, especially n. 5; Jeffrey Woolf, "The Authority of Custom in the Responsa of Joseph Colon (Maharik)," *Dine Israel* 19 (1998), English sec., pp. 43-93. Note also Joseph ibn Ezra, *Masa Melekh: dinei misim u-minhagim* (ed. princ. Salonika, 1601), pt. 8, Ne'ilat She'arim (ed. Ya'aqov Shemu'el Spiegel, [Jerusalem, 1989], pp. 200-205). Intermediate, in some sense, between lineage and place of residence is place of *birth*. Moses b. Joseph di Trani rules (responsum 1: 307, quoted in Rivka Cohen, *Qushta-Saloniqi-Patros*, p. 16) that communal allegiance should follow one's *own* birthplace rather than that of one's parents.

Many Ottoman *halakhists*, however, did not invoke the notion of ancestral custom, nor did they define the local ethnic subcommunities by genealogy. Rather, they developed a new *halakhic* theory and defined the subcommunities as a third type of group, neither local nor genealogical. Each was defined as a *qehilah*, a corporation or college, in the medieval sense of those terms.³⁰

The essential basis of membership in a medieval corporation was simply that the other members of the corporation let one join. An implicit contract existed (as medieval civil lawyers analyzed the matter) between the new member and the old. The old members could extend the contract to anyone.³¹

As rabbis like David ben Ḥayyim of Corfu (d. 1530) and Samuel de Medina (1506–1589) put it (and Karo himself in some of his responsa, as we have mentioned), each *qehilah*, each community, was considered “a city unto itself.” Geography was made fictive. The legitimacy of local difference was extended to permit communal difference as well. The new *qehilah* was not a location, and its basis in lineage was hidden; it was, rather, an independent corporation. Jewish law has moved from local autonomy to corporate autonomy.³²

Among the Ottoman Jewish communities there was often great fluidity in deciding who belonged to which *qehilah*. In Istanbul in 1549, the rule was established that “anyone is permitted to register and to pray in any congregation that he chooses.”³³ Rabbi Samuel de Medina wrote in a responsum, “There is no force in

30. Cf. responsum 78 of R. Elijah Mizrahi: “The name ‘Ashkenazi’ in this place does not signify that its bearer came from the kingdom of Germany, but rather that he is a member of the *qehilah* of the Ashkenazim who live in the city of Constantinople.” Note also the debate of two Egyptian rabbis of the end of the seventeenth century, Joseph ben Moses Nazir and Abraham ben Mordechai ha-Levi. Both addressed the question of whether Jews of Ashkenazic ancestry (or place of birth) should continue to observe Ashkenazic customs after settling in Egypt. Abraham ben Mordechai answered that they should not, because there was no Ashkenazic *qehilah* in Egypt. In a place where there is a *qehillah*, however, “each *qehilah* is considered a city unto itself.” See Joseph ben Moses Nazir, *Mateh Yosef*, pt. 2, *Yoreh de’ah*, no. 1; Abraham ben Mordechai, *She’elot u-teshuvot Ginat veradim* (Constantinople, 1717), *Yoreh de’ah* 3:5. Epitomes of both responsa are given in Isaac Lampronti, *Pahad Yishaq*, vol. 4 (Livorno, 1839; reprint ed., Jerusalem, 1969), pp. 138a–b, s.v. *minhag*.

31. See Wells, *Law and Citizenship in Early Modern France*, pp. 4–6. See also Salo Baron, *The Jewish Community*, vol. 2 (Philadelphia, 1945), pp. 4–23 on “citizenship” in the medieval and early modern Jewish communities. On the principle of consent, see Martin Golding, “The Juridical Basis of Communal Association in Medieval Rabbinic Legal Thought,” *Jewish Social Studies* 28 (1966), 67–76. Cf. also Menachem Elon, “Democratyah, zekhuyot yesod, u-minhal taqin bi-fesiqatam shel ḥakhmei ha-Mizrah be-mos’ei gerush Sefarad,” *Shenaton ha-mishpat ha-’Ivri* 18–19 (1992–94), pp. 9–64.

32. See R. David ben Ḥayyim of Corfu, *Responsa* no. 11; R. Elijah Mizrahi, *Responsa* #13; R. David ibn Abi Zimra (Radbaz), *Responsa*, pt. III, no. 472; R. Samuel de Medina, *Responsa*, pt. I, nos. 40 and 153. R. Joseph ibn Lev, in his *Responsa*, pt. II, no. 72, limits the scope of this principle considerably. On Karo, see above, notes 20 and 30. R. Solomon ibn Adret, at the turn of the fourteenth century, treats craft guilds as “cities unto themselves”: *Responsa*, no. 185. Cf. Kenneth Stow, “Corporate Double Talk: Kehillat Kodesh and Universitas in the Roman Jewish Sixteenth Century Environment,” *Journal of Jewish Thought and Philosophy* 8 (1999), pp. 283–303.

33. Cited by Cohen, *Qushta-Saloniqi-Patros*, p. 16. She refers also to Isaac Adarbi, *She’elot u-teshuvot Divrei rivot*, no. 56, who discusses a case arising from the decision of the seven Spanish and Portuguese communities of Salonika to assign new Jewish immigrants to communities *by lot*, regardless of their precise origins and preferences.

the world that compels any individual to come and pray in the synagogue that his ancestors prayed in.”³⁴ Consistent with this line of thought, de Medina ruled in another responsum that the community of Sicilian Jews in the Greek city of Patras was permitted to change its prayer ritual to the Sefardic rite.³⁵

To sum up briefly, then, three conceptions of Ashkenazic Jewry may be found among the rabbis of the Ottoman Empire in the sixteenth century. (Each one has parallels in medieval and early modern Roman law.)³⁶ The first is a geographic theory, that of Karo in his responsum to Pleven: Ashkenazic Jews live in a certain place; when they leave, they are no longer Ashkenazim. The divided, multi-ethnic Jewish community, in this view, is not *halakhically* legitimate. The second theory is genealogical, that of Jacob Castro in his analysis of the *herem* of Rabeinu Gershom: the Ashkenazim are the descendents of certain Jews who once lived in Ashkenaz. The third, an innovation of the sixteenth century, is a corporate theory: the Ashkenazim are the members registered in a certain synagogue and a certain *qehilah*.

Isserles: The Tosafists as Ancestors and Legislators

We turn now to Rabbi Moses Isserles.³⁷ How did he define the Ashkenazic Jews as a group?

There are two passages in Isserles' introduction to his comments on the *Shulḥan 'Arukh* in which he seems to define his audience. (The introduction is where a legal writer will typically place any discussion of why his work is authoritative, and for whom.) In the first, Isserles constructed the Ashkenazim as a lineage group, in the second, as a territorial group.

Isserles wrote:

34. De Medina refused to allow a community to exclude new immigrants from membership (that is, to apply against them the *hezqat ha-yishuv*), see the responsum discussed by Baron in *A Social and Religious History of the Jews*, 2nd ed., vol. 18, p. 59. Thus, he left the initiative very much in the hands of the individual. The community can neither coercively exclude nor retain members. Fluidity among Jewish ethnic groupings in Italy is emphasized by Baron (*Jewish Community*, pp. 19–20); by Stow, “Ethnic Rivalry or Melting Pot”; and by Westreich, “‘Ilot le-hatarat ḥerem de-Rabeinu Gershom.”

35. *She'elot u-teshuvot Maharshdam* 1:35. Cf. no. 36. The incident is discussed by Rivka Cohen, *Qushta-Saloniqi-Patros*, pp. 145–150. It is not clear whether de Medina would have accepted a decision by a community to *abandon* the Sefardic rite in favor of another; he praises the special clarity and simplicity of the Sefardic rite. Note also Samuel de Medina's attempts in one of his responsa (*She'elot u-teshuvot Maharshdam, Yoreh de 'ah* 40) to justify the continuation of Sefardic customs by the Salonika Jews, while at the same time allowing the Jews of Sofia to abandon Hungarian customs of ritual slaughter. Cf. nn. 22, 26 above.

36. See Wells, *Law and Citizenship in Early Modern France*. Wells disproves the commonly held view that the concept of citizenship did not exist in premodern times. She shows that rights to citizenship were held to be based on a number of separate claims: blood relation, place of birth, place of residence, and subjective allegiance, as demonstrated, for example, by an oath. A person might become a citizen upon birth or through a contract with the city.

37. On Isserles, see generally Siev, *Rabeinu Mosheh Isserles* and the extensive bibliography there, pp. 267–300; Jonah Ben Sasson, *Mishnato ha-'iyunit shel ha-Rema* (Jerusalem, 1984); Elhanan Reiner, “The Ashkenazi Elite at the Beginning of the Modern Era: Manuscript vs. Printed Book,” *Polin* 10 (1997), 93–98.

[Karo's] books are full of decisions that do not follow the interpretations of the sages from whose waters we drink, the famous authorities among the Jews of Germany [*bi-vene'i Ashkenaz*] who have always been eyes for us, and upon whom the earlier generations relied, . . . [interpretations] which are all built on the words of the Tosafists and the sages of France, whose children's children we are.³⁸

Why are Rashi and the Tosafists to be followed rather than Maimonides, quoted so extensively by Karo? Isserles did not argue that the Tosafists were greater sages than Maimonides, or that their interpretations of the Talmud were truer than the philosopher's. He argued simply that their rulings carried authority for their descendants.

It is easy, at a distance of four centuries, to lose sight of the differences between Karo's and Isserles' communities. Karo spoke from a place of authority, the land of Israel.³⁹ Isserles, by contrast, was rabbi in a city and a land that had as yet made no mark on Jewish scholarship or on Jewish history, whose claim, therefore, to the excellence of its traditions might seem weak. Isserles compensated by laying stress on the community's illustrious ancestors.

One medieval Jewish view of customs, basing their power on rabbinic rather than on popular authority, was that every custom must have been approved by the great rabbis of former times. This theory was put forth strongly in the late fifteenth century by one of the leading rabbis of Italy, R. Joseph Colon (d. 1480), a scion of French (Savoyard) Jews. The ancient customs of the French Jews, he claimed, were all based on the teachings, written or unwritten, of the Tosafists.⁴⁰

In 1541, Elijah Levita had claimed that "it is well known that we Ashkenazim are the descendants of the French Jews."⁴¹ Isserles extended this claim and nar-

38. From the introduction to Isserles' commentary to the *Shulhan 'arukh*. The introduction, which is not in all editions of the *Shulhan 'arukh*, is published, for example, in the photo-offset reprint of the first Cracow edition (Jerusalem, 1974), and in Raphael, ed., *Rabi Yosef Qaro*, p. 96. Isserles repeats the phrase in *Yoreh de'ah* 39:18: "the ancient sages of France and Germany, whose children's children we are." Isserles' remark is echoed in the 1649 responsum of R. Yom Tov Lipman Heller, *She'elot u-teshuvot Ge'onei batra'ei*, ed. Elijah b. Moses of Pinzow (ed. princ. Turka, 1764), no. 10: "We are the descendants of the Jews of France and Germany, and we decide *halakhah* in accordance with their opinions, as . . . Rabbi Moses Isserles wrote."

39. Karo was regarded by rabbis of the subsequent generations, such as Mordechai Jaffe and many others, as an "Oriental" rather than a Spanish Jew. See the introduction to Jaffe, *Levush Malkhut*: "[Karo] decided the majority of his rulings . . . in accordance with the customs of the Islamic lands, because he was their leader." Cf. Ḥayyim ben Bešalel in *Vikuaḥ Mayim Ḥayim* (in Tchernowitz, *Toldot ha-Posqim*, vol. 2, p. 98), who characterizes Karo's rulings as *minhag Ereš Yisra'el*; see also Ḥayyim Benveniste (1603–1673), in the introduction to his *Keneset ha-gedolah*, and the quotation from Joshua Falk Cohen below at n. 77.

40. See Jeffrey Woolf, "The Authority of Custom in the Responsa of R. Joseph Colon (Maharik)," *Dine Israel* 19 (1998), English section, pp. 43–93. The principle that descendants should follow the *halakhic* interpretations of their ancestors is also discussed by Zimmels, *Ashkenazim and Sephardim*, pp. 281–282. Cf. nn. 26, 29 above.

41. *Sefer ha-Tishbi*, s.v. *qeruvaš* (*sic*), quoted by Max Weinrich, *Geshikhte fun der yidishe sh-prakh* (New York, 1973), vol. 1, p. 349 (trans. Shlomo Noble and Joshua Fishman, *History of the Yiddish Language* [Chicago, 1980], p. 342). Cf. the remark by the early seventeenth-century grammarian

rowed it. He extended it to the Ashkenazic Jews of Poland and elsewhere, who were descendents of the German Jews; but he narrowed it at its root, for he did not claim lineage merely from the French Jews, but from “the Tosafists and the sages of France.”⁴² Isserles did not merely claim (echoing Colon) that his ancestral customs were Tosafistic; he claimed that the Tosafists themselves were his ancestors.

Isserles, as it happens, was descended on his mother’s side from the Luria family, which traced its ancestry to Rashi himself.⁴³ But Isserles was not making a personal genealogical boast. He was adapting his own genealogy into a foundation myth for all of his readers, for all of Ashkenazic Jewry. In this myth, as in Isaac Luria’s, Ashkenazic Jews were conceived of as a lineage group.⁴⁴

In the introduction to one of his law books, Sir Edward Coke, the great seventeenth-century defender of the English common law, cited the medieval legend that Britain had first been settled by Brutus, a refugee from ancient Troy. Sir Edward found in the ancient ancestry of the British a grounding for his belief in their “ancient rights,” inalienable rights given prior to the decrees of any British monarch. In just that way did Isserles present “the Tosafists and the sages of France” as both ancestors and legislators.⁴⁵

Isserles’ major opponent in the Polish rabbinate was his cousin, R. Solomon Luria.⁴⁶ Like Isserles, Luria traced his genealogy back to Rashi. Like Isserles, al-

and liturgist Shabbetai Sofer: “The German Jews are the French Jews” (!), quoted by Stefan Reif, *Shabbetai Sofer and His Prayer Book* (Cambridge, 1979), p. 80, n. 86.

42. One may contrast other medieval theories of the origins of the German Jews, and particularly the theory of Maharil that the German Jewish settlements were ancient, and predated the destruction of the Temple. See Abraham Grossman, *Hakhmei Ashkenaz ha-rishonim 'ad . . . tatnu* [= 1096] (Jerusalem, 1981), pp. 2–5. Similarly, R. Asher ben Yehiel’s claim (quoted by Maharil in his *Responsa*, no. 100 [ed. Satz, p. 172], and then by R. Hayyim ben Bešale [in Tchernowitz (above n. 1), p. 98]) that “the traditions of the German Jews are to be preferred . . . because the Torah is an inheritance for them from their ancestors,” does not seem to trace that tradition through the French Jews.

43. See Siev, *Isserles*, pp. 8–10. The genealogical tradition of the Luria family was first recorded in the early sixteenth century; it reached back as a continuous genealogical record to the fourteenth century. From there to Rashi, it merely asserted the existence of a genealogical link. See Israel Yuval, *Hakhamim be-doram: manhigut ha-ruhanit shel Yehudei Germanyah be-shilhei yemei ha-beinayim* (Jerusalem, 1989), pp. 249–252.

44. Cf. Isserles’ role in the creation of the story of the *translatio studii* from Germany to Poland (the story of R. Jacob Pollak), discussed by Elhanan Reiner in “Temurot bi-shivot Polin ve-Ashkenaz ba-me’ot ha-16-ha-17 veva-vikuaḥ ‘al ha-pilpul,” in Israel Bartal et al., eds., *Ke-minhag Ashkenaz u-Folin: sefer yovel le-Chone Shmeruk: qoveš meḥqarim be-tarbut Yehudit* (Jerusalem, 1993), pp. 47–53. As Reiner points out there, Polish Jewry did not have a well-developed foundation myth in the early modern period (and note the literature on medieval Jewish foundation myths cited on p. 49, n. 62.) On the later legends of the origins of Polish Jews, see Haya Bar-Itzhak, *Polin—agadot reshit: etnopo’etiqah ve-qorot agadim* (Tel Aviv, 1996), and now in English, *Jewish Poland—Legends of Origin: Ethnopoetics and Legendary Chronicles* (Detroit: Wayne State University Press, 2001).

45. On Coke’s controversial reference to the legend of Brutus the Trojan, founder of Britain, see Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought 1603–1642* (University Park, PA, 1993), pp. 73–78. Cf. the attribution of the Salic Law to the legendary Trojan founders of France, discussed by Colette Beaune, *The Birth of an Ideology: Myths and Symbols of Nation in Late-Medieval France*, trans. Susan Ross Huston, ed. Fredric L. Cheyette (Berkeley, 1991), pp. 242–243. See also the references there on the general topic of legitimation by descent.

46. On Luria, see Simah Assaf, “Mashehu le-toledot Maharshal,” in *Louis Ginzberg Jubilee Vol-*

beit less explicitly, Luria also implied that the Polish Jews were descendents of French Jews. (He did not make them all, as Isserles did, descendents of great rabbis.) However, Luria opposed the notion that genealogy could be made into a basis for Jewish jurisprudence. Luria wrote in the introduction to his *Yam shel Shelomoh*: “In this view, each one could choose his own, the Spanish [Jew] choosing Spanish authorities and the French [Jew] choosing French authorities, each one in its own language, believing that the Torah is inherited by families. But this is not the way and this is not the city.”⁴⁷

The mainstream of talmudic interpretation, as Luria presented it, passed through the Tosafists rather than Maimonides. Luria stressed, however, that the true heirs of the Tosafists and the true intermediaries between himself and his Tosafist ancestors were not the intervening generations of parents and children, but the Spanish Talmud commentators, beginning with Naḥmanides, who had imbibed the teachings of the Tosafists.

Isserles presented the differences between Karo and himself as the difference between universalism and particularism.⁴⁸ Karo’s code announced the law ideally for all Jews and ultimately for all humankind; Isserles was more modest, stating the law only for a particular group. Solomon Luria agreed with Isserles in preferring the views of the Tosafists to those of Maimonides. He agreed with Karo, however, that in principle Jewish law ought to be universal to all Jews, and that interpretations of Jewish law are not inherited by children from their parents.⁴⁹

Isserles and the Geography of Ashkenaz

In another passage in the introduction to his commentary to the *Shulḥan ‘Arukh*, Isserles offered another definition of his limited audience, a geographical definition.

Whereas the great author of the *Beit Yosef* and the *Shulḥan ‘Arukh* . . . left after himself no room for any addition, except to gather the words of the most recent rabbis and to set down the *minhagim* that are customary in these lands [*bi-medinot eilu*], therefore I have come after him to spread a tablecloth on the Laden Table [*shulḥan ‘arukh*] that he wrote, upon which will be every ripe fruit and every delicacy that is beloved of men. For without this, the table

ume (New York, 1945), Hebrew section, pp. 45–63, and cf. the literature cited by Jacob Elbaum, *Petiḥut ve-histagrut: ha-yeširah ha-ruḥanit-ha-sifrutit be-Folin uve-arašot Ashkenaz be-shilhei ha-me’ah ha-16* (Jerusalem, 1990), p. 19, n. 20. See also Meir Rafeld’s Ph.D. dissertation (Bar Ilan University, 1991), “Ha-Maharshah vaha-Yam shel Shelomoh.”

47. From the introduction to Solomon Luria, *Yam shel Shelomoh*, Bava Qama. Solomon Luria’s opposition to Isserles’ myth of the migration of Torah study from Germany to Poland is discussed by Reiner, “Temurot” (above n. 44), pp. 53–56.

48. Cf. Bellomo, *Common Legal Past of Europe*, p. 78, on presentations of German vs. Italian law as a contrast of the particular and the universal.

49. Universalism is not, of course, identical to tolerance. Unlike Karo, who tried to ingratiate himself to Ashkenazic Jewish readers among others (see Ta-Shma, above n. 1), Solomon Luria attacked Spanish Judaism in the introduction to *Yam shel Shelomoh*. See below n. 94.

which he laid before the LORD is not yet ready for the men of these lands [*benei adam asher bi-medinot eilu*], for in the majority of the customs of these lands [*minhagei medinot eilu*], we do not follow his opinions.⁵⁰

Isserles was thus writing for “the men” (clearly he meant the Jews) “of these lands.” But which lands precisely are “these lands”?

Isserles’ vagueness here is striking. One may contrast his commentary to one of its major sources, the *Turim* of Rabbi Jacob ben Asher. At the beginning of the fourteenth century, Jacob ben Asher had moved with his father (Rabbi Asher ben Yehiel) from Germany to Spain. In his law code, the *Turim*, he contrasted the customs of the Jews of Spain to those of Germany (*Ashkenaz*) in more than one hundred different passages.⁵¹ (The *Turim* was perhaps the first work in which the opposition of Sefarad and Ashkenaz was made into a fundamental dualism of Jewish life.) In contrast, Isserles’ work is singularly devoid of place-names. The name *Ashkenaz* in particular appears only ten times.⁵² The erasure of place-names is one of Isserles’ most characteristic editorial procedures.

Where exactly are Isserles’ “lands,” *medinot eilu*? Not surprisingly, the matter was disputed after Isserles’ death.

The debate centered on the question of whether “these lands” included the land of Germany. Were the Jews of Poland and Germany members of one polity, with shared customs and a shared interpretation of Jewish law, or did they form two separate groups?⁵³

The first readers to address this question were Isserles’ Cracow publisher, Isaac of Prossnitz, and his proofreader and editor, Samuel ben Isaac the Martyr Boehme (Pihem). The title pages of the various Cracow editions of the *Shulḥan 'Arukh* (1570, 1577, 1583, and so on) read: “*Shulḥan 'Arukh* . . . written by . . . R. Joseph Karo, with many comments . . . by . . . Moses Isserles . . . and a guide

50. From the introduction to Isserles’ commentary to the *Shulḥan 'arukh*. Cf. Isserles’ introduction to *Torat ha-Ḥatai*, “If a man were to decide the law following [Karo’s] opinions set down in his *Shulḥan 'arukh*, especially in matters of ritual prohibitions [*isur ve-heter*], he would contradict all of the customs that are followed in these lands [*ba-medinot ha-eilu*].” Similarly, in Isserles’ introduction to *Darkhei Mosheh*, his commentary to the *Turim*, among the objections that Isserles made to Karo’s decisions was that “[Karo] contradicts all of the customs that are observed in these lands (*be-eilu ha-medinot*).” Cf. also *Darkhei Mosheh* on *Yoreh de'ah* 35:7.

51. See, for example, *Tur, Oraḥ ḥayim*, para. 47, 48, 49, 51, 59, 60, 114, 129, 131, 147, etc. Sometimes R. Jacob contrasted Spain to “France and Germany,” *Ṣarefat ve-Ashkenaz*. Cf. Israel Ta-Shma, “Rabeinu Asher u-veno R. Ya’aqov ba’al ha-turim: bein Ashkenaz li-Sefarad,” *Pe’amim* 46–47 (1991), pp. 75–91.

52. *Oraḥ ḥayim* 10, 28, 60, 114, 474, 547, 552, 581; *Yoreh de'ah* 1, 58. He refers to “the custom of the Rhineland Jews” in *Yoreh de'ah* 64. Contrast his much more frequent references to “these lands,” listed below n. 60.

53. The satirical Yiddish poem “Di beshraybung fun Ashkenaz un Polak,” (published by Max Weinreich, “Tzvy Yiddishe shpotluder oyf Yidn,” *Yivo filologishe shrifn* 3 [1929], pp. 537–554) gives evidence of the formation of antagonistic stereotypes of the two groups by about 1675, stereotypes that can also be seen in Glikl’s diary a few decades later. Cf. Chone Shmeruk, *Sifrut Yidish: peraḳim le-toledoteha* (Tel Aviv, 1978), p. 72, n. 1. On relations of Polish and German Jews in the nineteenth and twentieth centuries, see Steven Aschheim, *Brothers and Strangers: The East European Jew in German and German Jewish Consciousness 1800–1923* (Madison, 1982).

to the customs of Poland, Russia, Lithuania, Bohemia, Moravia, and Germany [emphasis added].”⁵⁴

This list of the lands whose customs were codified by Isserles was then repeated by Samuel ben Isaac in his editorial introduction. The later parts of Isserles’ comments to the *Shulḥan ‘Arukh* were published posthumously, and Samuel ben Isaac, lately arrived from Venice, saw them from manuscript into print. He was a grandson of the famous Yiddish poet and Bible scholar Elijah Levita (Eliyahu Bokher).⁵⁵

Not long after, however, there was a protest on the part of one of the leading rabbis of Germany, R. Hayyim ben Bezalel (ca. 1520–1588), the brother of the better-known Rabbi Judah Loewe (Maharal) of Prague.⁵⁶ In the same way that Isserles had rejected Karo’s pretensions to legal authority over Ashkenazic Jews, R. Hayyim rejected the notion that Isserles could decide law for German Jews.

R. Hayyim composed a set of objections to an auxiliary work of Isserles, called *Torat ha-Ḥatat*.

There is a great need to assert the differences between the customs of the Jews of Germany [*benei Ashkenaz*] and those of the land of Poland. . . . Rabbi [Isserles] himself in his introduction [to *Torat ha-Ḥatat*] did not mention the customs of Germany at all, but only those of his own land. The introduction of the proofreader, however, mentioned explicitly “Poland, the Ukraine, Bohemia, and Moravia.” And he extended the borders even farther, and wrote, “and perhaps every place where German [*leshon Ashkenaz*] is spoken by Jews.” One may see that he expressed uncertainty whether the book applies to German Jews [*benei Ashkenaz*] or not. So the printer added that on his own and mentioned Germany as well on the title page, so that he would increase his sales in all of those lands, because buyers always look at the beginning of the book.⁵⁷

Rabbi Hayyim framed his debate as being merely with Isserles’ publisher and his editor. (Reading carefully, he noted as well that even Samuel ben Isaac, in his introduction to *Torat ha-Ḥatat*, had expressed hesitation concerning Isserles’ relation to the customs of Germany.) R. Hayyim believed the extension of Isserles’ authority into Germany to be merely, as we would say today, publisher’s hype. He believed that Isserles had only intended to write a law book for *Polish* Jews.

54. See Naftali Ben Menaḥem, “Ha-defusim ha-rishonim shel ha-shulḥan ‘arukh,” in Raphael, ed., *Rabi Yosef Qaro* (above n. 1), p. 114. Cf. Samuel ben Isaac’s note at the end of *Yoreh de’ah* (Cracow, 1578), p. 114a.

55. Bernhard (Hayyim) Friedberg, *Toledot ha-defus ha-‘Ivri be-Folanyah* (rev. ed., Tel Aviv, 1950), pp. 5–6; Naftali Ben Menaḥem in Raphael, ed., *Rabi Yosef Qaro* (above n. 1), p. 104.

56. On R. Hayyim, see Byron L. Sherwin, “In the Shadows of Greatness: Rabbi Hayyim ben Bešalel of Friedberg,” *Jewish Social Studies* 37 (1975: 35–61; Eric (Yizhaq) Zimmer, *R. Hayyim b. Bešalel mi-Friedberg: aḥi Maharal mi-Prag* (Jerusalem, 1987); Zimmer, *Gaḥalatan shel ḥakhamim* (above n. 1), pp. 177–219. On R. Hayyim’s opposition to Isserles, see pp. 210–216. See also Reiner, “Ashkenazi Elite,” pp. 85–90.

57. Hayyim ben Bešalel, Introduction to *Vikuaḥ mayim hayim*, printed in Tchernowitz (above n. 1), p. 98.

The title page that so incensed R. Ḥayyim first appeared in the first volume of the *Shulḥan 'Arukh* with Isserles' notes, which was published during Isserles' lifetime. This in itself suggests that Isserles approved of it; so does the unanimous agreement of Isserles' students (as will be discussed below) with the printer's expansive view.

It is possible, however, to argue on behalf of R. Ḥayyim's narrower reading of Isserles' intent.⁵⁸ Hebrew printers were indeed capable of expanding a law code's announced authority. This is clear from the case of R. Isaac of Tyrnau's *Sefer ha-Minhagim*, written about 1410. R. Isaac wrote at its head that he would include the customs of "Austria, Hungary, Styria, and Moravia." The four regions that he listed form a compact area centering roughly on Vienna. The work was later published in 1566 in Venice. The title page of the published volume, however, included a new list of places whose customs were said to be collected in the book. The work had now become "The Book of the Customs of Poland, Bohemia, and Germany."⁵⁹

A second and more decisive argument may be brought from Isserles' own writings. "These lands" is a phrase that Isserles was fond of, and he used it several times in his *Responsa*.⁶⁰ In one place, he contrasted "these lands" to Italy: oil brought from Italy to "these lands" cannot be used. In another place, he contrasted "these lands" to Moravia: attitudes of Jews in the two places differ in regard to drinking wine made (or touched) by non-Jews. In a third responsum, importantly for us, Isserles contrasted "these lands" to Germany. "In these lands, the hatred of the Gentiles is not as strong against us as it is in the lands of Germany."⁶¹

The evidence of the usage in Isserles' *responsa*, that is, favors R. Ḥayyim's interpretation. Isserles used "these lands" to mean the lands of Poland. The "customs of these lands" that Isserles codified in his notes to the *Shulḥan 'Arukh* were the customs of the Polish Jews.

The Geography of Ashkenaz: The Formation of German Jewish Identity

Ashkenaz is a biblical name that was appropriated in the Middle Ages for Germany.⁶² An "Ashkenazic" Jew was therefore, in the first instance, a Jew who lived in Ashkenaz, in Germany. Beginning in the sixteenth century, however, the term came to have a wider semantic connotation that included, as we have seen, all

58. Professor Twersky argues ("The *Shulḥan arukh*," p. 151) that Isserles' and Karo's intentions were not decisive in the later use of their book (and need not be decisive, for that matter, in our interpretation of it). This is, of course, far from arguing that Isserles had no specific intention in mind.

59. *Sefer ha-minhagim le-Rabeinu Ayziq Tirna*, ed. Shelomoh Spitzer (Jerusalem, 1979), p. 3 of the text, and p. 11, n. 9 of Spitzer's introduction.

60. The phrase "these lands," (*medinot eilu*, or *eilu ha-medinot*, or in some places *gelilot eilu* or *arazot eilu*) appears frequently in the text of Isserles' glosses to the *Shulḥan 'arukh*: *Orah ḥayim*, par. 28, 31, 128, 291, 366, 447, 608, 646, 892, 894, *Yoreh de'ah* par. 39, 55, 68, 115, 196, 316, 322, *Even ha-'ezer* par. 1, *Hoshen mishpat* par. 207.

61. See *She'elot u-teshuvot ha-Rema*, ed. Asher Siev (Jerusalem, 1971), nos. 53 (contrast with Italy), 95 (with Germany), 124 (with Moravia); ed. Asher Siev, pp. 263, 417, 484.

62. See Grossman, *Ḥakhmei Ashkenaz ha-rishonim*, p. 1, n. 1. On the origins of the term "Germany" itself as a designation for the medieval kingdom, see Karl Ferdinand Werner, "Les nations et la sentiment nationale dans l'Europe médiévale," *Revue Historique* 244 (1970), 285–304.

Jews living in “Ashkenazic” communities, whether in Germany, Eastern Europe, or elsewhere.⁶³

The process of group formation among Ashkenazic Jews may also be seen differently, however, not as a simple process of expansion, but as a dual process in which both *German Jews* and *Central and Eastern European Jews* came simultaneously to be self-conscious groups. The Jews who lived in medieval Germany, in “Ashkenaz,” did not see themselves consistently in that light. Their stronger identifications were frequently regional or local.⁶⁴ For instance, the great fifteenth-century rabbi Jacob Moellin, called Maharil, debated with his contemporaries whether such regions as Thuringia and the Rhineland were separate “lands” or whether all of Germany should be considered one “land.”⁶⁵

The localism of the German Jews of the late Middle Ages found strong expression in the realm of *minhag*, religious custom, the topic that would, of course, be so important to Isserles. In the extensive literature of customs produced by rabbis of Central Europe in the fifteenth century, the notion of *minhag Ashkenaz*, of the custom of German or Ashkenazic Jews, appears rarely.⁶⁶ Rather, Central Eu-

63. Max Weinreich has designated these meanings as Ashkenaz I and Ashkenaz II, respectively. See Weinreich, *Geshikhte* (above n. 41), vol. 1, p. 5; cf. vol. 1, p. 323; vol. 3, p. 5, n. 2. Weinreich's earliest citation for the term “Ashkenaz” used in its broader sense (Ashkenaz II) is from R. Anshel, *Mirkevot ha-mishneh* (Cracow, 1534). The name “Ashkenaz” did not lose its earlier narrower connotation, so there is an ambiguity that can be seen, for instance, in a quotation from R. Benjamin Slonik that we will cite later. On similar ambiguities in the meanings of “Germany” and “German” in the sixteenth century, see István Bejczy, “Erasmus Becomes a Netherlander,” *The Sixteenth Century Journal* 28 (1997), pp. 387–400.

64. On the general problem of regional and national consciousness in Germany, see Babel and Moeglin, eds. (above n. 3); Rüdiger Schnell, “Deutsche Literatur und Deutsches Nationsbewußtsein in Spätmittelalter und Frühen Neuzeit,” in Joachim Ehlers, ed., *Ansätze und Diskontinuität Deutscher Nationsbildung im Mittelalter* (Sigmaringen, 1989), pp. 247–319. The upsurge of German national consciousness at the turn of the sixteenth century, inspired partly by German humanists such as Ulrich von Hutten, is well known. Modern historiography has exaggerated the degree to which consciousness of national identity in Europe has tended to increase monotonically since early in the Middle Ages, and to denigrate other competing conceptions of group identity that have existed since that time. Michael Stolleis argues that national consciousness and imperial patriotism in Germany went through waves of increased and decreased intensity in the early modern period. See his “Public Law and Patriotism in the Holy Roman Empire,” in Max Reinhart, ed., *Infinite Boundaries: Order, Disorder, and Reorder in Early Modern German Culture* (Kirksville, MO, 1998), pp. 11–33.

65. *She'elot u-teshuvot Maharil ha-hadashot*, ed. Yitzchok Satz (Jerusalem, 1977), no.187 (p. 291). The context is divorce law. Note also 38:6 (p. 44), in which Maharil contrasted French and German speech, while noting also the existence of different dialects of German in different regions. Eric Zimmer (*Harmony and Discord: An Analysis of the Decline of Jewish Self-Government in 15th Century Central Europe* [New York, 1970], pp. 128–142) emphasizes the merely regional scope of intercommunal cooperation among German Jews in the fifteenth century, and the repeated failures of imperial attempts to achieve recognition for a chief rabbi of Germany. See also Dovid Katz, “East and West, *Khes* and *Shin*, and the Origin of Yiddish,” in Israel Bartal et al., eds., *Ke-minhag Ashkenaz u-Folin*, English section, pp. 15–19.

66. A significant exception is the custom, described in *Sefer Maharil* (ed. Satz, p. 159) as observed throughout Germany, of an annual recitation of the names of all the communities that suffered massacres in 1096. “German” identity was tied partly to the memory of the massacres. Cf. Adam Teller's article (above n. 2).

ropean rabbis of the period tended to conceive of custom on the basis of cities or regions.

Of particular importance were the customs of “Austria” and “the Rhineland.”⁶⁷ In *Leqet Yosher*, Joseph of Münster’s collection of customs, there are (if we may rely on Freimann’s index) twenty-three references to the Rhineland, sixty-four to Austria, and none at all to Germany.⁶⁸

Zalman of Sankt-Goar, to consider another example, included in his *Sefer Maharil* a cautionary tale of Maharil’s trip to Regensburg. In leading the prayers on the High Holidays, Maharil failed to observe all of the customs of the Regensburg Jews. When his daughter died on Yom Kippur, Maharil interpreted his loss as a punishment for that sin. The stress was on the diversity of customs among the Jews of different German cities; any attempt to establish a normative “Ashkenazic” set of customs was rejected.⁶⁹

The localism of German Jews did not, of course, ever disappear. In the sixteenth century, rabbis were still being sworn to preserve the local customs; in the seventeenth century, collections of local *minhagim* were still being produced.⁷⁰

Nevertheless, the general councils of German Jewry in the second half of the sixteenth century gave evidence of the new, clearer sense of forming a single community. “The kings have gathered,” wrote the Frankfurt council of 1603, “the heads of the people and the communities . . . at the order of our masters the sages of Germany, to study and to solve the needs of the community.”

67. See recently Eric (Yisshaq) Zimmer, *‘Olam ke-minhago noheg: peraqim be-toledot ha-minhagim, hilkhoteihem, ve-gilguleihem* (Jerusalem, 1996), pp. 217–295; Shelomoh Spitzer, “Minhag benei Ostraykh: meqoro ve-hitpathuto be-meshekh yemei ha-beinayim,” *Sinai* 87 (1980), 55–64. Cf. Benjamin Hamburger, introduction to Juspa Shammes, *Minhagim di-qehila qadish Varmaisa* (Jerusalem, 1988), vol. 1, pp. 69–105. Zimmer (p. 217) and Spitzer both make assurances that the customs of “Austria” and “the Rhineland” agreed more than they disagreed. Note, however, that our question is not how modern ethnography sees medieval German Jews and their diverse but related customs, but how they saw the matter themselves. Notoriously, groups that seem very similar to outsiders may regard themselves as entirely different. R. Shalom of Neustadt, a rabbi in Austria, regarded Rhenish *minhagim* as customary throughout Germany: “The main part of the kingdom of Germany is the Rhineland, and the other lands follow it.” See *Halakhot u-minhagei Rabeinu Shalom mi-Neustadt (Derashot Maharash)*, ed. Shelomoh Spitzer (Jerusalem, 1977), p. 41. On the earlier Middle Ages, see Israel Ta-Shma, *Minhag Ashkenaz ha-qadmon: heqer ve-lyun* (Jerusalem, 1992).

68. See the index to Joseph ben Moses of Münster, *Leqet yosher*, ed. Jacob Freimann (Berlin, 1903–1904). There are similarly very few references to “Ashkenaz” in *Sefer minhagim le-Rabeinu Avraham Klausner*, ed. Yosef Dissen (Jerusalem, 1978). Even in *Sefer Maharil* (relying on the index in the Spitzer edition [below, n. 69]), there are twice as many references to Austria, and nearly four times as many to the Rhineland, as there are to Germany.

69. *Sefer Maharil*, ed. Shelomoh Spitzer (Jerusalem, 1989), *Hilkhot Yom Kippur*, no. 11 (p. 339). Cf. p. 261 (*Hilkhot yamim nora'im*, #7); *She'elot u-teshuvot Maharil*, no. 76 (ed. Yitzchok Satz [Jerusalem, 1980], p. 124. Cf. Denari, *Hakhmei Ashkenaz* (above n. 29), pp. 284–285.

70. See the 1575 contract of the rabbi of Friedberg, in A. Kober, “Documents selected from the Pinkas of Friedberg . . .” *PAAJR* 17 (1947), pp. 45–46. The outstanding seventeenth century collection of local customs was Juspa Schammes, *Minhagim de-qehila qadisha Varmaisa*. The conflicting tendencies of localism and centralization in German Jewry of the sixteenth and seventeenth centuries are discussed by Zimmer, *Gaḥalatan shel ḥakhamim* (above n. 1), passim.

The same sense of a German Jewish community (in the original texts *kelal* or *Gemein*) with common needs and distinct borders is expressed in the resolutions taken by the council, particularly the declarations that invalidated within Germany any rabbinical ordination given outside of Germany and any writ of *herem* from outside of Germany.⁷¹ R. Hayyim's defense of the boundaries of German Jewish customs against the pressures of Polish Jewish customs reflected this sense of Germanness.⁷²

The late medieval distinction of "Austria" and "Rhineland" remained, however, the geographical framework offered by another rabbi of the late sixteenth century, in trying to define the scope of Isserles' authority. According to Rabbi Isaac Mizeya, a rabbi in southern Germany (and possibly a student of Ḥayyim ben Bezalel), Isserles had not meant to codify the customs of Germany, nor had he meant, on the other hand, to restrict himself merely to Poland. Mizeya wrote in a responsum, "Isserles' place is in the land of Austria [*Meqomo shel moreinu ha-rav Rema haynu medinat Ostraykh*]."⁷³

There is no reason to imagine that Rabbi Mizeya was confused as to Isserles' place of residence, or that he foresaw Cracow's years as part of the Austrian Empire. Rather, Isserles' "place is Austria" in the sense that Isserles codified "the customs of Austria," customs set down by such authorities as R. Isaac Tyrnau and R. Israel Isserlein.

For the purposes of Jewish law, do the borders of Jewish groups follow the political borders of European kingdoms? Implicitly, Ḥayyim ben Bezalel suggested that they do. Isserles may have taken that position himself, as we have seen; by "these lands," he may well have meant the lands of the Polish crown. Mizeya, however, expressed Isserles' place not by the political geography of nations, but by the peculiar geography of Jewish religious custom. Isserles' students, as well as his publisher and editor, likewise took the position that the Ashkenazic Jews, though they have might lived in various kingdoms, nonetheless comprised one group living under one law.

71. "*Ḥuṣ li-Medinat Ashkenaz*," "ausserhalb Teutschlands" or in another version, "aus dem Römischen Reich." The text is in Eric Zimmer, *Jewish Synods in Germany during the Late Middle Ages (1286–1603)* (New York, 1978), pp. 148–149, nos. 5 and 13. Cf. Zimmer, "Rabanei Germanyah bame'ah ha-16 ve-ziqatam la-rabanim bi-tefuṣot 'aḥerot," in Ninth WCJS (1986) Division B. vol. I, Hebrew section, pp. 127–134. Much of the credit for the new sense of German Jewish community goes to the Habsburg emperors, notably Charles V, and to the men whom they appointed to be leaders of all German Jewry, notably Josel of Rosheim. See Zimmer, *Gaḥalatan shel ḥakhamim*, p. 263.

72. Note that R. Ḥayyim, unlike Maharil, can conceive of a codification of the customs of the "German" Jews. See *Vikuaḥ mayim ḥayim* in Tchernowitz (above n. 1), p. 94. Similarly, R. Isaac Mizeya stressed "German" customs in the last decades of the sixteenth century; so did Ḥayyim Ulma about 1630: see Zimmer, *Gaḥalatan shel ḥakhamim*, pp. 91–94, 228–236.

73. *She'elot u-teshuvot Yefeh nof*, ed. Avigdor Berger (Jerusalem, 1985), *Yoreh de'ah* 155 (p. 147), discussed in the introduction by Eric Zimmer, p. 18. But note that in another responsum (p. 236; discussed by Zimmer, p. 17), in which Mizeya discusses explicitly the authority of the *Shulḥan 'arukh* and limits its authority considerably, he does describe Isserles as having "gathered all the customs of our lands [*ha-medinot ve-araṣot shelanu*] as may be found in his [i.e., Isserles'] introduction." On Mizeya, see Zimmer, *Gaḥalatan shel ḥakhamim*, pp. 84–105, 257.

Joshua Falk Cohen: Ashkenazic Jews as a Linguistic Community

The expansive interpretation of Isserles' phrase "these lands," foreshadowed by the Venice publisher of *Sefer ha-Minhagim* and disputed by R. Ḥayyim ben Bealel, was promoted not only by Isserles' publishers, but by his students. Indeed, all of the earliest published affirmations of Isserles' authority came from his students.

Four of Isserles' students, Rabbi Abraham Horowitz, Rabbi Benjamin Slonik, Rabbi Mordechai Jaffe, and Rabbi Joshua Falk Cohen, regarded the *minhagim* collected by Isserles to be those not only of the lands of the Polish-Lithuanian Commonwealth, but of the lands of the German Empire. In this way, in spite of their hesitancy about accepting the authority of the *Shulḥan 'Arukh*, even with Isserles' corrections (Jaffe, for instance, wrote a competing code, the *Levushim*), their remarks tended to aid its spread throughout the world of Yiddish-speaking Jewry. Of the four, Rabbi Joshua Falk Cohen offered the longest analysis of the origins of the Sefardi-Ashkenazi split; he associated it with linguistic differences.

Rabbi Mordechai Jaffe (ca. 1530–1612), in the introduction to his *Levush Malkhut*, a work that in some ways competed against, and in other respects imitated, the *Shulḥan 'Arukh* with Isserles' comments, echoed Isserles' words from his introduction to the *Shulḥan 'Arukh*. Jaffe clarified, however, the vague reference to "these lands," accepting the interpretation of the publisher: "[Karo] decided most laws in accordance with the views of Maimonides, because that is the custom in the lands of Ishmael, and he . . . was their leader. . . . But that is not the custom . . . in these lands [*eilu ha-araṣot*]: Germany, Bohemia, Moravia, Poland, Russia, and the surrounding areas."⁷⁴

Rabbi Abraham Horowitz (ca. 1530–ca. 1610) wrote in a special appendix to his *'Emeq Berakhah* (Cracow, 1597): "We the Ashkenazim [*benei ha-Ashkenazim*] follow my teacher and master . . . R. Moses Isserles, for this man Moses is the most recent authority . . . and agrees with the truth and with the custom of these lands [*medinot ha-eilu*]."⁷⁵ For Horowitz, "these lands" are apparently all the lands in which Ashkenazic Jews live, including, presumably, Germany. Likewise, R. Benjamin Slonik (ca. 1550–ca. 1620) wrote in a responsum, around 1604, "[Isserles'] words have been accepted in all the lands of Germany [*be-khol medinot Ashkenaz*]."⁷⁶

Finally, Rabbi Joshua Falk (ca. 1550–1614) wrote in the introduction to his commentary to the *Shulḥan 'Arukh*, called *Sefer Me'irat 'Einayim*:

74. From the introduction to Jaffe, *Levush malkhut*. Jaffe copies Isserles' phrase *medinot ha-eilu* in his own *halakhic* work: see, for example, the passages quoted by Zimmer, *'Olam ke-Minhago Noheg* (above n. 67), pp. 140, 202. Another student of Isserles, the historian David Gans, also used the same phrase with the larger sense of the Ashkenazic lands. See his *Ṣemah David*, pt. 1, for the year 1530 (ed. Mordechai Breuer [Jerusalem, 1983], p. 138); the passage is discussed in Reiner, "Temurot" (above n. 44), p. 48.

75. From the concluding appendix of *'Emeq berakhah*, p. 116b, quoted in Siev, *Isserles* (above n. 1), p. 77.

76. *She'elot u-teshuvot Mas'at Binyamin* (Vilna, 1894; ed. princ. Cracow, 1632), no. 27, end, quoted in Siev, *Isserles*, p. 82. For the date, see Nisson Shulman, *Authority and Community: Polish Jewry in the Sixteenth Century* (New York, 1985), p. 192.

Alfasi and Maimonides and those who follow them were not men of Germany and France, and they disagreed with the sages of Germany and France, such as Rashi and the Tosafists, in the interpretation of the Talmud. . . . Differences of language were also responsible for this, because their language in which they made legal decisions was Arabic, which is not like the languages of Germany and France. . . . And the commentaries of Rashi and the Tosafists were followed by all the great rabbis of Germany and France who came after them, from whose waters we drink. . . . And R. Joseph Karo . . . lived in the lands of Islam. . . . But those who live in these lands, Germany, Poland, and Ukraine, follow the sages and leaders of Germany and France. . . . Therefore we need the work of [Isserles], who gathered, collected, and codified all of the customs of Ashkenaz.⁷⁷

What united the Jews of Poland and Germany? Was it the observance of identical rituals and customs? That was Jaffe's implicit claim. Like Isserles, like Jacob ben Asher before him, Jaffe contrasted the customs of the Polish and German Jews to those of the Spanish Jews. As we have seen, Ḥayyim ben Bešalel had disputed the claim.

Was it the reliance of Jews in both kingdoms on the interpretations of Rashi and the Tosafists? So Joshua Falk suggested, but this immediately raised the question of why Rashi and the Tosafists were authoritative for Ashkenazic Jews, authoritative in a way that they were not for other Jews. We have seen Isserles' answer to this question: "we are their children's children." Interestingly, Joshua Falk Cohen did not accept Isserles' reliance on lineage. Perhaps, having studied under Solomon Luria as well as Isserles, he had been dissuaded by Luria's argument.

Groping for an alternative answer, R. Joshua, like Samuel ben Isaac, Isserles' editor, suggested language. Jewish traditions, he suggested, are transmitted within language groups.

In at least two respects, this is not at all satisfactory. In the seventeenth century, there was no *halakhic* theory that would explain why Jews who speak the same language should be subject to the same laws. Furthermore, Falk had to gloss over the major differences between the French spoken by Rashi and the Tosafists and the German or Yiddish of later Ashkenazic Jews, and between Arabic and Spanish.

In another respect, however, the suggestion was an insightful one. It is significant that in the multi-ethnic communities of the Mediterranean, German and Polish Jews almost never formed separate synagogues or separate *qehilot*.⁷⁸ Their

77. Introduction to *Sefer me'irat 'einayim*, published in many editions of *Shulḥan 'arukh, Ḥoshen mishpat*.

78. An exception that proves the rule was in Amsterdam, where the Polish Jews split away from the German Jews in 1660. The two groups composed their differences and joined together again as one community in 1673. On the incident, see Bodian, *Hebrews of the Portuguese Nation* (above n. 2), pp. 125–131; Yosef Kaplan, "The Portuguese Community in the Seventeenth Century Amsterdam and the Ashkenazi World," *Dutch Jewish History* 2 (1989), p. 42; Moshe Rosman, "Samkhut shel Va'ad 'Arba 'Arba šot mi-ḥuṣ le-Folin," *Bar Ilan* 24–25 (1989), 19–20; D. M. Sluys, "Yehudei Ashkenaz be-

common bond was based, no doubt, partly on the close similarity of their prayer rites (in spite of the differences regarded as so important by R. Ḥayyim ben Bezalel), but also on their shared Yiddish language. “It has been the custom throughout the Diaspora,” wrote R. David ibn Abi Zimra in the sixteenth century in Egypt, “that the men of each city and each language form communities of their own and do not mix with the men of other cities and other languages . . . for hearts are divided according to the divisions of places and languages.”⁷⁹

Whether or not the Ashkenazic Jews were in truth a lineage group in the simple sense implied by Isserles, they were surely a linguistic group. A collection of lands that might otherwise seem almost random—Lithuania, Moravia, Germany—had in common that the great majority of their Jewish inhabitants spoke Yiddish. They were Ashkenazim not because they lived in Ashkenaz, but because they spoke *leshon Ashkenaz*, German or Yiddish.

Medieval Theory of Corporations and the Reception of the “Shulḥan 'Arukh”

We have asked how the authority of the Talmud commentaries of Rashi and Tosafot was defended in this period. We must now ask why the Talmud itself was regarded as authoritative. There were three essential theories, all of which are set forth in Moses Maimonides’ introduction to his *Mishneh Torah*. According to the first, the Talmud is authoritative because it is the correct interpretation of the Torah; according to the second, because it was agreed to by all the rabbis; according to the third, because it was accepted by the Jews: “All of Israel is required to observe everything that is in the Babylonian Talmud . . . [and] to observe all the customs instituted by the sages of the Gemara . . . since all of Israel consented to everything in the Talmud.”⁸⁰ In the terms that we suggested earlier, the third theory casts the Jews as a medieval corporation, accepting laws by an act of corporate will.

Karo accepted Maimonides’ theory of authority based on popular consent.⁸¹

Amsterdam mi-shenat 1635 ‘ad shenat 1795,” in *Mehqarim ‘al-toledot Yahadut Holand*, vol. 1 (1975), pp. 69–87. (Sluys’s article appeared originally in Dutch: “Hoogduits-Joods Amsterdam van 1635 tot 1795,” in *Geschiednis der Joden in Nederland*, ed. H. Brugmans and A. Frank, vol. 1 [Amsterdam, 1940], pp. 306–381.)

79. *Responsa*, pt. III, no. 472. Cf. R. Joseph ibn Lev, *Responsa*, pt. II, no. 72: “In Salonika, . . . when they arrived after the expulsions, each language established a community for itself, and no one goes or comes from community to community, and each community supports the poor of their language.” Salo Baron quotes the passage in his *Social and Religious History of the Jews*, vol. 18, pp. 55–56.

80. On Maimonides’ theory of talmudic authority, see Menahem Kellner, *Maimonides on the ‘Decline of the Generations’ and the Nature of Rabbinic Authority* (Albany, 1996). “They vowed and accepted”—*qiyemu ve-qibelu* (Esther 9:27)—is the catchphrase that is very often used for popular reception of a law or lawcode. A different view of Jewish law derives the authority of Jewish communal institutions from Talmudic law; here it is the reverse.

81. Karo was among those who applied the theory to Maimonides. See *She’elot u-teshuvot ‘Avqat rokhel*, no. 32: “All the communities of the Land of Israel and Arabistan and the Maghreb are accustomed to follow his opinions, and have accepted him as their master.” See also the passage from Karo’s introduction to *Beit Yosef* quoted above n. 19. Maimonides’ theory of consent forms the basis for his theory of the possible future renewal of rabbinic ordination. It is therefore significant that Karo was involved in R. Jacob Berav’s movement to ordain rabbis in Safed. On that event, see the revised

Moses Isserles, on the other hand, does not appear to have accepted either the theory or the corollary notion of the “reception” of a law or a law code.⁸² He did not invoke it on his own behalf or on behalf of any other work; his own theory of the authority of Rashi and the Tosafists, namely, that their authority derived from their being the ancestors of present Ashkenazic Jews, was quite different.

The notion of reception was applied to Isserles’ work, however, as well as Karo’s, in the generations after them, by (among others) R. Isaiah Horowitz (ca. 1560–1626), author of the kabbalistic and moralistic work, *Shenei Luhot ha-Berit*.⁸³ Suggesting that the Ashkenazic Jews had collectively chosen Isserles as their guide, Horowitz cast them as a sort of *qehilah* or super-*qehilah*.

Isaiah Horowitz, whose father Abraham (as we have mentioned) was a student of Isserles, was convinced, just as his father had been, that Isserles’ work was authoritative for Ashkenazic Jews. The son did not agree, however, with any of the reasons that had been put forward by his father, nor indeed with any of the reasons that had been put forward by Isserles himself.

Isaiah Horowitz made no use of Isserles’ claim (repeated, as we have seen, by his students) that he had collected the customs of the Jews of “these lands.” Nor did he repeat Isserles’ foundation myth of the ancestry of Ashkenazic Jews. R. Isaiah argued, moreover, that Solomon Luria was more insightful than Isserles as a Talmud interpreter. Isserles’ comments, according to R. Isaiah, do not correspond most closely to the “true meaning” of the Talmud or the Torah; Isserles is not authoritative on that account. Isaiah Horowitz argued finally, against his father, that, having seen Isserles’ views and responded to them, Solomon Luria should be considered the more “recent authority.” Applying (as had both his father and Isserles) the talmudic principle that “the law follows the most recent authority [*halakhah ke-vatra’ei*],” the younger Horowitz suggested that Luria’s views ought to have been decisive; and yet he admitted that they were not.⁸⁴

[Isserles’] coinage has been accepted, and we must follow his opinions and render decisions in accordance with his views. Doubtless he merited this from

version of Jacob Katz, “Maloqet ha-semikhah bein Rabi Ya’aqov Berav vecha-Ralbah,” in his *Halakhah ve-qabalah* (Jerusalem, 1984), pp. 213–236, and the literature cited there. On Karo’s use of Maimonides, see Twersky, “R. Yosef Qaro,” above n. 1.

82. Note as well that R. Joshua Falk Cohen, in his discussion of the Talmud’s authority in the introduction to *Sefer Me’irat ’Einayim*, bases it only on rabbinic consensus.

83. Note also the formal acceptance of Karo’s authority by the rabbis of the land of Israel in the seventeenth century, reported by Jacob Hagiz and discussed by Toledano in Raphael, ed., *Rabi Yosef Qaro*, p. 185.

84. Isserles claimed in his introduction to the *Shulhan ’arukh* that Karo, in relying on Maimonides, had unjustly neglected the more “recent authorities” whom it is right to follow, such as the fifteenth-century Ashkenazic rabbis. Abraham Horowitz (n. 75 above) argued that Isserles himself was the most “recent authority,” and that on that account he should be followed. On the principle that “the law follows the recent authority,” see Israel Ta-Shma, “Hilkheta ke-vatra’ei: beḥinot historiyot shel ketal mishpati,” *Shenaton ha-mishpat ha-’Ivri* 6-7 (1980), pp. 405–425; Meir Rafeld, “‘Hilkheta ke-vatra’ei’ eš el Ḥakhmei Ashkenaz u-Folin ba-Me’ot ha-15–16: Meqorot u-Sefiḥin,” *Sidra* 8 (1992), pp. 119–140; Israel Yuval, “Rishonim ve-’aḥaronim, *Antiqui et moderni*: toda’at ha-zeman ve-toda’ah ‘ašmit be-Ashkenaz,” *Zion* 57 (1992: 369–394).

heaven, just as the House of Hillel did. . . . In the Diaspora, in the lands of the Polish crown, in Bohemia, Moravia, and Germany, the [practice] has spread to render decisions in accordance with his views. . . . In this generation, we follow the opinions of R. Moses Isserles, and who shall permit what he forbade?⁸⁵

Horowitz claimed that Solomon Luria was the more profound talmudist and the more recent authority, but that the providentially guided communities of Central and Eastern Europe had accepted Isserles. They are all governed by the same laws because they have accepted them together. Exercising a putative common will, the Ashkenazic Jews (in the broader sense of the term) have constituted themselves into a single juridical community.⁸⁶

In the generation before Horowitz, R. Benjamin Slonik (whom we quoted above) had already applied to Isserles the idea of voluntary reception. “[Isserles’] words have been accepted in all the lands of Germany [*be-khol medinot Ashkenaz*].” (We may remark that Slonik’s and Horowitz’s comments seem somewhat premature: Isserles’ victory in Germany, although it had begun before 1600, was not assured until after 1650.)⁸⁷

In the generation after Horowitz, the thought that Isserles had been accepted by popular acclaim was repeated by a minor rabbi in Cracow, Hayyim Buchner (ca. 1610–1684).

R. Moses Isserles exerted much effort and searched, like the search of Jerusalem by candlelight, for all the customs of the lands that belong to the Ashkenazim [*medinot ha-mityaḥasim la-Ashkenazim*]. . . . And truly one must follow the decisions of the great rabbi . . . R. Moses Isserles of blessed memory, for the Jews have vowed and accepted that they will follow him in every regard.⁸⁸

85. *Shenei luhot ha-berit* (Warsaw, 1878), I, 54a–b (*Sha'ar ha-'otiyot*, “*qedushah*”), discussed in Zimmels, *Ashkenazim and Sephardim*, p. 57.

86. Zimmels, *Ashkenazim and Sephardim*, exaggerating somewhat, claims that “it was only through Caro and Isserles that the Sephardim and Ashkenazim became united among themselves” (p. 58).

87. The reception of the *Shulḥan 'arukh* in Germany is surveyed by Zimmer in *Gaḥalatan shel ḥakhamim* (above n. 1), pp. 257–258, and in greater detail, pp. 210–237. The reception of the *Shulḥan 'arukh* had at least four aspects, not all of them simultaneous. (1) Its widespread use was nearly instantaneous. (2) The decline and gradual falling out of print of competing codes, such as *Sefer mišvot ha-gadol*; the *Mordechai*; the *Turim*; and the Talmudic digest of R. Asher ben Yehiel, began about 1600 and was complete after 1640, after the death of R. Joel Sirkes, who had championed the *Turim*. (3) Beginning at the turn of the seventeenth century, the authority of the *Shulḥan 'arukh* was also asserted by major rabbis, by students of Isserles and later by their students and (particularly after mid-century) by their students’ students, and by others. (4) Finally, after the second quarter of the seventeenth century, statements of opposition to the *Shulḥan 'arukh* by major rabbis trail off. Statements of support and opposition to the *Shulḥan 'arukh* are collected by Siev (above n. 1), pp. 286–296. Cf. Reiner, “*Temurot*” (above n. 44), pp. 21–22, n. 20.

88. From the introduction to Buchner’s *Orot Ḥayim* (Cracow, 1654), reprinted by Yizhak Yudlov in *Moriah* 14 (1985–86), nos. 5–8, p. 19. It is not clear just whom Buchner meant by “the Jews” in the last line. He may have been writing imprecisely, and meant only “the Ashkenazic Jews.” It is possible,

Consider, finally, the case of the Jews of Buda. In the sixteenth and seventeenth centuries, Hungary was a part of the Ottoman Empire, and its Jewish community balanced itself between the Ashkenazic and Sefardic worlds. In the Ottoman Empire, Hungarian Jews were frequently distinguished from “Ashkenazim.” We recall, for instance, that in Safed there were separate Hungarian and Ashkenazic communities.⁸⁹ Sometime in the mid-seventeenth century, however, the community of Buda enacted a communal decree that their rabbis should “make no decision in Jewish law except in accordance with the *Turim*, the *Beit Yosef*, and its pure *Shulhan* [*Arukh*], following the decisions of *The Tablecloth* [Isserles’ commentary], and their recent commentators.”⁹⁰ The Jews of Buda voted themselves into the Ashkenazic world by accepting the authority of the *Shulhan* ‘*Arukh* and its Ashkenazic commentators.

The Formation of Ashkenazic Identity in the Sixteenth and Seventeenth Centuries

Isserles’ authority, so wrote Isaiah Horowitz, was accepted because “he merited it from heaven.” Comparing Isserles to the House of Hillel, Horowitz perhaps meant to suggest that Isserles’ personal character, which is reflected in his legal writings, had played a role in winning acceptance for his work: Isserles’ generosity, kindness, and modesty. No doubt these qualities are significant, and a more stringent work or a more strident one would not have been as popular. Nevertheless, the ambit of Isserles’ acceptance still needs to be explained.

As we have seen, the Jews of “the lands of the Polish crown, Bohemia, Moravia, and Germany,” were not typically a unanimous group. Why did the German or Bohemian or Moravian or Lithuanian Jews not accept some other legal code? There were enough to choose from, medieval codes as well as more recent ones.⁹¹

however, that, like certain other rabbis in his day such as R. Hayyim Benveniste in Izmir, Buchner thought of Isserles’ comments as being applicable in principle to all Jews. See Hayyim Benveniste, introduction to *Keneset ha-gedolah* (Livorno, 1658).

89. On the relation of Hungarian Jews and Ashkenazic Jews in the sixteenth and seventeenth centuries, see Bornstein (above n. 13), pp. 82–86. There were separate communities of Hungarian and Ashkenazic Jews in Constantinople as well (p. 82, n. 6). By the second quarter of the seventeenth century, however, two Salonika rabbis, R. Daniel Estrossa and R. Hayyim ben Shabbetai, referred to the Buda Jews in their responsa as “Ashkenazim” (pp. 83–84).

90. See Ephraim ben Jacob ha-Kohen, *She’elot u-teshuvot Sha’ar Efrayim*, no. 113, quoted in Siev, p. 291, and in Tchernowitz, p. 157 (both above n. 1). In a reponsum written between his arrival in Buda in 1666 and his death in 1678, R. Ephraim wrote that he had found these *taqanot* in the *pinqas* of the community. He added that the community had placed clauses to this effect in the contracts of some of his predecessors. (Contrast the contract of the rabbi of Friedberg, above n. 70.)

91. For example, the acceptance of the *Shulhan* ‘*arukh* by the Prague rabbinate before the end of the seventeenth century is not clear. There were attempts in Prague to promote Jaffe’s *Levushim* (Jaffe was a Prague native), as well as R. Asher ben Yeiel’s *Pisqe ha-Rosh*. In the early seventeenth century, while the *Shulhan* ‘*arukh* was not published in Prague, the *Levushim* was reprinted twice: in 1609 and again in 1622–1624. R. Yom Tov Lipman Heller made efforts to promote R. Asher’s *Digest*, as had Maharal before him; volumes of R. Asher were published in 1619 and 1628. Volumes of the *Shulhan* ‘*arukh* were finally published in Prague in 1688–1695. See Tchernowitz (above n. 1), pp. 185–186 on *Eliyah Rabah* by the Prague rabbi Elijah Spira, which was written about 1690 as commentary to the *Levushim*, but published in the eighteenth century as a commentary on the *Shulhan* ‘*arukh*.

The political scientist Liah Greenfeld, in her analysis of the rise of nationalism in the modern period, emphasizes the role played by imitative pressure, which she calls *ressentiment*. French nationalism was inspired by British nationalism, German nationalism by French, and so on.⁹²

Mutatis mutandis, this notion may be applied to our story. The wealthier, more eminent, and more populous Sefardic communities pressed against the Ashkenazic Jews of the sixteenth century in many realms, such as theology and educational practice.⁹³ Isserles felt the pressure especially keenly in the realm of law. In opposition to Maimonides, on whom the Sefardic rabbinate relied, Isserles placed Rashi and the Tosafists “the sages from whose waters we drink.”

Solomon Luria, who rejected the rationalism of Spanish Jewry, found space in the introduction to his great work of jurisprudence to include a diatribe against Maimonides, and also against, of all people, the Spanish Bible commentator Abraham ibn Ezra. Isserles’ character was to avoid polemics, but the double form that he created for the *Shulḥan 'Arukh*, with its contrasting sections of Karo’s rulings and his own comments, also placed Ashkenazic Judaism in implicit opposition to Spanish or Oriental Judaism.⁹⁴

Before 1492, Sefarad (Spain) and Ashkenaz (Germany) were simply two of the many lands in which Jews lived, each with its own traditions and customs. After 1492, Sefardic identity was released from the bounds of geography and was based instead on communal association, lineage, and language; similarly, the definition of “Ashkenaz” was extended in these ways.⁹⁵

Another political scientist, Benedict Anderson, examining the same question of the rise of nationalism, emphasizes two other factors: first, printing and the rise of standardized national languages, and second, the creation of centralized bureaucracies.⁹⁶

Here again, there are parallels to our case. The invention of printing created an opportunity for the codification of Jewish law and the centralization of rabbinic authority, an opportunity that was taken by Karo and then by Isserles. The spread of each work depended partly on the established markets for Hebrew books from Venice and Cracow, respectively. The code of Isserles (i.e., the *Shulḥan 'Arukh* with

92. Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge, MA, 1992).

93. See Elbaum, *Petiḥut ve-histagrut* (above n. 46), passim.

94. Luria’s identification of Spanish Jewry with philosophical rationalism prefigured (albeit with a negative slant) the “Sefardic Mystique” of the *Haskalah*, on which, see Schorsch (above n. 2). Cf. the remarks of the Messianic visionary Asher Lemlein in the wake of the expulsion of the Spanish Jews in 1492 (“*Ḥezyonotav shel R. Asher be-R. Meir ha-mekhuneh Lemlein Reutlingen*,” ed. Ephraim Kupfer, *Qoveṣ 'al yad* 18 [1976], p. 406). Isserles, to the contrary, was a follower of Maimonidean rationalism: see Jonah Ben Sasson (above n. 37). Isserles restricted Ashkenazic difference to law and practice; he did not believe in the existence of an “Ashkenazic theology” nor a “Sefardic theology” that would be distinctive in any way. Isserles’ tendency to avoid polemics is remarked on by Twersky, “The *Shulḥan 'Arukh*” (above n. 1), p. 150, n. 29.

95. On Sefardic identity, see Bodian (above n. 2).

96. Benedict R. O’G. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, rev. ed. (London, 1991). Note also Rogers Brubaker, “Myths and Misconceptions in the Study of Nationalism,” in John Hall, ed., *The State of the Nation: Ernest Gellner and the Study of Nationalism* (Cambridge, 1998), pp. 272–309.

Isserles' commentary) spread among speakers of Yiddish not only because it was directed at them, but because they constituted a distinct market for Jewish books, served by Isserles' printer.⁹⁷ In an era in which the standardization of national language, the consciousness of them, and the dignity accorded to them had all begun to increase, the speakers of *leshon Ashkenaz*, the Ashkenazim—Yiddish- or German-speaking Jews—began to regard themselves as one group.⁹⁸

We must not neglect, however, the role of the rabbinate. Ashkenazic Jews in the early modern period did not develop a centralized court system (*Polish* Jews did), but they did have a shared rabbinic elite. The success of Isserles' code, historians have noted, was tied to the success of the Polish yeshivot, and to the acceptance of rabbis trained in Poland by the German Jewish communities.⁹⁹ We have already seen the efforts of four of Isserles' students to promote the authority of their teacher both within Poland and outside it. Rabbinic graduates of the Polish yeshivot, students of Isserles' students, and the students they in turn taught, gave authority to Isserles' work. In so doing, they gave legal substance to the notion of Ashkenazic Jews as a group.

The pressure of Sefardic Judaism, the common market for Yiddish books, and a shared rabbinic elite all helped make Ashkenazic Jews into a unified and distinctive group. Seeking to explain and to justify that unity, Isserles invoked the notions of shared lineage ("we are their children's children") and geographical coherence ("these lands"). His printer, his editor, and most importantly his students then expanded Isserles' view of "these lands" from the Polish lands to include all of Central and Eastern Europe; they added by way of explanation that the Jews of this entire area were united by language. Finally, in the seventeenth century various authorities added to these two legal bases of Ashkenazic unity (ancestral tradition and local custom) a third one: namely, that for all these Jews, the authority of Isserles had been established by communal act.

Joseph Davis
Gratz College
Philadelphia, PA

97. On the international scope of the market for Yiddish books in the sixteenth and seventeenth centuries, see Shmeruk, *Sifrut Yidish* (above n. 53), pp. 72–89. Note p. 80 on Isserles' printer, Isaac of Prossnitz. Cf. Elbaum, *Petiḥut ve-histagrut* (above n. 46), p. 14, n. 9.

98. On linguistic nationalism in the sixteenth century, see M. T. Jones-Davies, ed., *Langues et Nations au Temps de la Renaissance* (Paris, 1991); Fredi Chiapelli, ed., *The Fairest Flower: The Emergence of Linguistic National Consciousness in Renaissance Europe: International Conference* (Florence, 1985); Roy Porter and Mikuláš Teich, *The Renaissance in National Context* (Cambridge, 1992), pp. 78, 130, 158, 174, etc. Cf. above n. 3.

99. Elon, *Ha-Mishpat ha-'Ivri*, 2nd ed. (above n. 1), vol. 2, p. 1183. Cf. Heinrich Graetz, *Divrei yemei Yisra'el*, Saul Pinas Rabinowitz trans. and ed., vol. 8 (Warsaw, 1902), p. 156 and Rabinowitz's note, p. 157. On the movement of rabbis and other Jewish religious personnel in the seventeenth and eighteenth centuries between Poland and the rest of the Ashkenazic world, see Moshe Rosman, "Demuyav shel beit Yisra'el be-Folin ke-merkaz Torah aḥarei gezerot taḥ ve-tat," *Zion* 51 (1986), pp. 442–448. On the sixteenth century, note Zimmer, *R. Hayim ben Beṣalel* (above n. 56), p. 41; Elbaum, *Petiḥut ve-histagrut* (above n. 46), pp. 13–14 and n. 8.