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The Political Theology of Maharam of Rothenburg

Abstract: *This article treats the political theory of the preeminent legal authority at the end of the High Middle Ages, Maharam of Rothenburg. Maharam's political philosophy is concerned with one of the central issues challenging every system of jurisprudence: the tension between individual rights and the public good. His effort to resolve this tension begins with his definition of the community as a political entity. On his view, the community is a partnership arising from the proprietary rights of the individual and common economic interest. Yet Maharam goes beyond characterizing the community politically, defining it also as a holy congregation united around a theological vision, where the community's right to exist as a political organization derives from the fact that it is a union created for the purpose of serving God. For Maharam, complete interaction with God is possible only in the public sphere, as only a united community can attain a full conception of God. This important theological principle places the community above the individual, justifying the existence of a God-serving community and even the denial of certain individual rights when this is necessary in order to consolidate the community. The uniqueness of Maharam's theory lies in the balance it strikes between individual rights and the public good, and the placement of these in a theological hierarchy.*

1. Introduction

Rabbi Meir ben Baruch, Maharam of Rothenburg (ca. 1220–1293), was the preeminent legal authority in Ashkenaz at the end of the High Middle Ages. His writings, and those of his disciples, served as the final statement of Ashkenazi tradition on a plethora of issues and set the tone for all subsequent communal and political theory, not only in Germany, where he was active, but also in France and even Spain, until the Emancipation.

This article will explore Maharam's political philosophy. Like other medieval Jewish scholars, Maharam did not write specifically philosophical

works or treatises on political thought—he was an outstanding exponent of halacha and a poet—and his political thought can be found between the lines of the halachic rulings in his many responsa on communal affairs.[1] Although Maharam's political philosophy has a unique and obscure source, it is nevertheless philosophy and will be treated here as such.[2]

Maharam's political philosophy is concerned with one of the central issues challenging every system of jurisprudence: the tension between individual rights and the public good. Maharam's effort to resolve this tension begins with his definition of the community as a political entity; a partnership resulting from the proprietary rights of the individual and common economic interest. And yet Maharam goes beyond the political definition of the community, adding a theological definition of the community as a holy congregation, where here the community's right to exist derives from its status as a union created for the purpose of serving God. This two-pronged definition yields contradictory implications. For example, one consequence of defining the community as a legal partnership is the primacy of individual rights over communal rights, since the community's right to exist derives from the recognition of collective proprietary rights of individuals; the community was formed to help individuals further their economic interests. However, when the community is defined as a holy congregation justified by a higher theological vision, the survival of the community takes precedence over the survival of its individual members, and the community is favored over the individual. R. Meir resolves this by advocating the primacy of individual rights in routine situations and of communal rights during emergencies.

The theological dimension of Maharam's two-pronged definition derives from the definition of the community as *aguda ahat*, a union created for the purpose of serving God. According to this understanding of community, firmly grounded in the thought of *Hasidei Ashkenaz* (German Pietists), complete interaction with God is possible only in the public sphere, as only a united community can attain a full conception of God. This important theological move justifies the existence of a God-serving community and even denies certain individual rights where this serves to consolidate the community.

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[1] There have been numerous attempts to collect the responsa of Maharam. The four most significant collections of responsa will be referred to throughout this article: Cremona, 1557; Prague, 1608; Lvov, 1860; Berlin, 1891. [Hebrew]

[2] Many scholars today treat the topic of philosophy of halacha as jurisprudence. The approach taken in this article is well justified in Abraham Melamed's article "Is There a Jewish Political Thought?" *Hebraic Political Studies* 1:1 (2005).

The uniqueness of Maharam's political theory is not in its foundations; Maharam was not the first to consolidate and strengthen the authority of the community over its individual members. Neither was he the first to define the community as a partnership or to conceive of the community as a *kahal kadosh* (holy community). The uniqueness of his theory lies in the balance he achieved between these two foundations and his placement of them in a theological hierarchy.

From the time of the founding of Ashkenaz communities, sages discussed the issue of authority. In the Middle Ages, the communities' centers of authority were constituted organically, outside the legal system. Sages sought sources for legitimate political authority that would justify their social standing in the Hebrew legal tradition. Some of them relied primarily on the halacha concerning the *beit din*: as early as the beginning of the eleventh century, Rabbeinu Meshulam Miluka (who lived from the late tenth to early eleventh centuries in Luca and Mainz) and Rabbeinu Gershom Meor Hagola (known as Ragmah, 960–1028, Mainz) employed the talmudic source that grants leaders the power of the *beit din* to relinquish ownership of individuals' property according to the principle of *hefker beit din hefker*.[3] This became the traditional source cited in support of communal authority.[4] In contradistinction, some rabbis found in the sources that authority can be legitimately exerted only when necessary for maintaining a society's values and principles and for guaranteeing that its members retain the right to shape their common space as they see fit. The *baraita* in tractate Baba Batra dictates the following: "The residents of the city are allowed to decide upon the conditions that pertain to values, wages, and workers' compensation and to enforce their decisions."[5] This was a source of inspiration for the conception of the community as a collective unit based on individuals united in order to satisfy their mutual interests. In this spirit, a number of sages defined the community as a partnership. Rabbeinu Simha, for example, claimed that

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[3] *Babylonian Talmud*, Yabamot 89b. The halacha of *hefker beit din hefker* can also be found in Gittin 36b, and there it deals with the laws of the Sabbatical year and remission.

[4] See the responsum of R. Joseph Tov Elem cited in Irving A. Agus, "Democracy in the Communities of the Early Middle Ages," *Jewish Quarterly Review* 43 (1952–1953), pp. 173–176.

[5] *Babylonian Talmud*, Baba Batra 8b; Saul Lieberman, *The Tosefta* (New York: Jewish Theological Seminary of America, 1973), Baba Metzia 11:23. See also Menachem Lorberbaum, *Politics and the Limits of Law: Secularizing the Political in Medieval Jewish Thought* (Stanford: Stanford University Press, 2001), pp. 95–96; Michael Walzer, Menachem Lorberbaum, and Noam J. Zohar, eds., *The Jewish Political Tradition*, vol. 1 (New Haven: Yale University Press, 2000), p. 388.

"all who enter a city and are involved in commerce there are partners."[6]
At the same time, the Jewish community was understood by members in
religious terms, as a holy community. That the Ashkenaz communities
had sources to this effect dating back to the eleventh century is attested
to in the writings of R. Yehuda Hakohen and R. Eliezer bar Yehuda.[7]
It is also possible to find the construct *kahal kadosh*, or "holy commu-
nity," in later responsa.[8] This construct was most likely taken from the
way in which men were referred to in the Talmud, such as in tractate
Berachot 9b: "R. Yosef son of Elyakim testified from the holy commu-
nity of Jerusalem…."[9] The phrase "holy community" is mentioned here,
as is the guarding of the principle of mutual responsibility that was also
mentioned in earlier responsa.[10]

Although the talmudic, legal, and moral or religious foundations on
which Maharam relied were common in the juridical tradition of the sages
of Ashkenaz since the turn of the millennium, Maharam's conception is
unique in the distinct status it grants to each layer of authority in the com-
munity. *De jure*, the community is defined as a partnership, and still, its
definition as a holy community or a holy cooperative body defines many
of its activities *de facto*. Partnership is a common legal institution that de-
rives from the property rights of individuals, while the holy community, a
concept deeply rooted in theology, has no place in the conceptual world of
jurisprudence. In Maharam's thought, the interest of the community often
overrides the interests of individuals, and theological values trump indi-
vidual rights. Perhaps this is not surprising: Maharam derives his hierarchy
of political-legal values from a theological standpoint. Maharam insists
that it is impossible to manage all the affairs of the community if the latter
is understood solely in legal terms, as a partnership. Community affairs
cannot be decided upon unanimously, the rights of each individual cannot
always be fully considered, and punishment cannot be privatized. All these
are expressions of a conception of community as a legal partnership, and
their inadequacy serves to explain why Maharam introduces an additional
element that limits the extent of the legal partnership: the theological sta-
tus of the community as *aguda ahat*. The halachic argument that allowed

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6   R. Yitzhak of Vienna, *Sefer Or Zarua*, part 3, Baba Kama. Another version can be
found in *Responsa of Maharam* (Prague, 1608), 932.

7   *Sefer Kol Bo* (Lvov, 1860), 142.

8   Ibid., 147; Shimshon bar Tzadok, Tashbetz Katan, 322.

9   *Babylonian Talmud*, Berachot 9b. See also *Babylonian Talmud*, Rosh Hashana 19b;
Babylonian Talmud, Yoma 69a; *Babylonian Talmud*, Beitza 14, 27a, 27b.

10   See nn. 3 and 5 above.

Maharam to place the community above the individuals that compose it is expressed in the talmudic construct *migdar milta*, where the halachic decisor is permitted to place mitzvot in a hierarchy, and to place the principle that advances the divine (or Godly) matter at the top of that hierarchy.

2. Historical Background

The events that took place in Germany in the second half of the thirteenth century, when R. Meir was active, created very uncomfortable conditions for the German Jewish community in the Middle Ages. Germany was fraught with social divisions due to the papal objection to imperial rule and the objection of German aristocracy to any centralized power that could threaten its authority. In R. Meir's time, during the reign of the Hapsburg king Rudolph I (1273–1291), the power of the emperor saw a modest revival, and he and his son Albert were able to do more to unite the social forces at home against the princes, the wealthy city men, and the heads of the church.[11] In the thirteenth century, the principal occupation of the Jews was moneylending, which placed them between the competing factions: they were an important source of income for the king (the taxes that every community paid jointly were a kind of indirect taxation that made up for the fact that in general the aristocracy was exempt from paying taxes), and they were attacked by the church because they were moneylenders and because of their religion. The fate of the Jews was thus linked to the extent and nature of ecclesiastical criticism of the king. A review of imperial edicts and decrees might well lead one to the conclusion that in spite of their delicate situation, the Jews fared better than other populations in feudal Germany.[12] Their security was usually guaranteed by law and they were protected by *gemeiner Landfrieden* edicts. Such imperial edicts to ensure internal peace protected various sectors: orphans, female children, women, nuns and priests as well as special interest groups and those that served the emperor; tradesmen, hunters, and Jews. But imperial decrees during the reign of Rudolph, aimed at re-establishing and renewing the status of the empire, somewhat ironically exacerbated the plight of the Jews. Although he reinstated decisions concerning their freedom and rearticulated the official denial of the blood libel, at the same time he barred Jews from holding public office. In Rattisbon in 1274 and 1281

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[11] Jacques le Goff, *Le Haut Moyen Age*, trans. Aharon Amir (Tel Aviv: Dvir, 1993), pp. 72–86, 182–184. [Hebrew]

[12] Salo Baron, *A Social and Religious History of the Jews*, 2nd ed., vol. 11 (New York: Columbia University Press, 1967), pp. 110–165.

he went so far as to prohibit Jews from leaving their homes throughout the Easter period, and this was not long after confirming their status as free men. Worst of all was his broad interpretation of the Jews' servitude to the Treasury (*servi camerae nostrae*) that made the Jews the emperor's property such that he could justifiably place strict limitations on where they could live. In 1286 he prohibited the Jews on the Rhine—in Speyer, Worms, Mainz, Oppenheim, and Watro—from leaving their cities, and the property of anyone who left was to become property of the emperor.[13] As Mark Cohen claims, liberties were curbed for the emperor's protection, and in the process many arbitrary taxes were imposed on the Jews. Later, Jews would be expelled from towns and districts in Germany as they had been expelled from England and France.[14] The lives of the Jews grew intolerable. The tax burden became unbearable, and many of them emigrated illegally—some fleeing eastward to Poland, others to Italy. R. Meir himself fled Germany with some of his congregation, only to be captured in Lombardy when he was betrayed by a convert.

3. THE COMMUNITY AS A LEGAL PARTNERSHIP

The conditions under which Jews lived in Germany in the Middle Ages affected R. Meir's understanding of how the Jewish community should be defined. Throughout his responsa, he defines the community as a partnership, especially with regard to the joint payment of municipal taxes. As we have already mentioned, taxes in towns in Germany and northern France were levied on the entire Jewish community and supposedly paid collectively so that members might have the right to live in these places and carry on their business as moneylenders. On occasion, the sovereign would look beyond the collective arrangement and, seeking economic gain, try to make a private arrangement with an individual member of the community. R. Meir was opposed to such agreements, regarding them as against halacha. Where members of a community are considered partners according to common practice, any enforced division of this partnership subverts the right of community members to form partnerships, a right that is derived from the proprietary rights of each and every member of the community:

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13   Ibid., pp. 152–153. On *servi camerae* see David Abulafia, "The Kings and the Jews—The Jews in the Ruler's Service," in Cristoph Cluse, ed., *The Jews of Europe in the Middle Ages (Tenth to Fifteenth Centuries): Proceedings of the International Symposium held at Speyer, 20–25 October 2002* (Turnhout, Belgium: Brepols, 2004), pp. 43–54.

14   Mark Cohen, *Under Crescent and Cross*, trans. Michal Sela (Haifa: University of Haifa Press, 2000), pp. 90–93. [Hebrew]

> It is not within the powers of the ruler to separate one from the oth-
> er, changing the custom of Jews in his town; he must abide by the
> custom of the town when it is so that all Jews are partners in tax.[15]

The legal basis on which this partnership rests is the proprietary right of individuals that derives from recognition by talmudic law of the freedom of the individual and his competency to dispose of his property as he wishes. From this freedom also derives the right to make agreements between himself and his fellows with almost unrestricted freedom, a capability that enables a group of partners to make private laws even if they are not strictly compatible with the law.

Partnership in talmudic law denotes the common ownership by a number of people of a single piece of property, and the partnership represents the accumulative rights of its members. Maharam defined community as a legal partnership whose members had rights and obligations and were entitled to insist on their rights from outside, from the sovereign or from other members of the community. They were also to insist on their collective communal rights from others within the community. Maharam was not the first to issue this ruling, and he in fact bases it on the prevailing tradition in Germany attributed to R. Simha ben R. Shmuel of Speyer (a twelfth-century Tosafist) who ruled that his uncle did not have the right to make a separate agreement with the emperor:

> All who live in a town and are involved in business there are part-
> ners. The king's portion and the ruler's portion are imposed on
> all; even the unemployed must pay tax with the community.[16] And
> since the status of Jews in the town is the status of partners, anyone
> who has managed to exempt himself from paying his portion of the
> tax must share his profits with the other members of the commu-
> nity.… I thought this law was derived from compassion and piety.
> But now I hold that this law is strict justice, and all Jews are held
> accountable for one another and accept the yoke of exile. For that
> they will be worthy of joining together in their consolation and in
> their redemption.[17]

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[15] R. Meir Hacohen of Rothenburg, *Hagahot Maimoniyot*, Kinyan 29; *Responsa of Maharam* (Cremona, 1557), 222; *Responsa of Maharam* (Prague, 1608), 234.

[16] According to R. Shmuel ben Meir (Rashbam) on Baba Batra 55a: "A man who is unemployed or doesn't study or conduct a business and who does no work in this world at all still has obligations to the community (taxes), even though he does not make a living in the town."

[17] According to *Babylonian Talmud*, Ta'anit 11a. Citation is from R. Yitzhak of Vienna, *Sefer Or Zarua*, part 3, Baba Kama, 460. For other versions, see *Responsa of Maharam* (Prague, 1608), 932; *Mordechai*, Baba Kama, 177; Hacohen, *Hagahot Maimoniyot*, Laws of Partnerships 1.

R. Simha assumes that members of the community are partners. According to halacha, the fact that residence in the same town obligates the payment of a collectively paid tax establishes a tacit contract which embraces all the community's taxpayers, even the unemployed. The king's wish to make a private arrangement with R. Simha's uncle assumes that each member of the community has a social status as an individual. According to R. Simha, this premise contravenes Jewish law and the joint communal arrangement and is therefore null and void. It should be noted that the rabbi's ruling appears to set a precedent, and his words are quoted in the Ashkenazi tradition of later generations when defining a community that bears the burden of the communal tax.[18]

Building on the ruling of R. Simha, R. Meir established some far-reaching new laws. In contrast to the talmudic partnership, he ruled that members of the community may band together in an association, without the need for a property deed (*ma'aseh kinyan*), in order to reach joint decisions or to be represented in dealings with a third party. Whereas the partnership agreement commonly found in talmudic law derives from the joint ownership of a single property, Maharam considered the partnership agreement to be a more abstract type of contract based on the agreement between the parties that focused on joint management. This development in the concept of a partnership began before R. Meir's time but was fully elaborated only in his law. He perceived Jews' adoption of urban life in thirteenth-century Germany as something of a calculated risk, and all who benefited from it had to be prepared to accept the consequences. If an individual took up residence in a town, he had entered into an implicit contractual act between himself and the community and taken on an ad hoc commitment to share in the payment of communal taxes:

> It is a simple matter that they do not participate except insofar as they are in thrall to the king and residing under him, but if they leave his jurisdiction, in this respect they do not participate.[19]

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18   See the responsa of R. Yitzhak of Vienna, Ba'al Haor Zarua, in Irving A. Agus, ed., *Responsa of the Tosafists* (New York: Talpiot Yeshiva University, 1954), 47 [Hebrew]; *Mordechai*, Baba Kama, 176. See also Israel Isserlich, *Sefer Trumat Hadeshen* (Warsaw, 1886), Bnei Brak, 1971, part 1, responsum 343: "It seems that the townspeople and the community sharing in the paying of taxes are defined as partners by the law… as proven by the quote of Rabbeinu Simha."

19   *Responsa of Maharam* (Prague, 1608); Agus, *Responsa of the Tosafists*, 104. Likewise, see the writings of Maharam Or Zarua concerning the stipulation that applied to the ruler because of the tax levied on the individual in the community. As a student of Maharam, he too understood the partnership as resting on this: "Whatever our Rabbi Simha of blessed memory spoke of, his responses were couched in terms of

The communal partnership derives from an economic concern: the need to pay taxes. When this joint concern no longer applies, neither does the partnership. Other unforeseen taxes levied on only a segment of the community are not included in the partnership agreement, and therefore, if an individual makes an arrangement that exempts him from such taxes, the arrangement holds.[20] In other words, Maharam understood the community as a specific commitment based on a convergence of the wishes of the community's members, as a real partnership in a concrete joint concern.

Such a contract, in his opinion, is binding on the community and also on the ruler. Therefore, he ruled that the action of King Rudolph I in collecting the debts of one member of the community by seizing the property of the entire community was not legitimate and beyond the king's authority. The king is authorized to collect from the community only those debts that are associated with the payment of tax, not private debts. Members of the community are similarly forbidden to involve themselves in this illegitimate act of collection:

> [Y]ou asked if the king collected money from the community because Reuben did not [make his payment] in time, and [the king] took property from them [the other members of the community]. When Reuben said that they never signed to be guarantors for him [so they should never have paid for him, Reuben does] not have to pay [them back], first because there is no law that one Jew will stand guarantor for his fellow… the law that a Jew may be assessed for obligations accruing to his fellow Jew applies only to the taxes of that particular year. But to be assessed for anything else is not the law of the king but rather theft by the king and is illegal.[21]

R. Meir's decision derives from his understanding of talmudic halacha regarding the binding nature of the law of the land (*dina demalchuta dina*). Any deviation by the ruler from the authority vested in him by the halachic instruction regarding the law of the land was unacceptable to him.[22]

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partnership. Unless the king, in asking for a tax, [says] give me this way or that, then already everyone is obliged to give his pound this way or that. And if the king wants to later make a change and reduce for one and increase for another, this is not a binding law of the land (*dina demalchuta dina*)." *Responsa of Maharam Or Zarua*, 80. The partnership is conditional only on the interest each member of the community has in paying the tax.

20 *Mordechai*, Baba Kama, 187.

21 *Responsa of Maharam* (Prague, 1608), 943.

22 See Walzer, Lorberbaum, and Zohar, *Jewish Political Tradition*, p. 442.

The concept of joint property was not the only thing to undergo change during Maharam's time; the notion of property itself did too. In order to apply the institution of partnership in the community, Maharam needed to refine the legal tools that made it possible for the community to make decisions. The concept of a contract in talmudic law is a consensual one. There has to be a convergence of wishes—*smichut da'at*. To prevent the contract from sliding down the slippery slope of excess abstraction or overreliance on thoughts and feelings, talmudic law generally demands a considerable amount of tangibility in a contractual process, and requires an actual physical act and physical property. There are limits to this, and sometimes the parties' intentions are themselves vague, as in a deal concerning "something which will never exist." A future situation that cannot be predicted to the degree required destroys the possibility of the sides' coming to an agreement and reaching a convergence of wishes.[23]

The requirement set out in talmudic law that a contractual act be tangible has the implication that a verbal agreement is not normally considered a contract. This is at variance with Maharam's position in his decisions about public laws. His solution to this problem was to recognize good faith between parties as a property. He believed that mutual faith in the political arena should be regarded as a real property on the basis of which a contract can be signed, thus removing the necessity of performing a material act to mark the contract even when the agreement is executed orally:

> We accept that there may be an oral contract. And even when the conditions are set verbally and not by a proprietary act, a contract that is normally considered to be inferior in reference—a contract that is dependent on a doubtful reality, the law concerning which is that it is invalid—in the present case the contract should certainly be considered legitimate; the trust the parties have in each other, in a case in which both parties profit equally, is what creates the required agreement, and the contract is valid.[24]

The validity accorded to an oral contract is ostensibly incompatible with the law of *asmachta*. This law states that every agreement that depends on a future occurrence, when there is a reasonable probability that it will not occur, is invalid. In every agreement there must be certainty on both sides in order to affirm the seriousness of their intentions. In an

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23   See, for example, *Babylonian Talmud*, Gittin 43b.

24   *Responsa of Maharam* (Prague, 1608), 941. The quotation is the second part of the responsum of R. Joseph Tov Elem (Bonfils) of Troyes. (On this responsum, see Chaim Soloveitchik, *Responsa as a Historical Source* [Jerusalem: Zalman Shazar Center

agreement between members of a community that is based on the payment of collective tax, the agreement with the authorities regarding that tax is so vague regarding future expectations that there may be misgivings about the seriousness of the community's intentions. Despite these misgivings, R. Meir believed that the status of the members of the community at the moment communal decisions are made is binding. The trust community members place in one another is considered a property of such great importance that it has implications for the entire contract, which should be considered to be an agreement about property, an agreement dealing with a clear and certain occurrence, an agreement in which the seriousness of the parties' intentions is not in doubt. Therefore, no physical act of possession (*ma'aseh kinyan*) need take place. That which R. Meir adds to previous rabbinic opinions on this matter is not that he raises the possibility that an emotional benefit such as trust is to be considered sufficient "property" for an agreement to have a real legal status; this possibility appears already in the Talmud. What is new in Maharam's thought on these matters is the understanding of social agreement as something to which value or profit should be attributed, making it a satisfactory equivalent to material property. This indicates the elevated status that the political order held in Maharam's eyes.[25]

This move on the part of Maharam has important legal implications; indeed, it follows that every communal regulation or decision is like a contract between parties, even without the occurrence of a proprietary act (*ma'aseh kinyan*), and therefore agreement between community members is enough to make their decisions valid. The right of the community to exist derives from the proprietary rights of individuals. Therefore, in his opinion, the decision to join or leave the community is determined

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for Jewish History], pp. 54–55. [Hebrew]) This particular segment is not the responsum of R. Joseph Yom Tov Elem but a later addition by Maharam. On this see Soloveichik, *Responsa as a Historical Source*, p. 51; *Mordechai*, Baba Batra, 481; Y.Z. Kahana, ed., *The Responsae of Rabbi Yitzhak ben Moshe Or Zarua and Meir ben Baruch* (Zitomir, 1862), 364. [Hebrew] For another version see *Mordechai*, Baba Kama, 176; *Codex Maimuni*, "Laws of Plunder and Loss," ch. 12, 12:10.

25 Ephraim Kanarfogel claims that Rabbeinu Tam was the first to make this claim and that Maharam merely summarized and clarified Rabbeinu Tam's words. He writes that the statutes of the congregation have to be decided upon in the presence of an important person in order to make the decisions valid and equivalent to agreements made via *ma'aseh kinyan*. See Ephraim Kanarfogel, "Unanimity, Majority, and Communal Government in Ashkenaz during the High Middle Ages: A Reassessment," *Proceedings of the American Academy for Jewish Research* 58 (1992), pp. 90–92. I would argue that there is a difference between the two rabbis, as for Rabbeinu Tam, even according to Kanarfogel, the presence of an important person is that which adds the required credential to the opinions, whereas for Maharam, public agreement itself has sufficient credentials.

according to the wishes of the parties, even when the agreement between them would be rendered invalid according to the yardstick of halacha if it were a matter of a private contract. The only demand that he makes of someone wishing to withdraw from the community is that his departure not be detrimental to it and at its expense.[26]

4. THE GOOD OF THE COMMUNITY

As a result of all the processes described, R. Meir came to regard the community as a collective incorporated in a legally binding social pact, anchored in private law, and deriving from the proprietary rights of its members. However, set against the rights of the individual and the joint economic interest of members is the good of the community as a body. On many occasions, Maharam discriminates in favor of the community and considers it to take precedence. This seems to depend less on legal or political arguments and more on a theological outlook that I will describe more fully later. His preference of the community over its members had a number of implications, foremost of which was a restriction on the administration of justice outside the courts according to the talmudic rule of self-help (*oseh adam din le'atzmo*). Maharam's understanding of the centrality of the community and the importance of its being firmly established led to the idea that justice must be administered from within a communal framework to prevent individuals from taking the law into their own hands. Self-help is permissible, in his opinion, only in cases where injustice has clearly been committed against an individual and there is no doubt that the individual is right. In such a case, when it is certain that the court will rule in favor of a particular individual, the talmudic rule of self-help applies. In all other cases, individuals may not exercise legal discretion, and the law is subject to interpretation only within the confines of the courts. Maharam explained his position by maintaining that the administration of justice outside the courts may lead to a complete disruption of the social order:

> It is acceptable to us as [for] R. Nahman that a man may take the law into his own hands.[27] R. Meir [of Rothenburg] gave his ruling that this is only in regard to property that clearly belongs to him and was taken from him by force; but in cases where it is not known whether it is his or not, he does not have the right [to take the law

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[26] *Responsa of Maharam* (Prague, 1608), 134. See also *Mordechai*, Baba Kama, 176–177.

[27] *Mordechai*, Baba Kama, 176–177.

into his own hands], even if he says he will suffer a loss as a result.
If not for this qualification you have not allowed life to every crea-
ture [you will destroy the peace of society].[28]

This halacha is exceptional in light of the Talmud's conclusion that a
man is entitled to take the law into his own hands. Despite this, R. Meir
rules that it is only reasonable to limit this halacha to circumstances in
which there is no legal doubt. He rules that in other circumstances the
law is the sole preserve of the courts, at once elevating the status of the
political realm.

Maharam went so far as to lend his support to the custom of com-
munities' giving preference to the claims of the community over those
of individuals in lawsuits. The halacha generally follows the rule "the
onus probandi falls on the claimant" (*hamotzi mehavero alav hara'aya*).[29]
Despite this halachic trend, Maharam ruled that in taxation and other
communal laws, representatives of the community are entitled to collect
debts from individuals, and the burden of proof is on the individual even
when the claim is being made against him. The community was given the
right to first act and only later respond, in court, to claims of injustice
made by individuals. This state of affairs is extremely perilous for the in-
dividual, since he always runs the risk of being sued and of bearing the
burden of proof. Despite this, R. Meir believed that since the community
has fewer types of proof available to it than the individual does, it must be
protected. Moreover, the individual usually takes good care of his affairs
and is likely to diligently demand justice, whereas there is concern that
the community may be negligent in presenting its demands. It is there-
fore appropriate to put the burden of proof on the individual. R. Meir's
responsa open with a description of local custom:

> I have observed this and will say that it is the custom in all the com-
> munities I have passed through: It appears to me that [when] any
> individual [is] in litigation with his community concerning taxes,
> the community first collects the tax. Then, if he has a mind to, it
> goes to court with him, and if it has taken from him unlawfully, the
> judges will order [it] to make restitution. The community wants to
> take possession and wants to be the defendant and not the plaintiff.
> Even in a case where it hasn't taken possession, yet it still wants to
> be treated as if it has taken possession ad hoc. The law is that the

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[28] *Responsa of R. Meir ben Baruch of Rothenburg* in *Mordechai*, Baba Kama, 30. See
also the responsum in *The Book of R. Shimshon bar Tzadok*, 610. [Hebrew]

[29] On this rule, see *Babylonian Talmud*, Baba Kama 46a. See also Shalom Albek,
Evidence in Talmudic Law (Ramat Gan: Bar-Ilan University Press, 1987), p. 58.
[Hebrew]

> burden of proof is on the plaintiff… because the community has the
> upper hand at all times.

Thus he justifies the custom of preferring the community's claims over
those of the individual. This corrective discrimination is at variance with
pure halacha, and still Maharam accepts the common custom and justi-
fies it on grounds of legal reasonableness.

Another halacha found in his responsa that is indicative of his discrim-
inatory attitude in favor of the community is his acceptance of majority
decision-making, even though he felt that in principle decisions must
be made by unanimous agreement. Since a community cannot run its
affairs in the absence of decisions, and since unanimous decisions can-
not always be reached, he subscribes to the majority method when the
quest for unanimity fails. His ruling below, a response to a community
that could not reach a unanimous decision about the appointment of
leadership, is an example of a situation in which he recommended that
the majority decide:

> With regard to your question of when there is a quarrel in your
> community and they [the community] cannot reach a unanimous
> agreement about electing their leaders, one says one thing and an-
> other says something else, and because of the dispute the prayers
> in the synagogue are disturbed, and there is a lack of truth, law,
> and peace in the town as well as anywhere in the kingdom that has
> been dragged along with them, what should they do? It seems to
> me that all the householders who pay tax should be sat down and
> should make an oath that each of them should express his opinion
> in God's name and for the peace of the town, and the majority will
> decide about electing their leaders and cantors, about establishing
> a charity, about appointing managers to build and demolish in their
> synagogues, to add and take away, to build a wedding hall, to buy
> an artisan's building, and to build and demolish according to the
> needs of the community, and it shall be done according to what
> they [the majority] have said.[30]

When public posts are not allocated naturally with the agreement of
all community members, then all the householders should be assembled
and a majority agreement reached. This ruling is particularly important,
as it is not limited to economic concerns and taxation, but pertains to
all decisions that need to be made in a community. Aside from the ap-
pointment of leaders, we also find Maharam ruling on other needs of a

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[30] Front cover of *Responsa of Maharam* (Berlin, 1891), 865. Parallel passages
can be found in R. Meir Hacohen of Rothenburg, *Tshuvot Maimoniyot*; *Codex Maimuni*,
"Prayer," 11b.

community, such as the establishment of welfare institutions, synagogues, function halls, and buildings for craftsmen. All of these are to be created by the majority when unanimity cannot be reached.

These processes are indicative of the superior status of the community as perceived by R. Meir, a status that it could be accorded only on the strength of the collective interest of community members. However, if this were only a collective good, Maharam would not have done all he could to defend individual rights against those of the community. He was inclined to prefer the right of the community only in times of emergency, in line with the sanction of tenth-century halachic tradition. It was R. Gershom Meor Hagola who recognized the community as the basic organizational unit of Jewish life[31] and accorded the community, as a body, the broad authority of a court to deviate from Torah law in matters of communal legislation:

> Since the community that was there had ruled that whoever came into possession should keep nothing of what had been lost and that he should return it to its owners, this Shimon must return it to Reuben, even though he acquired it according to the Torah, because the court has the right to confiscate property and transfer it to others (*hefker beit din hefker*). And if you say that… like Shamai and Hillel.[32] But this cannot be said in our times because… he is a knight amongst knights,[33] go according to what the communities decided in their judgments and how they acted, and Shimon has no right to contravene their judgments.[34]

[31]   Yitzhak Baer, "The Origins of Medieval Jewish Community Organization," *Tzion* 15 (1950), pp. 55–56. [Hebrew]

[32]   According to *Babylonian Talmud*, Gittin 36b: "Authority to collect a debt (*prosbol*) can be issued only by the highest court in Babylon—in Sura and in Naharda'a… maybe Hillel amended the *prosbol* for his generation only for a court similar to his court and like the courts of R. Ami and R. Asi, which had the proxy to confiscate assets, but the other courts, whose power is not as strong, are not permitted to issue these authorizations."

[33]   *Babylonian Talmud*, Rosh Hashana 25a–b; *Tosefta*, Rosh Hashana, ch. 1, article 18.

[34]   *Responsa of the French and Lotharingian Sages*, 97. Soloveitchik compares the different versions of the responsum of R. Gershom Meor Hagola that established the authority of the community over that of the courts and shows how it was shortened over time, for it was extremely well known, and it was enough to cite it in part in order to come to a full understanding. Soloveitchik, *Responsa as a Historical Source*, p. 51. Menachem Elon, *Jewish Law* (Jerusalem: Magnes Press, 1988), p. 565 [Hebrew], notes that the legal authority of the community was based on the principle of *hefker beit din hefker* in this responsum, as in Samuel Morel, "The Constitutional Limits of Communal Government in Rabbinic Law," *Jewish Social Studies* 33 (1971), p. 89.

R. Gershom was referring to a situation in which a person is in pos-
session of property salvaged from the wreck of a sunken ship. In normal
circumstances, the law would rule in favor of the salvager (the intention
of the words "according to the Torah"), since the halacha requires that
lost property be returned only when its owners have not despaired of re-
trieving it, and lost property swept away in water is mentioned as a clear
example of a right of possession that has been despaired of by the own-
ers.[35] However, R. Gershom ruled that if required by a local community
statute, the property should be restored to its previous owners. He en-
forces the legitimacy of communal legislation that contradicts halacha by
comparing the community's authority and that of the court, and ruling
like R. Meshulam that the legal process was executed according to the
standards of the halachic status accorded to the court (*hefker beit din*). To
invest the community with the authority of a court suggests something
beyond a purely economic principle.

5. THE COMMUNITY AS A HOLY CONGREGATION

The preeminent status of the proprietary rights of individuals and the
conceptualization of the community with regard to the collective rights
of its members as partners, was not R. Meir's sole orientation in defining
the community. He did not even rely on the talmudic precept of *hefker
beit din hefker*—a precept that had been used in the past to ground not
only the authority of the courts but even the authority of communal
leadership[36]—when he decided to give preference to the community over
its members. For this, Maharam added the talmudic construct *migdar
milta vetakanata*, the filling of moral gaps, to the idea of *hefker*, incor-
porating a theological aspect into what had previously been a purely
legal discussion. His rationale for the primacy of the community, then,
is its theological status, and this is what establishes his political phi-
losophy as a political theology.[37] The community, for Maharam, was the
maximal theological domain in which members could conceive God,
and in this respect I believe that he was following in the footsteps of
German Pietists, who were of the opinion that the community was a
holy congregation with a crucial role in the religious entity. According

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[35] *Babylonian Talmud*, Baba Metzia 22b.

[36] On this see Menachem Elon, "Authority and Power in the Jewish Community,"
Shnaton Hamishpat Ha'ivri 3–4 (1976–1977), p. 16. [Hebrew]

[37] With its medieval meaning of a theology that justifies legal processes, not one
that marks out a historical political process.

to this view, the community is the immanent actuality through which the transcendental God can be reached. The individual cannot fully conceive God, and only a unified collective conception will suffice to achieve a complete encounter with him. God is overpersonalized when conceived of by an individual, and a full meeting with God can occur only in the community. The anthropomorphic descriptions of God in the *Tanach* (the Hebrew Bible) are subjective, understood in the heart (*beuvnata deliba*). Multiple conceptions of God brought into a collective, as occurs in the public sphere, bring the conception of God closer to full understanding. The theological role relates to the community as a whole and not to the best individuals within it; every individual is a wheel on the divine chariot.

The principle on which R. Meir relies to sway the balance in favor of the community is a metahalachic one that creates principles allowing halachot to be overridden in various situations. As such, the Talmud declares that "to do God's will you may violate a Torah commandment" (*et la'asot ladonai heferu Toratecha*),[38] according to which it is permissible to break a Torah commandment in order to abide by a theological principle. The principle is occasionally at variance with the law, and when this happens, the principle takes precedence. Several cases in the Talmud demonstrate this attitude that a principle overrides a legal rule. These cases are justified in the Talmud by a "need of the moment" (*tzorech hasha'a*) or "fencing the law" (*migdar milta*), both principles that close ideological loopholes. The Talmud states this in the context of extending the authority of the sages not to act in accordance with Torah law and even to act contrary to it, when there is a "need of the moment" to defend religious principles:

> R. Elazar ben Yaakov said: I have heard that the court is meting out punishment that is not from the Torah [and] does not adhere to the biblical laws, but qualifies the Bible. There is a case of a man who rode a horse on Shabbat during the days of the Greeks, and he was brought to court and was executed by stoning, not because he deserved it, but because the times required it; and there was another case of a man who had intercourse with his wife under a fig tree, and he was brought to court and flogged, not because he deserved it—but because the times required it! But the reason for these cases is fencing the law.[39]

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[38] *Mishna*, Berachot 9:5, according to Psalms 119:126.

[39] *Babylonian Talmud*, Yabamoth 90b, and see also Rashi ad loc., s.v. "*migdar milta*," and Tosafot, s.v. "*veligamer mina*."

The two cases described in this passage advocate following the spirit of *migdar milta*, or "fencing the law" such that a religious commandment that embodies an important theological principle will be preferred over a commandment with a lower theological status. The Talmud itself does not explain that *migdar milta* is the basis for the hierarchy, but it follows from the theological convictions of the Sages. The theological influence, which is for the most part unexpressed and derives more from the oral than the written law, determines which principle should have precedence and when. R. Meir, who made considerable use of "fencing the law," was therefore relying on talmudic halacha, but his responsum is innovative in applying this principle to the political arena. As we shall see, his innovation is based on a theological conviction though not always on biblical passages or textual proof. He went so far as to declare that he had no intention of consolidating his position with evidence from the Talmud, and that he relies on his reasonable consideration of the material.

As suggested, Maharam applied the term "fencing the law" beyond religious commandments. Unlike the examples given in the Talmud in which Torah law was broken out of a need to maintain a more important halachic or religious principle, his justification was the need to defend the public interest and the necessity to safeguard the good and welfare of the community against private interests that run contrary to it. Numerous instances of such applications of "fencing the law" are to be found in his thought. The following responsum deals with the case of a man who, following an incident in which a friend bit his finger, complained to the foreign authorities, who fined the person who had bitten him. Appealing to external authorities instead of to the Jewish courts is considered by the halacha to be an act of "informing," with all its negative connotations, but in "a moment of rage" it is held to be justified. When a person in a state of uncontrollable rage has committed a violent act, it is permissible to involve the external authority. R. Meir felt that this justified the reporting of violence to the authorities on the basis of the halacha of *hefker beit din hefker* and in general with the justification of "fencing the law":

> If it is the community's rule to exempt completely in time of anger in order to fine the assailants and deter them from doing it again, I have no objection, since the law is that the court has the power of relinquishing ownership [which is justified in cases of fencing the law].[40]

At this time in which the authority of the Jewish courts was restricted due to the abolition of the institution of *smicha* (rabbinic certification),

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40 *Responsa of Maharam* (Prague, 1608), 994.

the sages were deprived of the right to apply criminal law to torts. Despite this, they did mete out punishment in instances of violence. R. Meir justified this custom on the basis of *migdar milta* because he saw instances of violence in the community as real threats to its safety. In one instance, he concurred with the punishment of a man whose actions constituted a political threat to the Jewish community, though there was no halachic basis for such a punishment. This man insisted on his right to collect a debt and the agreed-upon interest owed him by the king, and subsequently the king collected through his representative, a priest, the money of the Jewish lender and demanded that the community actually do the collecting. This same man later claimed his money back from the community. R. Meir considered that the community had acted consistently and within its realm of authority:

> All the more so in fencing the law (*migdar milta*) is the court authorized. The court has the power to relinquish his ownership, to fine and to exact punishment on his body and property, and it was appropriate to fine him heavily because he angered the priest, one of the king's officers, and he did not bring darkness only upon himself. Not only that he should not complain since they did not fine him so harshly but only with reduction of interest, and the community acted properly when [it] misled him.[41]

The sanction imposed by the community is justified here by *aguda ehat* (the idea that the community is a single unit), the meaning of which in this instance is protecting the integrity of the community.

In other instances, Maharam uses the expression *aguda ehat* rather than *migdar milta* in order to make quite clear the primacy of the communal interest. As demonstrated above, he opposed the trend of dissociating from the community and making private agreements with the sovereign. He feared for the survival of the community and ruled for the sake of its welfare and wholeness:

> Concerning Reuben, who came to settle in another town and dissociated himself from the community and came to a compromise with the minister to pay him tax on his own account, he has no power to do this, because all townspeople are partners… and even if Torah law did not decree it, since it is the custom in all the kingdom to be partners, it is not permissible to create divisions, since if they were to divide, each person on his own, this would lead to bad things, with each one relinquishing his burden and putting it on his neighbor, and to great quarrels, to a point that they would

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41 Ibid., 980.

be never-ending, for may we be one people and one unity (*aguda ahat*), and may we survive amongst those who hate us.[42]

R. Meir draws in this instance on the principle of solidarity, on which he considered the welfare of the community to depend. True, he does not employ *migdar milta* here but rather *aguda ehat*, which he uses in a way similar to *migdar milta* but within a far more profound theological context than he expresses in this responsum, and which he reiterates in other responsa. In a letter to his pupil R. Yehuda of Vienna (second half of the thirteenth century), he entreats him to preserve the honor of one of the sages for the sake of the solidarity of the sages, and he expresses himself in the same idiom he used in addressing the community:

> And I will make a small request of your community not to write to him in such a contemptuous way, for what is the need of it? Whores titivate each other and all the more so the disciples of Sages. As God is my witness, I do not do this so much for his honor but also for your honor and for the honor of all religious persons, that we shall not be ridiculed by laymen. And may all students of the Torah be one unity (*aguda ehat*), and may we be able to stand and punish the rebels and criminals.[43]

Not only the general community, but even the disciples of the sages are commanded to maintain solidarity. In a similar case, R. Meir disapproves of a rabbi who expelled his pupil because he slighted his honor. He disapproved of anyone who ostracized others, considering this to lead to rifts within the community. In his words: "Those who ostracize at this time divide the community into sections (*agudot*)."[44] Contributing to unity in the community, on the other hand, comes with reward, as only unity will ensure the survival of the Jewish people. And although in the previous case Maharam expressed concern for the welfare of the community, and here for maintaining respect for the Torah, considering that he uses *aguda ehat* only twice in his writings, this construct is not likely to be accidental. In the stratified unity of which Maharam speaks, these words have a broad theological meaning, and it is difficult to imagine that he himself was not aware of the implications of the phrases he chose. Halacha demands unity among leaders, and it forbids the institution of

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[42] *Responsa of Maharam* (Lvov, 1848), 108.

[43] Agus, *Responsa of the Tosafists*, note 90. See also Efraim Kupfer, ed., *Responsa and Decisions*, note 101, pp. 159–160.

[44] *Responsa of Maharam* (Cremona, 1557), 184; R. Yisrael of Bruna, 387; *Responsa of Or Zarua and Rabbi Meir bar Baruch* (writings), part 1, pp. 65–66, 387; *Responsa of R. Yosef Kolon* (Maharik) (Jerusalem: Oraita, 1988), 167.

competing traditions in a single community. According to the Talmud, in two communities in which each has a *beit din*, or an independent halachic authority, there is nothing to prevent each from having its own tradition:

> "Do not factionalize"—do not make unions and unions.… Said Rava: When we say do not make factions—we mean in any given court in one city—some rule according to Beit Shamai and others according to Beit Hillel. But two courts in one city—there is no prohibition in that.[45]

This halacha is learned from the biblical passage "You are the children of the Lord your God; you shall not gash (*titgodedu*) or make any bald-ness between your eyes for the dead."[46] The Sages concluded, from the fact that the Hebrew word for "gash," *titgodedu*, and the word for "un-ion," *hitagdut* come from the same three-letter root *alef, gimmel, dalet*, that there is a prohibition to unite in factions that create division within the community. This halacha was repeated in the responsa of a number of sages in the Middle Ages. Rabbeinu Tam, for example, instructed the members of the community not to transgress custom, and not to eat be-tween *minha* (the afternoon prayer) and *ma'ariv* (the evening prayer) on the Sabbath eve, so that there would not be division within the commu-nity on this matter. Rabbeinu Tam instituted the construct *agudot agudot* (unions and unions, or factions and factions), hinting at the gemara in Yabamot and asking the members of the community to work to maintain unity "and please, do not make our kingdom factions and factions."[47] Not only is division within the community forbidden, it is dangerous; as early as the Talmud, we find mention of the collective punishment that the people of Israel can expect if they do not abide by the divine order: "As it is written [Leviticus 26:37]: 'and they failed each his brother'—one man in his brother's sin; this teaches that all are guarantors for all."[48] Indeed, the principle of unity is halachic as well as theological, so it is possible to speak of a theology of unity.

In Maharam's thought, *aguda ehat* resonates with the terms *kahala kadisha* (holy congregation) and *kneset Yisrael* (community of Israel),

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[45] *Babylonian Talmud*, Yabamot 14a. Cf. Rambam, *Mishneh Torah*, Laws of Idolatry 12:14.

[46] Deuteronomy 14:1. The translation is from *The Jerusalem Bible* (Jerusalem: Koren, 1969).

[47] Rabbeinu Ya'akov Tam, *Sefer Hayashar*. I am indebted to Simha Goldin for refer-ring me to this source.

[48] *Babylonian Talmud*, Sanhedrin 27b.

and there is a common thread connecting them: these terms all conceive of the people of Israel as one cohesive unit, and as an entity with solemn theological attributes. The term *kneset Yisrael* is often mentioned in the context of the political theory of Jewish communities to represent a community united around a mystical idea. This we find in the studies of Yitzhak Baer, and later Yaakov Blidstein,[49] and to a certain extent, even in the writings of Francisco Suárez.[50]

Underlying the view of the community as a holy congregation is the midrash dealing with the laws of elevating the *lulav* and the rest of the four species on Sukkot, the Festival of Tabernacles. According to this midrash, the commandments of the four species are to be interpreted as an allegory of solidarity akin to national unity: "And a man does not fulfill his duty with respect to them [the four species] until all of them are a single unity (*aguda ehat*); and Israel is wanting until it is all in one community, as it is said: 'It is he who builds his upper chambers in the heaven and has founded his vault (or union—*agudato*) upon the earth.'"[51] The community of God relies on the unity and solidarity of men on earth. This view is made even clearer in the following midrash:

> "And there became a king in Jeshurun" [Deuteronomy 33:5]. When Israel is equal and in consent below, his great name is glorified above, as it is said, "And there became a king in Jeshurun." When does this happen? "When the leaders of the people assemble." And an assembly is only of the leaders, as it is said, "the Lord said to Moses, 'take all the ringleaders'" [Numbers 25:4]. Another teaching—when a leader appoints elders to a yeshiva below, his great name is glorified above, as it is said, "And there became a king in Jeshurun." When does this happen? "When the leaders of the people assemble." And an assembly is only of the elders, as it says, "Assemble for me seventy of Israel's elders" [Numbers 11:16]. "The tribes of Israel together" [Deuteronomy 33:5] When they are all made into one unity, and not when they are separate units. And so it says, "who built his chambers in heaven and has founded his unity on the earth" [Amos 9:6]. R. Shimon ben Yohai says: A parable—one who brought two ships and tied them together and placed

49   Baer, "The Origins of Medieval Jewish Community Organization," pp. 11–12; Gerald J. Blidstein, "The Individual and the Many in the Communal Law of the Middle Ages," in *Kinship and Consent: The Jewish Political Tradition and the Its Contemporary Uses*, ed. Daniel S. Elazar (Jerusalem: Rubin Mass, 1991), pp. 258–259. [Hebrew]

50   Francisco Suárez, *De Legibus, ac Deo Legislatore*, in James Brown Scot, ed., *The Classics of International Law*, trans. G.L. Williams (Oxford: Clarendon Press, 1944), 1.6.18–20.

51   *Babylonian Talmud*, Menahot 27a, citing Amos 9:6.

them in the middle of the sea and built upon them palaces. As long as the ships are tied to each other, the palaces stand, but once they separate, the palaces cannot stand. So is it with Israel: when they follow the will of God, he builds his chambers in the heavens. But when Israel does not follow his will, then it is as though he founds his unity on earth. And so he says, "this is my God, and I will glorify him" [Exodus 15:2]. When I give thanks to him, he is glorified, and when I don't give thanks, it is as though only his name glorifies him. A similar teaching—"For the name of the Lord I proclaim, give glory to our God"[Deuteronomy 32:3]. Only when I proclaim his name he is glorified, and if I don't, it is as though he isn't. Another similar teaching—"so you are my witnesses, declared the Lord, and I am God" [Isaiah 43:12]. When you are my witnesses, I am God, and when you are not my witnesses, it is as though I am not. Another similar teaching—"to you enthroned in heaven I turned my eyes" [Psalms 123:1]. If not for me then, so to speak, you wouldn't be enthroned in heaven. And so here you say, "The tribes of Israel together," when they are made into one unity and not separate units.[52]

The name of God and his divine status, then, are established by means of the union below. The unity of God is achieved through unity on earth, through the unity of man: "it is as if his throne will be established above when Israel becomes one unity (*aguda ahat*)."[53] The intention here is unity in the theological sense, since cohesion in the political realm creates divine cohesion, or at the very least, God's unity is substantiated by social unity. Social and national harmony is therefore of paramount theological significance.[54]

The obligation to maintain a *minyan* (a minimum of ten men required for prayer), which is a religious obligation, is conceived by Maharam as a "great need" that is on a par with material needs, such as a bakery or an inn in the city. For this Maharam leaned on a parallel with similar religious responsibilities that are laid out in the *Tosefta*, such as the obligation to establish synagogues and to purchase a Torah scroll for the community. These are considered communal rights that take precedence over individual rights. Maharam was not himself the one who instituted the amendment that made it possible to coerce community members to

52 *Sifre Deuteronomy*, par. 346.

53 *Midrash Tanhuma* (Buber, 1885), Behaalotcha, 21. See also Numbers Rabba, ch. 15; *Sifre Deuteronomy*, par. 646.

54 Moshe Weinfeld, *The Ten Commandments and the Reading of the Shema: Incarnations of Declarations of Faith* (Tel Aviv: Hakibbutz Hameuchad, 2001), pp. 126–129.

join the *minyan*, and he refers to this as a custom of the times in which he lived, although he is the only thinker we know of in the Middle Ages who considered this custom to be binding. Maharam's position on this matter corresponds to his position that the prayer of many is preferred over the prayer of the individual in all cases, even when it causes the transgression of the Torah. He goes so far as to state that "the prayer of an individual does not resemble the prayer of ten men."[55] It is in the prayer of the multitude that the ultimate meeting between man and God takes place, and this meeting is considered to be a great need, as great as any material need the community might have. The prayer of the multitude is also the agency through which theological theories are transferred to the political realm: the liturgical text in the prayer service in the synagogue is a vehicle for the transmission of theological messages, and synagogues take on political meaning.

R. Meir was not the first to meditate on the theology of unity. He learned it from the German Pietists. The main concern of Pietist Rabbis such as R. Elazar of Worms (1160–1230) and his pupil R. Yitzhak Or Zarua (1180–1250) was with the individual and the relationship between individual man and his creator. They did not specifically deal with political theory. Unlike their rabbi, R. Yehuda Hahasid (1140–1217), they made no attempt to establish a Hasidic sect dissociated from wider society, and they seem not to have been at all concerned with relations between man and society, but dealt only with the individual and his relationship with God. This is not to say that political theory did not occasionally surface in their philosophy, and we find this most clearly in the tension between the accumulative subjective perceptions of God, achieved by aggregating the perceptions of the individuals in the community, qua individuals, and the idea of God's unity. The principle of unity has repercussions for social life as it has for relations with God. The society that prays must act differently from the individual who prays—there is a need for unity. The disciples of sages must act in a harmonious group, and society as a whole must act in unison in making political decisions. The meaning of the verse "He has founded his community upon the earth"[56] is that God's unity is achieved through the work of unity on earth. In other words, political endeavor is the embodiment of mystic unity.

R. Meir, who attended seminaries endowed with the spirit of the German Pietists, was doubtless familiar with the works of R. Elazar of

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55   Yitzhak Ze'ev Kahana, ed., *Rabbi Meir ben Baruch (Maharam) of Rothenburg, Tshuvot, Psakim Uminhagim*, vol. I 30 (Jerusalem: Mosad Harav Kook, 1957) (according to Ginzburg manuscript 311). [Hebrew] See *Babylonian Talmud*, Berachot 7b–8a.

56   Amos 9:6.

Worms, who preached devotion to God through the unity of God's honor
and man's soul, as is evident from the repeated use in his responsa of "one
unity" (*aguda ehat*), which also appears in his writings with this theo-
logical meaning. R. Elazar was a strong believer in mystical unity with
a metaphysical God. Drawing on the lessons of his teacher, R. Yehuda
Hahasid, he argued that "honoring God" and "the divine presence" were
one and the same. Gershom Scholem described the perception of the
German Pietists as a retrograde step from metaphysics to the theologi-
cal era.[57] In their thought, God is too abstract for man to achieve, since
he is "insubstantial and wondrous and hidden and concealed and invis-
ible." Only by his kindness he "shows honor as he wishes… and when
God shows honor, it is like a consuming fire and is called the divine
presence." The ability to see the divine presence is achieved through the
comprehension of the heart (*uvnata deliba*), that is, only by a subjec-
tive understanding.[58] It is impossible to grasp God, let alone his glory,
through sensory perceptions, as R. Yehuda Hahasid says: "Yet the Creator,
blessed be he, has no form and no beginning or end,"[59] or as Rabbi Elazar
Ba'al HaRokeah says, God "…is something that has no end, and He is
King and fills the entire heavens and earth… we must think about the
Lord our God, the Lord is one."[60] Such ideas are also found in Maharam's
thought. Maharam too believed that God himself cannot be perceived,
only his glory: "a vision through mirrors the image of the glory of God
give an eye to your kings, with me in your secret, to know how to raise

57   Gershom Scholem, *Major Trends in Jewish Mysticism* (New York: Schocken,
1995), p. 117.

58   R. Yehuda ben Shmuel (Rabbi Yehuda Hahasid), *The Book of Gematria of Rabbi
Yehuda Hahasid*, ed. Yaakov Yisrael Stell (Jerusalem, 2005), 79, pp. 77–78 (on *The Book
of Gematria*, see Israel M. Tashma, *Knesset Mehkarim: Studies in Rabbinical Literature of
the Middle Ages*, part 1 [Jerusalem: Mosad Bialik, 2004], pp. 261–269 [Hebrew]); R. Elazar
bar Yehuda, *Book of the Rokeah* (Jerusalem: Otzar Haposkim, 1967), "Hasidic Laws,"
pp. 21–22 [Hebrew]; R. Yitzhak of Vienna, *Sefer Or Zarua*, part 1, "Laws of Reading
the Shema," 7. See also R. Abraham bar Azriel, *Sefer Arugat Habosem*, ed. Ephraim E.
Urbach (Jerusalem: Mekitze Nirdamim, 1939), pp. 197–199: "Everything is according
to man's knowledge… and the truth is that man's knowledge is not able to comprehend
and investigate this"; note 1 in the name of R. Yehuda Elbarcelloni, and in the name of
R. Hananel or R. Hai Gaon.

59   R. Yehuda Hahasid, *Book of Gematria*, 79.

60   R. Elazar bar Yehuda, *The Book of the Wisdom of the Soul (Sefer Hochmat
Hanefesh)* (Safed, 1923), p. 8. [Hebrew] The subjective concept of *uvnata deliba* in the
philosophy of R. Yehuda Hahasid and his disciples is explained by Elliot Wolfson as a
purely notional concept, similar to what is described in Christian theology as docetism,
the meaning of which relates to the materialization of God described in the Bible as
purely notional. God is transcendental, transcendent, and devoid of all form. See Elliot
R. Wolfson, *Through a Speculum That Shines* I (Princeton: Princeton University Press,
1977), pp. 208–234.

those who love the Lord. The vitality of your throne did not see you. Those who received your wonders did not find you…."[61] He also writes: "Open the small altar, I asked of God, and behold, the glory of God stood opposite me with an army of his units."[62] Maharam always writes of God's glory, never of God himself.

Unity was at the core of German Pietist theology and was its most important principle. Indeed the entire Hasidic outlook evolved from this principle, as attested to by a number of *sifrei hayihud* (books of unity) written by the German Pietists.[63] But the theological basis that led to the preeminence of unity was a metaphysical concept of God. The recognition of the limited ability of humans to comprehend the metaphysical is what drove the German Pietists to investigate the possibility of a conception of God that is not concrete and emerges from a plurality of perspectives. R. Elazar, for example, believes that every prophet has a unique perspective, derived from his subjective view of things, and yet God remains one:

> And already the wisest of philosophers would sit and argue about the unity and images of God, and one called from the depths, as "the Lord of Hosts" is written, and sometimes "God, Lord of Hosts." And why should he not be glorified in a single tongue, for his name is God, and how is it possible that he is Lord of Hosts [plural], considering that unity is everything and [God] created considerable images and infused the opinions of his orders in these images, and in the most considerable and respected image of all, and sometimes in the image of men and inside them the wisdom of God, and he brings the wisdom of a prophet in the great image. And the prophet, when he sees the images, believes they are divided bodies, and the glory he considers to be God, and the divisions he considers to be his armies. And in the end he sees those divided, sometimes calling them sons of God, and sometimes cities and temples, and sometimes the army of the heavens. And sometimes they are sent in order to return, and sometimes they are all made one. And he who sees the changing vision, and words come to him, not from the mouth of the image, because the image is not a stronghold as the body of a man is, and doesn't talk of itself as the body of man

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[61] R. Meir (Maharam) of Rothenburg, "Love," in Maharam, *A Collection of Maharam of Rothenburg's Poetry, Printed and in Manuscript*, ed. R. Shmuel Menachem Mendel Schneurson (Jerusalem, 1993), p. 19. [Hebrew]

[62] Maharam, "The Creator to a Second Rest," in Maharam, *Poetry Printed and in Manuscript*, p. 10.

[63] See Joseph Dan, *Studies in German Pietist Literature* (Ramat Gan: Masada, 1975), pp. 72–88. [Hebrew]

does, but rather the words come from the people of God to inform him and the images that he saw, so the highest knowledge can know what it is God wants.[64]

The spirit of this passage from R. Elazar can be found in the *piyu-tim* (liturgical poems) of Maharam. He too defines God as one despite his many images: "and a loud noise… wheal and a charging horse and a chariot, he is one in all his imaginations, from Sinai he came as a flame of fire, in our days a fire of religion like an old man sitting in a yeshiva."[65]

The multiplicity is that which allows full human perception of God, and arriving at such a multiplicity necessarily involves a discussion of society and the social makeup. The unity that R. Elazar preaches is a theology that denies any gap between God and man. The soul of man is formed of the same entity as God himself. But it is pure and completely immaterial. The divine emanation toward glory (or the divine multiplic-ity, as Joseph Dan explained it)[66] is of secondary importance, and its function is to resolve the contradiction between the notion of unity and a number of texts in the Bible and in the literature of the Sages that attest to relations between man and God that are not collective or "unified."[67] The God of the Bible talks to man and prods him—he is conceived as a human image, loving or angry, merciful or vengeful. These all contradict the abstract notion of God, the notion of a totally mystical God, the one God. R. Yehuda Hahasid and his disciples propose a solution by which God, in his benevolence, revealed a human face in the form of *honor* that was intended to be grasped subjectively by man, a solution that leaves God himself, as it leaves man's soul, free of any material being. It also makes it possible to understand the desirable religious act as an act of mystical unification. This solution is not essentially different from the Jewish mystical tradition reflected in *The Book of Creation* (*Sefer Yetzira*) and *The Book of Brilliance* (*Sefer Habahir*), which even reveal a kind of "unity in plurality," as Yehuda Liebes called it in his book. *Sefer Yetzira* "opens with the plurality that prevails in the world and ends with negat-ing it…. All the phenomena of the cosmos represented by the ten spheres

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64 R. Elazar of Worms, *Sodei Razaya* (*The Secret of Secrets*) (Jerusalem: Sodei Razaya Institute, 2004), part b, p. 42. [Hebrew]

65 Maharam, "*Ofan to Shabbat Vayosha*," in Maharam, *Poetry Printed and in Manuscript*, p. 26.

66 Joseph Dan, *German Pietists* (Tel Aviv: Ministry of Defense, 1992), pp. 19–24. [Hebrew]

67 Joseph Dan, "The Law of Honor" (manuscript). [Hebrew]

(and the letters) do not exist but only appear to do so, and in fact there is nothing in the world except unity."[68]

It is easy to conclude, therefore, from the midrashim about unity and one unity (*aguda ehat*) that public worship and the community at large have a theological role in that they offer the only way for the individual to fulfill his religious destiny. The German Pietists and R. Meir came to the conclusion that the individual's survival depends on the continued existence of a community that enables a real human need to be fulfilled; the need to encounter God. Worldly existence has a theological role as the location of the encounter with God. Any undermining of the community's existence threatens the individual. God is characterized as the one God, and the religious experience is one of recognizing that unity, the experience of solidarity. The German Pietists added a theurgy to the solidarity of the group, considering it to be the basis of God's unity. R. Meir drew from this the importance of the community's existence and its internal harmony, and the idea that any divisive act in the community is an act that indirectly impairs God's unity. This view of the theological destiny of the community was so firmly rooted in Maharam's thought and so affected the nature of his worldview as to cause him to reject the rights of the individual in order to ensure the survival of the community. This theological rationale rests on the assumption that this indispensable theological principle takes precedence over the principle that requires the proprietary rights of individuals to be protected.

The agency for transmitting the notion of unity from the theological to the political is, it seems, public prayer. In a responsum by Maharam's teacher R. Yitzhak of Vienna, he draws on the writings of R. Yehuda Hahasid and warns against the danger of controversy in prayer:

> In truth and faith, my teacher and rabbi, Simha, of blessed memory, instructed in practice that a single person may prevent cantillation from being performed by a public representative unless it is out of *one unity* (*aguda ehat*)… and the great Pietist, my teacher and our rabbi, Yehuda Hahasid of blessed memory, told me that a cantor must be liked by the community, because if he is not, then when he reads the Torah portion on admonition, there is a danger to whoever does not like him. And he told me that if a man knows the cantor does not like him, when he reads the Torah portion in admonition, he should be warned not to read, for he will fail if he reads from the Torah. [emphasis added][69]

68   Yehuda Liebes, *Sefer Yetzira* (Jerusalem: Schocken, 2000), pp. 36–37. [Hebrew]

69   R. Yitzhak of Vienna, *Sefer Or Zarua*, part 1, 140, Laws Concerning a Public Representative 114; *Responsa of Maharam* (Lvov, 1860), 109.

Prayer that is not offered as one community is a latent danger, yet in R. Meir's thought, *aguda ehat* appears as a political virtue within the framework of political life. It would seem that the instruction of R. Yehuda Hahasid to the worshipper, repeated in the responsum of R. Yitzhak of Vienna, was expanded in Maharam's thought to instruct in the political realm. For Maharam, the controversy that threatens the community is not restricted to controversy in prayer, as R. Yehuda Hahasid suggested. Communal activity in general demands solidarity and the community's survival is dependent on harmony. R. Meir, for whom the community's safety depended on the protection of the divine presence, considered controversy—the lack of internal harmony in the community—as a threat to the enduring divine presence over the community, and therefore also a real danger to the community's physical security.

6. Summary: Theology as a Basis for Politics

As we have seen, Maharam perceived the community as a legally defined partnership relating to the property rights of individuals, and a theologically defined holy congregation. The idea of the community as partnership derived from a common fate that community members suffered under a regime that demanded communal taxation, and also from a religious project held in common by members that demanded the establishment of synagogues and communal prayer. This partnership defined the rights of the individuals and their obligations toward the community, but it did not, in itself, necessitate the establishment of the community. So long as community was defined as a partnership, each member could detach from the community the moment he was not satisfied with the benefits he was receiving from his membership. This was no longer an issue once the community was defined as a holy congregation whose purpose was national survival and the institution, on earth, of the divine glory (*shechina*). When an individual member of the community wished to exercise what would be a right to give up membership, he was harming the theologically defined community and its chance of ensuring the survival of the Jewish people and providing a haven on earth for the divine presence. With his incorporation of a theological principle into a legal framework, Maharam solved a legal problem.

Legal systems are not merely systems of rules but also systems of principles. Principles, as distinct from rules, are not straightforward and sometimes contradict each other. In order to arrive at adequate legislation, it is necessary to stratify these principles and rank them by employing moral judgment. The reasons for preferring one principle over another, however, are not always evident. Maharam's explanation that the purpose

of the community is to ensure the survival of the Jewish people and that this can be achieved only when the community is *aguda ehat*, a single unity, brings some of the hidden foundations of his legal and political philosophy to light. This unmasking has practical political significance: the disciples of sages benefit from an important tool that allows them to morally rank principles on which their society is grounded when they participate in communal decision-making and other communal forums. The people also become more likely to accept communal rules that harm their individual rights, when they know that these rules have a greater religious significance. For a community in which religious ideology is the unifying ethos, grounding communal laws in religious foundations enables both legitimate enforcement of these laws by community leaders and voluntary abiding by the law on the part of community members.

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