

Into the Market and Back Again: Jews, Trust, and the Medieval Marketplace

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...and the Jews of Cologne are accustomed to going to Mainz to the market [*shuk*] to buy wine and grain and merchandise and likewise the Jews of Mainz go to the fair [*yerid*] in Cologne. And [as] the caravans there are many, it is not necessary to say "in front of me it was written and signed"...¹

In his reply to a question about a gentile delivering divorce papers (*get*) to a distant recipient, Rabbi Eliezer ben Yoel HaLevi (Ravyah, ~1140-1220, Rhineland) referred to the practice of travelling between trading centers along the Rhine River to exchange goods. The knowledge Ravyah exhibited of marketplaces in his vicinity is not surprising, as the medieval marketplace was a crucial component of urban life and economic sustenance.² As Ravyah's response reveals, the Cologne fair was heavily frequented, thereby presumably exposing exchange to public scrutiny. As a result, there was less of a need to officially validate a transaction by actively producing specified witnesses, as the reply indicates, to say in front of whom a contract was written and signed. More precisely, in the marketplace, the basic and accessible economic hub of the city, transactions occurred in the open and during the day, thus creating a place for public or community oversight and circumstantial witnessing that, in turn, accorded transactions legitimacy.³ Certainly, Jews were heavily involved in commerce from the early Middle Ages, even if not necessarily as the quintessential merchants.⁴ Their unique legal status within cities meant that their participation in trade was not necessarily governed by the same laws and rules as that of Christian merchants.⁵ Drawing on the context of Ravyah's statement about the marketplace as a field of validation also for Jews, the following paper asks to what extent the validation function of marketplace exchanges, created by their public nature, shaped Jews' economic activity and economic interactions with their Christian neighbors.

¹ R. Eliezer b. Yoel Halevi, *Teshuvot U-Ve'urei Sugyot*, ed. D. Deblisky (Bnei Brak, 2000) §922

² The marketplace and its role in the medieval economy has been subject to much scholarly interest. To name but a few: Robert S. Lopez, *The Commercial Revolution of the Middle Ages, 950-1350* (Cambridge University Press, 1976); Richard H. Britnell, *The Commercialisation of English Society, 1000-1500* (Manchester University Press, 1996); John Day, *The Medieval Market Economy* (Oxford: B. Blackwell, 1987); Martin Elbl, Ivana Elbl, Lawrin D. Armstrong, and John H. A. Munro, eds., *Money, Markets and Trade in Late Medieval Europe: Essays in Honour of John H.A. Munro* (Boston: Brill, 2007); Gerhard Fouquet and Hans-Jörg Gilomen, *Netzwerke Im Europäischen Handel Des Mittelalters* (Ostfildern, 2010)

³ This function of the marketplace is also expressed in the legal concept of sale in market overt, sale in the open market, which was introduced into the English common law in the late Middle Ages. Since this legal code remained valid until the 1990s in all the Commonwealth, research is still scarce as to its Medieval origins and development. See: Daniel E. Murray, "Sale in Market Overt," *The International and Comparative Law Quarterly* 9, no. 1 (1960)

⁴ The question of the role of Jews in commercial and economic development in Europe, whether as long-distance traders or as moneylenders, has been much discussed. For a detailed account of Jews' mercantile activities see: Michael Toch, *The Economic History of European Jews: Late Antiquity and Early Middle Ages* (Brill, 2012); Michael Toch, "Jews and Commerce: Modern Fancies and Medieval Realities." In *Il ruolo economico delle minoranze in Europa. Secc. XIII-XVIII*, ed. Simonetta Cavaciocchi (*Atti della XXXI Settimana di Studi, Istituto Francesco Datini, Prato*, 2000)

⁵ Alfred Haverkamp, "Jews in the Medieval German Kingdom," *Corpus der Quellen zur Geschichte der Juden im spätmittelalterlichen Reich*, (Arye Maimon Institut für Geschichte der Juden: Universitätsbibliothek Trier, 2015) 5-7, 15-20

Over the past few decades since the publication of Henri Lefebvre's *The Production of Space*, scholarly attention has been increasingly dedicated to the inclusion of space and place as categories of analysis in historical research.⁶ Regarding the marketplace, many of these studies have shifted focus from commercial products and practices to the social implications market routines created.⁷ As a result, a new conception of medieval urban markets has emerged, recognizing them as demarcated spaces within the city, and as places where urban authorities could exert their power by overlooking and regulating trade.⁸ Studies of marketplaces as urban spaces have broadened our understanding of the marketplace, emphasizing the existence of multiple market arenas within a city, each functioning under a different authority and subject to its own set of rules.⁹ These politically contested arenas subsequently acquired multiple meanings beyond their commercial function.¹⁰ Building on recent scholarship on the role of the marketplace as a public space that facilitated exchange between trading partners,¹¹ this paper will examine whether and in what ways the function of validating transactions shaped economic interactions between Jews and Christians living in the German Empire during the 13th and 14th centuries.

To explore these questions, this article will draw from Hebrew as well as Latin and German legal sources. These sources served a variety of purposes in regulating Jewish and Christian economic exchange, reflecting different outlooks on such interactions. Linked together, they provide a detailed picture of the interactions that took place between Jews and Christians. The first part of this article examines marketplaces in the German Empire and their legal organization, which created a space, the public nature of which served as security for exchange. The article will continue by examining how Jewish participation in exchanges within marketplaces was shaped by their legal organization. The second part

⁶ Henri Lefebvre, *The Production of Space* (Blackwell: Oxford, 1991)

⁷ Marc Boone and Martha C. Howell, *The Power of Space in Late Medieval and Early Modern Europe: The Cities of Italy, Northern France and the Low Countries* (Turnhout: Brepols, 2013); Martha C. Howell, *Commerce before Capitalism in Europe, 1300-1600* (Cambridge; New York: Cambridge University Press, 2010); Ursula Kundert, Barbara Schmid and Regula Schmid, eds., *Ausmessen – Darstellen – Inszenieren. Raumkonzepte und die Wedergabe von Räumen in Mittelalter und früherer Neuzeit* (Zürich, 2007); Ferdinand Opll, Christoph Sonnlechner, *Europäische Städte im Mittelalter* (Innsbruck, Wien, 2010)

⁸ Arnade, Howell and Simons. "Fertile Spaces," 543-4

⁹ Chloé Deligne, "Powers over Space, Spaces of Powers. The Constitution of Town Squares in the Cities of the Low Countries (12th - 14th Century)," *The Power of Space in Late Medieval and Early Modern Europe: The Cities of Italy, Northern France and the Low Countries*, Marc Boone and Martha C. Howell, eds., (Turnhout: Brepols, 2013)

¹⁰ Martha C. Howell, "The Gender of Europe's Commercial Economy, 1200-1700." *Gender & History* 20 (3) (2008); Masschaele, "The Public Space of the Marketplace in Medieval England" *Speculum* 77, no. 2 (2002); Shennan Hutton, "Women, Men, and Markets: The Gendering of Market Space in Late Medieval Ghent," *Urban Space in the Middle Ages and the Early Modern Age*, edited by Albrecht Classen (Berlin; New York: Walter de Gruyter, 2009)

¹¹ Peter Arnade, Martha C. Howell, and Walter Simons, "Fertile Spaces: The Productivity of Urban Space in Northern Europe," *Journal of Interdisciplinary History* 32, no. 4 (April 2002) 546; James Masschaele, "The Public Space of the Marketplace in Medieval England," *Speculum* 77, no. 2 (2002); Albrecht Classen, *Urban Space in the Middle Ages and the Early Modern Age* (Berlin; New York: Walter de Gruyter, 2009)

of the article will focus on the Jewish trade privilege and its relation to the dual role of the marketplace as both a physical and norm-setting space in the urban environment. Due to the wide variety of sources and variations in regional economic legislation across the German Empire, the chronological development of the sources will not be stressed. Rather, this article will trace how the concept of public validation and its legislative application to Jewish economic activity adjusted and changed throughout the Empire.

The legislation that has become known as the Jewish trade privilege first appeared in the privileges granted by Henry IV to the Jews of Worms and Speyer in 1090. These state, *inter alia*, that when an item sold or given to a Jew as a pawn is claimed as stolen, the Jew has the right to receive monetary compensation for that item from its rightful owner.¹² This privilege deviated from the contemporaneous legal codes in the German Empire, wherein an individual caught with stolen goods was tried as a thief.¹³ While the original 1090 Jewish trade privilege simply required a Jew to take an oath as to the amount paid for the item in order to receive compensation, by the 13th and 14th centuries, it had developed to include further stipulations. An important addition was a requirement that Jews prove not only the value of the goods for which compensation was being sought, but also that the original transaction had been made in the light of day and not behind closed doors. As the privilege evolved over time, local Christian legislators found different ways to introduce the public space of the city as a crucial component of transactions between Jews and Christians.

This unusual privilege has been the subject of much scholarly interest since the early 20th century. While initial research into the privilege and its Talmudic origin was undertaken as part of anti-Semitic argumentations by Herbert Meyer,¹⁴ which were later rebutted by Guido Kisch and Boaz Cohen,¹⁵ recent studies have drawn attention to a variety of issues stemming from the privilege. Friedrich Lotter has examined the question of the Talmudic origin of the privilege as well as its scope of influence in the German Empire,¹⁶ while Christine Magin has considered this privilege in relation to the legal position of

¹² Dietrich von Gladiss and Alfred Gawlik, ed. *MGH Diplomata Regum et Imperatorum Germaniae VI: Heinrici IV. Diplomata*, Vol. 2. (Weimar, 1952), Nr 411, p. 543–547; Worms: Nr 412, p. 547–549.

¹³ Christine Magin, "Wie es um der iuden recht stet": *der Status der Juden in spätmittelalterlichen Rechtsbüchern* (Wallstein Verlag, 1999) 354; Jörg R. Müller, "Gestolen und an ainem iuden versetzt. Jüdische Pfandleiher zwischen legaler Geschäftspraxis und Hehlereivorwur," *Aschkenas* 20, no. 2 (2010) 445

¹⁴ Hebert Meyer, "Das Hehlerrecht der Juden und Lombarden," *Forschungen zur Judenfrage* 1 (1937) 92-109; "Das jüdische Hehlerrecht," *Deutsche Rechtswissenschaft* 2 (1937) 97-111.

¹⁵ Guido Kisch, "The Jewish Law of Concealment," *Historia Judaica* 1 (1938) 1-30; Boaz Cohen, "The So-called Jüdisches Hehlerrecht in the Light of Jewish Law," *Historia Judaica* 4 (1942) 145-153.

¹⁶ Friedrich Lotter, "Talmudisches Recht in Den Judenprivilegien Heinrichs IV?" *Archiv Für Kulturgeschichte* 72, no. 1 (1990) and Friedrich Lotter, "The Scope and Effectiveness."

the Jews in the German Empire as reflected in law books.¹⁷ Jörg Müller has also dealt with this privilege in relation to accusations against Jews for dealing in stolen goods.¹⁸ Nonetheless, these studies have yet to explore the spatial constraints presented in the later 13–14th century versions of the privilege, nor have they examined how the reliance on spatial divides can elucidate social and economic relations between Jews and Christians.

Urban Marketplaces in the German Empire and Jews' Participation in them: Between Physical and Legal Boundaries

The marketplace, the physical space in which market activity transpired, began to develop as the focal point of the urban economy in the German Empire in the 10th century.¹⁹ From their onset, marketplaces served as one avenue through which the risks involved in economic activity were mitigated.²⁰ Apart from the physical perils of the road, risks involving communications between parties and enforcement of agreements posed perhaps the greatest obstacles to the smooth conduct of trade. How could merchants ensure the honesty of their business associates, especially with trade covering greater distances and with trade partners not necessarily personally acquainted? Additionally, what security mechanisms could be put in place to protect merchants in cases of fraud or default of a trading partner? In many cases, formal institutions were unable to exclusively provide such safety nets. Not only were existing mechanisms for enforcing agreements inadequate, but formal institutions at times did not have the capacities to create the prior sureties necessary for transactions to take place. To overcome this, informal arrangements developed alongside the formal legal system, allowing for the smoother flow of trade.²¹

From the early stages of their development, marketplaces were a legal configuration, established by rulers assigning market privileges to specific physical locations, thus excluding them from the local

¹⁷ Magin, *der Status*.

¹⁸ Müller, "Jüdische Pfandleiher."

¹⁹ Gerhard Fouquet and Hans-Jörg Gilomen, *Netzwerke Im Europäischen Handel Des Mittelalters*. Vol. 72. Vorträge Und Forschungen. (Ostfildern, 2010); Charles Verlinden, "Markets and Fairs," *The Cambridge Economic History of Europe from the Decline of the Roman Empire*, edited by M. M. Postan, E. E. Rich, and E. Miller (Cambridge: Cambridge University Press, 1963)

²⁰ Ulrich Bindseil and Christian Pfeil, "Specialization as a Specific Investment into the Market: A Transaction Cost Approach to the Rise of Markets and Towns in Medieval Germany, 800-1200." *Journal of Institutional and Theoretical Economics (JITE)/Zeitschrift für die gesamte Staatswissenschaft* (1999)

²¹ Avner Greif wrote extensively on such informal arrangements in relation to North African trading networks among Jewish merchants. Avner Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Cambridge University Press, 2006). Greif's research sparked much scholarly interest in the formal and informal institutions involved in trade, for example Jessica Goldberg, *Trade and Institutions in the Medieval Mediterranean: The Geniza Merchants and their Business World* (Cambridge University Press, 2012)

jurisdiction.²² Market charters and legal decrees from the 9th through the 11th centuries attest to the establishment of local legal courts by the lords who granted the marketplace its privileges and awarded special legal rights to those visiting each marketplace.²³ The legal designation of a specific public location and specific times during which economic activity could and should be conducted allowed the marketplaces to become central economic hubs in the city.²⁴

The centrality of these hubs was crucial not only for the exchange of commodities, but also for the creation of a space where information was communicated, thus facilitating the formation of social networks.²⁵ Accordingly, joining the trading network meant becoming subject to the controls and regulations of the designated marketplace. Furthermore, an important function of the network made possible by the marketplace was the dissemination of information, be it about the quality of supplies, potential markets, and perhaps most importantly, about business associates. Essentially, the marketplace, as an accessible and relatively inclusive space, acted as a public space of display, the purpose or function of which was not necessarily solely the acts of selling and buying,²⁶ but also communicating reputation and credibility.²⁷ Specifically, congruent with general developments in urban law that increasingly sought to enlist urban residents in the tasks of policing and surveilling each other,²⁸ the marketplace served as an arena where scrutiny of an individual's economic credibility could effectively take place. Thus, the function of the marketplace could also potentially be a deterrent force against possible future wrongdoing.

While trade and commerce were indeed not confined to the marketplace, and transpired throughout the city and beyond the urban setting,²⁹ marketplaces' prominence as main economic hubs resulted in their eventually establishing the norms of trade in the city's less public venues by setting standards in pricing, quality, and normative practices.³⁰ Despite marketplaces' normative power in dictating the "rules of the game," there still existed a difference between transactions conducted under the public oversight of an

²² Ulrich Bindseil and Christian Pfeil, "Specialization," 741

²³ Edith Ennen, *The Medieval Town, Europe in the Middle Ages*, Vol. 15. (Amsterdam: North Holland Pub., 1979) 67

²⁴ Fernand Braudel, *Civilization and Capitalism, 15th-18th Century* (London: Collins, 1981)

²⁵ Lefebvre, *The Production*, 266.

²⁶ As Masschaele wrote in relation to the marketplace in medieval England, the market was not only a place for economic interaction, but also a social space, to hear and be heard. Therefore, rulers used the market to make formal proclamations, as meeting points, and as spaces for public punishment and chastisement. See: Masschaele, "The Public Space " 390. The marketplace was also a gendered space, transitioning between its commercial activities, which allowed for female participation, and political proclamations, which in many cases excluded women. See: Hutton "Women, Men, and Markets"

²⁷ Howell, *Commerce*, 28-9

²⁸ Sara Lipton, *Dark Mirror: The Medieval Origins of Anti-Jewish Iconography*. First edition. (New York: Metropolitan Books; Henry Holt and Company, 2014) 267-9

²⁹ A. B. Hibbert, "The Economic Policies of Towns." *The Cambridge Economic History of Europe from the Decline of the Roman Empire*, edited by M. M. Postan, E. E. Rich, and E. Miller (Cambridge: Cambridge University Press, 1963) 198.

³⁰ Arnade, Howell and Simons. "Fertile Spaces," 543-4

official marketplace and those conducted in other frameworks within the city. At times, other forms of exchange that did not take place in a specified or designated space were considered private or secret, as they were not subject to public scrutiny, and were thus considered threats to the “market” norms of open and supervised exchange.³¹ The marketplace thus represented the norm demarcating the difference between trustworthy and secretive, and therefore suspect to dishonest behavior, regardless of whether these transactions occurred in a Jewish or Christian private space.³²

Like any other urban dwellers, Jews were active in the marketplace and depended on its activities to sustain themselves, especially in light of the fact that in certain cases, Jews’ original settlement in a town was a result of the local ruler inviting them for their mercantile activities.³³ There is certainly ample evidence in the Hebrew sources of Jews active as customers in the local marketplace in a variety of circumstances, at times trying to navigate between the Christian-dominated environment of the marketplace and their religious obligations.³⁴ Many marketplace regulations from German towns, mostly from the first half 14th century, also feature restrictions on Jews’ participation in the marketplace. As customers, their purchase of meat was at times restricted to the space of the marketplace, under the supervision of the butchers.³⁵ Further regulations from that time indicate that not only was Jewish purchase of meat regulated, but also their sale of meat was confined to a designated space, either outside the marketplace,³⁶ where the meat of sick animals was sold,³⁷ or outside the space designated for the Christian butchers’ shops.³⁸ At times, Jews were allowed to sell meat in the public marketplace by making an annual payment of special taxes.³⁹ These restrictions indeed reflect the demarcations of specific spaces within the

³¹ Howell, *Commerce*, 30

³² Howell, *Commerce*, 32

³³ Haverkamp, “The Jews,” 13

³⁴ Irving A. Agus, *The Heroic Age of Franco-German Jewry: The Jews of Germany and France of the Tenth and Eleventh Centuries, the Pioneers and Builders of Town-Life, Town-Government, and Institutions* (New York: Yeshiva University Press, 1969); R. Haim (Eliezer) b. Isaac Or Zarua, Austria Germany (13th century); Leipzig 1860, *Teshuvot Chadashot*, (Jerusalem, 2002) §28

³⁵ Alfred Haverkamp and Jörg Müller, ed., *Corpus der Quellen zur Geschichte der Juden im spätmittelalterlichen Reich*, (Trier, Mainz 2015) TW01, Nr. 244

³⁶ Restrictions on the sale of meat by Jews, including sale of meat of sick animals, partially stem from ecclesiastical attitude towards Jews selling meat that was deemed unkosher to Christians, which was considered demeaning. See Solomon Grayzel, *The Church and the Jews in the XIIIth century: A Study of their Relations during the Years 1198-1254, Based on the Papal Letters and the Conciliar Decrees of the Period* (Philadelphia: Dropsie College for Hebrew and Cognate Learning, 1933) 72; Freidenreich, David M., *Foreigners and their Food: Constructing Otherness in Jewish, Christian, and Islamic Law* (University of California Press, 2011) 110-128

³⁷ Julius Aronius, Albert Dresdner and Ludwig Lewinski, eds. *Regesten zur Geschichte der Juden im fränkischen und deutschen Reiche bis zum Jahre 1273*. Vol. 4. (Berlin: L. Simion, 1902) Nr. 626

³⁸ Haverkamp and Müller, *Corpus*, TW01, Nr. 103; Nr. 216

³⁹ Haverkamp and Müller, *Corpus*, BR01, Nr. 102

city for specific economic activities, as well as specific spaces where Jews could participate in certain economic activities. The space of the marketplace thus served as a venue for imposing municipal legal authority upon the Jews.

While the regulations regarding purchase and sale of meat subjected Jews to external market oversight and restriction by local authorities, an order of the Bishop of Würzburg issued over 1342–1343, includes the Jews in the task of official oversight. In assigning market observers for the entire city, the bishop stated that one Jew and one Christian were to serve as such in the *Judengasse*.⁴⁰ This order reveals the extent of official oversight over the economic activity in the city and specifies all the spaces in the city that were considered market spaces requiring official oversight. Among these are the actual marketplace, the city gates, and the cathedral stairs, as well as the *Judengasse*. As a result, not only was the *Judengasse* an officially acknowledged space of market activity, but the official oversight there was carried out by both a Christian and a Jew. Whether Jewish inclusion in the oversight can be attributed to the need to ensure that Jews were not in any way falsifying their transactions with Christians, or whether it was to ensure that Jews' interests were also represented, their inclusion emphasizes the importance of the validity of oversight in the eyes of the public for the smooth functioning of trade. Thus, in a market space that one can assume was predominantly Jewish, or at least featured a majority of Jewish vendors, local political actors maintained their authority by appointing Jews as necessary participants in the act of oversight. This also seems to reflect that validity was not achieved solely through official imposition, but required the acceptance and recognition of those active in the marketplace as well.

A 13th century responsum by R. Haim of Vienna further highlights Jews' specific understanding of the legal boundaries that governed the marketplace. In this case, a Jewish community on which a tax had been levied by a Christian ruler sought to have a particular Jew living and conducting business in their town participate in the tax. This Jew wanted to avoid the tax, and claimed that he was under the authority of another Christian ruler to whom he paid his taxes. Presenting many interesting details on the multi-leveled and at time overlapping relationships between Jews and Christian rulers and how these shaped inter-Jewish relationships, this reply of R. Haim also reveals a precise knowledge of the legal boundaries governing the marketplace. When deciding whether the business conducted by this Jew in the town was sufficient to deem the Jew in question a member of the community, he argues that:

Even those ten Livres which he lent in town, if he only lent them on the day of the market, the town residents cannot delay [the toll] only in the case that he did not lend to the residents of that city. And it appears that he can lend the amount even to local residents of the city

⁴⁰ Haverkamp and Müller, *Corpus*, WB01, Nr. 636

let alone to the gentiles who come on the market day and sell to the residents according to the common law...⁴¹

This reply demonstrates knowledge of the legal confines applying to the marketplace and to the temporal nature of these laws: specifically, that on the market day, one is bound by a different set of rules. Furthermore, this reply attests to the influence that the legal system of the market had on inter-Jewish customs. Inasmuch as this issue is one of taxation, R. Haim is deliberating as to whether this Jew was to be considered part of a specific community in light of his economic standing in the city. He nonetheless refers to the legal system established for the market as a specifically delineated space and time, applying to non-Jews as well as to Jews, to determine the possibility of considering this Jew a non-resident even while he resided in the city.

The Jewish Trade Privilege: Trust, Mistrust, and the Public Eye

In relation to Jewish economic activity, the sources discussed above attest to the participation of Jews in the marketplace, their understanding of its legal setting, as well as to ways in which the marketplace's spatial limitations were imposed on Jews' economic activity. However, these sources reveal little about the essential attributes of the economic interaction between Jews and Christians and, specifically, about the role of the public space of the marketplace in facilitating trust and providing surety between these two groups. As such, these economic interactions need to be contextualized within the prevalent Jewish occupations of the 13th and 14th centuries.

During this period, the scope of credit in the economy grew tremendously, and eventually, periodic debt became a common feature of economic existence for almost all segments of society, whether rich or poor.⁴² Although Jews were not the sole providers of credit in the German Empire, lending was a ubiquitous profession among members of the Jewish community. Furthermore, much of the Jewish credit activities focused on small credit that relied on the exchange of pawns rather than on written agreements for security.⁴³ In light of the shift in the focus of Jewish economic activities to lending that used pawns to secure the loans, how did the norms of practice established by the public nature of the marketplace shape these economic interactions between Jews and Christians?

⁴¹ R. Haim (Eliezer) b. Isaac Or Zarua, *Teshuvot Chadashot*, Leipzig 1860, (Jerusalem, 2002) §226

⁴² Joseph Shatzmiller, *Cultural Exchange: Jews, Christians, and Art in the Medieval Marketplace* (Princeton: Princeton University Press, 2013); Daniel Lord Smail, *Legal Plunder: Households and Debt Collection in Late Medieval Europe* (Cambridge, Massachusetts ; London, England: Harvard University Press, 2016)

⁴³ Shatzmiller, *Cultural Exchange*, 9-10; Müller, "Jüdische Pfandleiher," 463

One important source of evidence for this credit-based relationship is the aforementioned Jewish trade privilege that dates back to the 1090 privilege of Henry IV and remained valid until as late as the 15th century.⁴⁴ The original privilege granted by Henry IV, which was later reaffirmed for all the Jews of the Empire by Frederick Barbarossa in 1157 and Frederick II in 1236, includes a stipulation conditioning Jews' ability to receive compensation for stolen goods. In order for a Jew to receive compensation for an item that had come into his or her possession, either through purchase or pawning, and that was claimed as stolen by a third party, the Jew must swear an oath as to the amount paid for this item.⁴⁵ While oath taking was not an inconsequential act in the Middle Ages,⁴⁶ because the oath referred solely to the amount for which the item was procured, there were essentially no consequences for Jews who were found with stolen property, let alone any punishment for dealing in stolen goods. In contrast to this, as stated above, Christians found dealing in stolen property were tried as thieves.

Indeed, with time, the 11th century imperial privilege permeated into customary law, resulting in its use in territorial courts and eventually its codification in local legislation.⁴⁷ The first instance where an essential change in the privilege is found is in the provision of the *Sachsenspiegel* (Hereon *Ssp.*), a compilation of territorial customary law in Saxony written by a local juror named Eike von Repgow between 1225 and 1235.⁴⁸ It states that:

If a Jew buys or accepts chalices, books or priest's clothing in pawn for which he has no warrantor, and if it is found in his possession, he shall be tried as a thief. Whatever other items he buys openly in daylight and not behind closed doors [the purchase of which] he can prove with two others, he retains the money he paid for it or lent upon his oath even if it has been stolen. Should his warrantor fail him, however, he loses his money.⁴⁹

⁴⁴ For a detailed description of the manuscripts in which this privilege has been preserved and the history of its transmission see: Friedrich Lotter, "The Scope and Effectiveness of Imperial Jewry Law in the High Middle Ages," *Jewish History* 4, no. 1 (March 1989) 31–2.

⁴⁵ Von Gladiss and Gawlik, ed. *MGH*, Nr 411, p. 543–547; Worms: Nr 412, p. 547 –549.

⁴⁶ Ephraim Shoham-Steiner, "'And in Most of Their Business Transactions They Rely on This': Some Reflections on Jews and Oaths in the Commercial Arena in Medieval Europe," *On the Word of a Jew: Religion, Reliability, and the Dynamics of Trust*, edited by Nina Caputo and Mitchell Bryan Hart. (Bloomington, Indiana: Indiana University Press, 2018)

⁴⁷ Lotter, "The Scope," 46

⁴⁸ The *Sachsenspiegel* refers to the legal customary written by Eike von Repgow, which is considered to mark the beginning of German jurisprudence. For further reading on the creation of the *Sachsenspiegel* and its significance in German law see: Maria Dobozy, *The Saxon Mirror: A Sachsenspiegel of the Fourteenth Century*, Middle Ages Series (Philadelphia, PA: University of Pennsylvania Press, 1999)

⁴⁹ "Kouft der iude adir nimt her zu wette kelche buchere adir gewant da her keinen geweren ane hat, vint manz in dinen geweren, man richtet obir in alse obir einen diep. Waz der iude kouft anderes dinges unverholn unde unverstoln bi tages lichte unde nicht in besloseeme huse, mad her daz gezugen selbe dritte, her behelt sine phenninge dar an, de her dar umme gap adir dar uf tet bu sime eide, ab ez verstolen iz, bricht ez im abir an gezuge, her verlust sine phenninge." Friedrich Ebel, *Sachsenspiegel: Landrecht und Lehnrecht*. (Philipp Reclam jun., 1953) 120. Translation in Dobozy, *The Saxon Mirror*, 118.

Contrary to the previous versions of this privilege, the *Ssp.* introduces for the first time the issue of transparency, or public oversight, in relation to the initial transaction between a Jew and a Christian. As pointed out by Lotter, the inclusion of the imperial Jewish trade privilege in the *Ssp.* attests to the wide application and general validity of the privilege in the Empire.⁵⁰ Moreover, with only six out of the *Ssp.*'s 230 clauses in its territorial law referring to Jews, those clauses that do mention Jews suggest fundamental legal norms that governed the legal relationship between Jews and Christian institutions. The fact that the first recognition of the public nature of a transaction is transmitted through this source, a compilation of the prevalent legal customs in Saxony, may indicate that this was a common compromise found between the imperial Jewish trade privilege, allowing Jews to receive compensation on stolen items without any conditions, and the common norms of conduct prescribed by the marketplace, whereby transactions conducted in public were subject to communal scrutiny and therefore less likely to involve dishonest behavior.

It is additionally interesting that some later variations of the trade privilege, dating from the 1240s and 1260s from Austria, Eisenach, and Meissen specifically require that the Jew prove that the purchase was made in good faith, either by oath or by supporting witnesses.⁵¹ While the *Ssp.* presumably could have also contained such requirements, it instead specifically addresses the physical space in which the initial transaction took place. Furthermore, the significance of the space in which the transaction occurred, as one enabling transparency and public oversight of the exchange, is reinforced by the function of the witnesses in the provision. They were expected to validate not that said goods were purchased in good faith, but rather that the transaction took place in a public setting.

Both the omission of proof of purchase in good faith and the introduction of the space in which the transaction took place as elements of the privilege imposed a legal boundary on the time and space in which transactions could transpire. As with the legal framework defining the marketplace, which was also bound to a specific time and place, the provision distinguished between what transpired under the supervision of the public eye and what was done in privacy: essentially between honest and dishonest activities. To a certain degree, the space in which the transaction took place was more meaningful in ensuring its moral validity than was an oath on the good faith of the purchase, as public participation had become part of the validation process. However, whereas the marketplace itself had specific characteristics

⁵⁰ Lotter, "Talmudisches Recht."

⁵¹ Eveline Brugger and Birgit Wiedl: *Regesten zur Geschichte der Juden in Österreich im Mittelalter*, Vol. 1: Von den Anfängen bis 1338. (Innsbruck, Wien, Bozen, 2005) Nr 25, p. 35 – 38; Haverkamp and Müller, *Corpus*, TW01, Nr. 28; Aronius, Dresdner and Lewinski, *Regesten*. no. 711

that promoted its function as a facilitator of honest transactions, the Jewish trade privilege as it appears in the *Ssp.* attests to the norms of the marketplace applying to other public spaces in the city. Consequently, public space was included as an element involved in the transaction, whose institutionalized inclusion actually provided both parties with increased sureties.

A further clause in the *Ssp.*, concerning the possibility of finding stolen goods in a Christian's possession, similarly invokes the public space of the city, this time specifically addressing the marketplace:

If the possessor [of discovered stolen goods] says he bought it at the market and does not know from whom, then he is not guilty of theft [as long as] he proves the location and swears his oath on it. Nevertheless, he loses the money he paid for it, and the claimant regains the property stolen from him if he proves his ownership on the relics with two oath-helpers unblemished in their legal status who know it was taken from him by theft or robbery.⁵²

Thus, while the public space plays a similar role in validating the transaction, Christian possessors, unlike Jews, cannot receive monetary compensation for the stolen goods found in their possession. This accords with the exclusive advantage granted to Jews in the trade privilege awarding only them compensation on stolen goods. In the case of a Christian possessor of stolen goods, however, the public space could protect the possessor from being accused of robbery or theft. Furthermore, as with the clause relating to Jewish possession of stolen goods, the rule for Christians required proof of the location where the transaction took place. Thus, while the ramifications of the legal procedure may vary between this clause pertaining to Christians and that pertaining Jews, in both, the public space is introduced to provide sureties of the honesty of an exchange.

With regard to the Jewish trade privilege, following the *Ssp.*, later compilations of customary law, such as the *Deutschenspiegel* and the *Schwabenspiegel*, as well as the *Freisinger* and *Meissener* law books all included some variations on the necessity of the public nature of the initial transaction. Additionally, legislation from Nuremberg from the second half of the 13th century further detailed the public validation of the initial exchange. In the Jewish regulations of the city (*Judenordenungen*), which regulated among other matters Jews' receipt of pawns, there appears a clause relating to the acceptance of stolen goods. While the regulation does not specifically mention the Jewish trade privilege, it does state that if a Jew

⁵² “*Spricht abir ienir, her habe ez gekouft uf dem gemeinen markte, her en wisse wider wen, so ist her der dube unschuldig, daz her de stat bewise unde sinen eit darzu thu. Sine phenninge verhuset her abir, die her dar umme gap, unde iener behelt sin gut, daz im verstolen ader geroubit waz, ab her sich dar zu zut uff den heiligen selbe dritte vullkomener lute an irme rechte, die daz wissen, daz ez im duplich ader rouplich geloset si.*” Ebel, *Sachsenspiegel*, II/36, 94-5.

unknowingly received stolen items, he should swear an oath of purchase in good faith, and also swear an oath that he received the pawn in front of his door, and not inside his house.⁵³ This regulation goes further than the stipulation in the *Ssp.*, as it required both an oath of purchase in good faith and an oath on the public execution of the exchange. The oath can be considered as replacing the witnesses, who in the *Ssp.* attest to the public execution of the exchange. Furthermore, the specification of the space is more explicit than in the *Ssp.*, as the regulation clearly addresses the Jewish home, specifically the door, as the barrier between the outer, public space, which is subject to oversight, and the inner space of the home. In such a way, even though witnesses were not necessary for the procedure of redeeming the pawn, proof was required of the public oversight of the initial transaction.

A decision of the high court of Dohna, near Dresden, from the first quarter of the 15th century reveals the persistence of the custom conditioning Jews' ability to rely on the privilege to their public validation of the initial exchange. In this case, a man named Hempil Czgilheym claimed to have found his stolen horse in the house of another Christian. An unnamed Jew entered into their dispute, claiming that the horse had been given to him as security against a loan. The court issued a decision on the matter, stating that:

...Should the Jew with two supporting witnesses, one a Jew and one a Christian, can prove that he lent his money on the horse openly in the daylight and not behind closed house doors, he shall obtain on his oath his pennies thereon, which he had spent therefore or put out thereon, although it [the horse] was stolen. If he lacks the witnesses, he loses his pennies, if Hempil Czgilheym can testify according to law with two witnesses to the stolen horse being his.⁵⁴

The widespread dissemination and endurance of this stipulation in customary law and in urban legislation certainly attests to a strong incentive for Jews to conduct their business out in the open.⁵⁵ However, returning to the 13th century, it is interesting that many Hebrew sources evidence quite the contrary: that the initial transaction of receiving credit in exchange for pawned goods could also take place in the Jewish

⁵³ Moritz Stern, *Die israelitische Bevölkerung der deutschen Städte. Ein Beitrag zur deutschen Städtegeschichte mit Benutzung archivalischer Quellen*, BD. 3: Nürnberg im Mittelalter (Kiel 1894– 1896) 215.

⁵⁴ "...mag der Jude selpdritten mit eyne Juden unde eyne cristen geczugen daz her seyn gelt unvorhalen bey tagelichte unde nicht in beschlossene hausze udd saz pherd gelegen habe So beheld her seyne phenninge doran dy her dorumb gab ader doruff tet mit seynem eyde ab is wol vorstolin ist Gebricht om abir an den geczugen so vorleust her seyne phenninge ab hempil czgilheym czu seyme entriten pherde selpdritte czugit also recht ist." Friedrich Wilhelm Wasserschleben, *Sammlung deutscher Rechtsquellen*, (Giessen: Heinemann Verlag, 1860) 400

⁵⁵ A further 15th century court case from Göttingen evidences the same conditions to Jews' ability to rely on the trade privilege – the use of witnesses who can verify that the initial acceptance of the pawn took place in daylight and in the open. See: Müller, "Jüdische Pfandleiher," 439-440.

home. One such example appears in a responsum of R. Haim of Vienna, who received a query regarding the perceived abuse of a rented room:

Reuven and Shimon rented a house in partnership, and then rented out one room in the house to Levi, and Levi's room is situated downstairs near the gate [*sha'ar*] at the entrance to the house. And now Reuven and Shimon claim that Levi is causing them damages. Because every gentile who comes to loan on interest encounters him [*poge'a bo*] as he enters to receive a loan, and he [Levi] does not leave any gentile to go up to them [Reuven and Shimon], and they are left with no business. Therefore, they [Reuven and Shimon] would want him [Levi] to reside upstairs with them. And Levi replies, "I rented this room to reside in it, just as I have until now, and Reuven knew that it is my way to sit in my room and do business in it..."⁵⁶

This appeal to R. Haim reveals many noteworthy details about the practices of moneylending. First, it is clear that it was common for an exchange to take place inside the Jewish home, as is attested to not only by Levi's activity in the rented room, but also by the two partners who complain of the damages Levi had caused them. Moreover, this responsum reveals the absence of a personal relationship between lender and borrower. In this description, the clients are not established business associates who have a long-standing relationship with the two partners, but rather coincidental clients seeking credit from the first place they can get it. The haphazardness of the relationship raises questions as to what kind of securities were in place beyond the acceptance of a pawn, especially since pawns could potentially be stolen goods.

Even though some provisions stressed the importance of the public execution of transactions, around the second half of the 13th century, specific stipulations of the Jewish trade privilege appeared that not only dealt with the public nature of the initial transaction, but also with business conducted in private in the Jewish home. Such was the case in the statutes of the royal city of Dortmund from the middle of the 13th century. These not only acknowledged the imperial trade privilege awarded to the Jews, together with other conditions to prevent dishonest behavior, but also included a very interesting provision that: "If a Jew sends a pawn to sale on the market, and someone puts it under legal arrest, claiming it was stolen or robbed from him, and offers to provide the legally necessary evidence, then, the Jew is not allowed to offer a warranty on the said good outside the threshold of his house."⁵⁷ In essence, once the Jew removed the pawn from the threshold of his or her house for resale, in the case of default by the debtor, and the

⁵⁶ R. Haim (Eliezer) b. Isaac Or Zarua, *Teshuvot Chadashot*, §172

⁵⁷ "*Item sciendum: si Judeus aliquid mittit pignus aliquod venale ad forum et illud per aliquem obligatur, qui dicit sibi illud ablatum per furtum vel rapinam et illud per juris formam se offert probaturum, Judeus non potest aliquam prestare warandiam pignoris supradicti extra limen domus sue.*" Ferdinand Frensdorff and Otto Francke, *Hansische Geschichtsquellen: Dortmunder Statuten und Urtheile*. Vol. 3. (Georg Olms Verlag, 1882) No 39 p. 40-1; Bernhardt Brillling and Helmut Richter, *Westfalia Judaica: Urkunden und Regesten zur Geschichte der Juden in Westfalen und Lippe* (Stuttgart: W. Kohlhammer, 1967) no. 60. Special thanks go to Dr. Tzafir Barzilay on his assistance with the translation.

pawn was claimed as stolen, Jews could no longer provide sureties of the legality of their possession. This provision is notable as it acknowledged a frequent outcome of lending on pawns: namely, the debtor's default resulting in the lender having to sell the pawn to redeem the initial loan. Considering that the Jewish trade privilege dealt with the receipt of stolen goods as pawns, in such cases selling the pawn was perhaps the only recourse for Jews to profit from the transaction, as the thief was unlikely to return and pay the debt. Thus, this legislation specifically addressed the conditions according to which a Jew could preserve the trade privilege when offering the defaulted pawn for sale in the urban marketplace.

Interestingly, this provision moves the inclusion of the marketplace and its norms from the initial transaction to the final sale on the market. If in the provision in the *Ssp.* and similar codifications⁵⁸ the purpose of the public space was to provide the necessary sureties to protect both the Jewish lender and the Christian debtor, in the Dortmund statute, the public space served a completely different purpose. By revoking the Jews' right to provide warranties on items that were claimed to be stolen outside the threshold of their home, the Dortmund statute used public space to deter Jews from dealing in stolen goods. Thus, the purchase in good faith was not necessarily validated by the initial transaction's execution under the public eye, but rather through the oversight on the final redemption of the money owed to the Jew through the sale of the pawn in the marketplace. This provision underscores how the public space had a validating role in economic transactions that were vulnerable to dishonest behavior.

Similar to the regulation from Nuremberg, by stating that the Jew cannot provide the warranty for the goods outside the threshold of the home, even though it appears in the context of sending the pawn to the marketplace, a clear line is drawn between transactions that occur privately, inside one's home and without public oversight, and those that are subject to public oversight anywhere outside the threshold of the home. Accordingly, Jews could maintain their privilege for compensation on stolen goods as long as they kept these items in their homes. While focusing on a different stage of the transaction, the Dortmund statute, provides the same distinction between honest and dishonest activities, and therefore between activity that is subject to legal protection and activity that is not, although the protection is not of the Jewish trade privilege but of the interests of the owners of stolen goods.

The explicit mention of the threshold of the house seems to resonate in a contemporaneous responsum sent to R. Moshe Azriel b. Elazar, dealing with different arrangements regarding competition, stating the following:

⁵⁸ Aronius, Dresdner and Lewinski, *Regesten*, no. 731

But now in our times, when all the Jews in our kingdom (*malchuteinu*) are moneylenders, they neither need signs nor to solicit in the marketplace... And if a person arrives in a new place and he has come into money, and the gentiles did not know he was one who had money to lend, [then] he sits at the threshold of the house handling his coins...⁵⁹

As the responsum seems to depict, the marketplace was a space where people, perhaps unknown in the urban environment, went to seek out business. However, because Jews were known as moneylenders and had no need to advertise their involvement in supplying credit, it was no longer necessary for them to enter the physical space of the marketplace in order to attract business. This responsum also offers a unique glimpse into the strategies that those who were previously unknown for their moneylending activities had to employ in order to attract new business: mainly sitting at the threshold of the house. Even though this responsum refers to the initial lending of money and not to the resale of the pawn, as does the Dortmund statute, the threshold, as the boundary between the home and the public sphere, perhaps became a space that could meet the different requirements necessary for conducting a credit transaction.

The distinction between the home and the public space of the city is further enumerated in an interesting specification of the Jewish trade privilege from 1280, appearing in a document in which the city of Esslingen transferred its law to the city of Brackenheim. This document states:

This is the law placed on the Jews, that they should take in pawns only by daylight and never in the night. Such pawns that a Jew takes by day should be legal whether they are stolen or robbed goods, except for broken chalices and bloody garments...⁶⁰

In this legal context, Jews were restricted to accepting pawns only in daylight and never at night. As in the *Ssp.*, the initial exchange is restricted to a specific procedure that implies some public oversight. However, unlike the *Ssp.*, which applies this condition *ex post* once the Jew wants to receive some compensation for a pawn which is claimed as stolen, in the city law of Esslingen, this condition restricts any act of taking in a pawn by Jews. This may indicate a legal acknowledgement of the difficulty in determining the legal origin of the pawned good, therefore instating a procedure whereby including some kind of oversight established the legality of the pawn. But the legal provisions from Esslingen do not stop at the initial exchange, and include further specifications of the conditions by which one can claim stolen goods from Jews.

⁵⁹ Simcha Emanuel, ed., *Responsa of Rabbi Meir of Rothenburg and his colleagues*, (Jerusalem, World Union of Jewish Studies, 2012) §461

⁶⁰ “So ist umb die juden das recht gesetzet, das sie sich pfande bey tage unterwinden sollen und nimmer by der nacht. Was pfande aber ein jude tages verpfendet, es sye rechtfertigt ald erdiebig ald roubig, on zerdruckt kelche und one blutige wer...”
Württemberg Staatsarchiv, *Württembergisches Urkundenbuch*, Vol. 11, Nr. 5688, p. 541-545

If a Jew bought an illegal good, he whose good it is has the right to place claims in the Jewish house, as in a Christian's, regarding how he had lost them [the goods]. If a Jew had received an illegal good as pawn, if one were to seize the good outside of the Jew's house, then he can take it in and the Jew loses the amount of the original pawn and the accrued interest, should one prove that the pawn is robbed or stolen or illegal.⁶¹

This detailed provision further articulates the differentiation between the Jewish home and the public sphere. However, whereas the Dortmund statute allowed for legal protection of all goods found in the Jewish home, the Esslingen legislation, by allowing a Christian claimant the right to enter the Jewish home and claim legal ownership over goods that are in the Jew's possession, somehow breached the legal protection the Jewish home could enjoy.⁶²

Nonetheless, the previous section of the legislation provides precise conditions as to the procedure by which a Christian was to go into the Jewish house and claim the stolen property, stating:

One cannot place claims for the pawn in a Jew's house otherwise, at that time he whose good it is should give the Jew the amount of the pawn and the accrued interest up to that day, and the Jew should return the pawn with a document, and so should the redeemer of the pawn prove with credible witnesses and the necessary evidence that the pawn belongs to him, and so should the Jew give an oath as to the value of the pawn and the accrued interest.⁶³

Thus, in order to claim an item that was in the Jewish home, the Christian claimant must provide witnesses and evidence, as well as eventually pay the Jewish lender the amount of the pawn and its accrued interest up to the date of taking possession. Here too, as with the Dortmund statute, the ability of Jews to receive compensation on stolen items is limited to those items kept in their homes. Yet, unlike the Dortmund statute, where Jews are actively initiating the sale of the pawn in the marketplace, the Esslingen legislation does not directly address Jews' intent to sell the pawn, but, rather, the aggrieved owner of the stolen good initiates the interaction seeking to retrieve the stolen goods from the Jewish house. Thus, if the Dortmund statute delineated the physical space in which Jews could sell stolen goods and still maintain the trade

⁶¹ *"Ist auch das ein jud unrechtfertig gut kauft, wesz das gut ist, der hat also gut rechte in dem jude huse als in eines cristen, wie es verloren hat, anzusprechen und anzeclagen. Hat ein jude verpfendt unrechtfertig gut, wa man das ergreift uszerhalb des juden huse, das mag man wol anfallen und hat der jude hopgut und gesuche verloren, mag man erzuigen, das das pfand ro big ald diebig ald unrechtfertig ist."* Württemberg Staatsarchiv, *Württembergisches Urkundenbuch*, Nr. 5688, p. 541-545

⁶² The legal protection of the space where Jews kept their pawns was not inconsequential, as some responsa evidence Christian rulers abusing their ability to enter into the space where pawns were kept and take more pawns than those belonging to them. For example: R. Haim Or Zarua, *Teshuvot Chadashot*, §222

⁶³ *"...die pfand mag man in dem juden huse anders nit verbieten, wann wesz das gut ist, der soll ob er will dem juden hoptgut und gesuch, der bisz an den tag dar uff gegangen ist, geben und soll der jude das pfand wider geben mit urkunde, und so der löser erzeuget mit erbern kundschaft, das das pfand sin sien, sol er gewiszheit thun, der gnuge ist, und soll auch der jude behaben mit dem aide, wie vil des hopgutes und des gesuches syen."* Württemberg Staatsarchiv, *Württembergisches Urkundenbuch*, Nr. 5688, p. 541-545

privilege, the Esslingen legislation restricted the space in which Jews could receive compensation according to where a Christian initiated the procedure claiming the item.

The Esslingen legislation exhibits two concomitant forces governing the Jewish credit business. On the one hand, in order to discourage dishonest transactions, the initial exchange must in all cases be conducted during the day under some sort of oversight. On the other hand, if a dishonest exchange actually occurred, regardless of whether or not the Jewish lender received the pawn in good faith, the ability to receive compensation was essentially limited to items stored in the Jewish house, since Jews lost their privilege in cases where the goods claimed as stolen were found outside their homes. This legislation further demonstrates the differentiation that was made between transactions that occurred within the home, in private, and those that were subject to oversight. The distinction between spaces in which an exchange was deemed honest or dishonest, in this case comes to encompass both the initial transaction as well as the possible redemption of the stolen pawn. However, in the Esslingen legislation, this differentiation extended the time of the transaction itself, and came to encompass the Jews' overall ability to receive compensation for stolen goods. Regarding Christian owners, the distinction between spaces determined their eventual requirement to pay in order to retrieve stolen goods.

A similar restriction is found in the city statutes of Erfurt, recorded in 1306. An article added to the original statute in 1347 stated that: "Those objects belonging to Jews, that were sold on the market or on the street, the Jews can keep by law, but those objects belonging to them that are sold in their homes, it is forbidden for Jews to keep."⁶⁴ While the *Ssp.* and the Nuremberg, Dortmund and Esslingen legislations all clearly indicate the point in the transaction requiring the assurance of public oversight, this Erfurt edict is vague as to what type of transaction it is referring to, and as to what the meaning is of Jews' possession of the items in question. It does, however, point to the delineation of boundaries between the home and the public space of the city, whether the marketplace or the street, with Jews unable to lawfully provide warranties for transactions conducted inside their homes. These boundaries were instated in legislation that mentions neither the Jewish trade privilege nor stolen items, suggesting that all items kept in the hands of Jews were deemed to be of questionable origin. Thus, while the marketplace initially functioned as a space in which informal oversight provided the necessary security to ensure an honest

⁶⁴ "Was dinges auf dem markte oder inn den straßen gekaufft wirdt, das eines juden ist, das soll der jude wehren als recht ist, wird es aber gekauft inn deß juden hauß, so darff es der jude nicht wehren." Karl Wilhelm Anton Heinemann, *Die statutarischen Rechte für Erfurt und sein Gebiet: Versuch einer geschichtlichen und systematischen Zusammenstellung derselben* (Maring, 1822) Nr. 97, p. 91

exchange, with time, at least with respect to interactions with Jews, formal legal protection of the legitimacy of an exchange was limited to locations where informal oversight could take place.

Entering the Marketplace? Preliminary Conclusions

The initial trade privilege, granted by Henry IV in 1090, provided Jews with protection for stolen goods they may have purchased, protection unavailable to other traders. Ensuring that an item offered for sale was not stolen was indeed challenging at the time. Yet the risk of unknowingly accepting stolen items grew as credit transactions increasingly became the prevailing professional occupation of Jews. This was especially true regarding lending in exchange for pawns, where minimal written agreements or further collateral were in use. This only made the privilege, which from its outset gave Jews an unusual advantage, even more problematic. The solution of local legislators was not to revoke the trade privilege from the Jews altogether, so as to not unnecessarily restrict economic activity, but rather to introduce the public space of the city as an element involved in the exchange. This inclusion of space points to the importance of the procedure governing the conduct of the exchange, even though the goods pawned could have still in fact been stolen. Administering the exchange in a prescribed manner, structured according to the norms of the marketplace, was supposed to ensure *ex ante* that no misconduct was involved in the exchange, and also conditioned *ex post* that the Jew could receive his privileged protection.

Furthermore, the wide geographic scope and variation of the legal codes that included this privilege points both to its widespread application throughout the German Empire, as discussed by Lotter, as well as to the awareness of local legislators of the problems inherent in the original privilege, as discussed by Müller. The wide application of the privilege as well as its numerous variations, all introducing the public space into the transaction, further attest to local understanding of the function of public space in insuring exchanges. While the meaning of oversight in relation to Jewish economic activities was subject to different interpretations in different localities, throughout the German Empire, the norms of transparency and public oversight prescribed by the marketplace were enlisted to serve as surety, whether to the advantage or disadvantage of Jews. These stipulations to the trade privilege created a distinction between the home, which as a space for economic activity was considered private, secretive, and questionable, and the public space of the city, whether street or market, which was subject to communal or social oversight. Such a distinction can be interpreted to delimit space according to several axes: between Jewish and Christian spaces, between the home and outside and, most importantly, between legal and illegal spaces. However, in the reality of the medieval city, the boundaries of such spaces were not necessarily clear cut.

The topography of cities was such that Jews and Christians shared their living environments,⁶⁵ homes were not necessarily occupied by one-family units alone, and, as the different expressions of the trade privilege demonstrate, even the legal protection of the home was not a stable feature.

Nonetheless, when examining the manifestation of such delimitations according to the chronological development of the Jewish trade privilege, it is notable that, initially, the public space was used to protect the Jew in a transaction by setting out the procedure that allowed Jews to receive compensation in the event that the goods were found to be stolen. In such instances, when the public space was inserted as an element involved in the original transaction, Jews were protected by the public setting. In later expressions of the privilege, such as those from Dortmund and Esslingen, the exposure of the pawn in the public space after the assumed default by the debtor revoked the Jews' privilege. While in all instances the public space played the same role of allowing for communal oversight of an exchange that was supposed to ensure its honesty, the way in which the public was inserted into the transaction reflects different attitudes towards Jews and their economic activity. Once the Jews lost their privilege following exposure of the pawn to communal oversight, they were to a certain extent assumed to have engaged in dishonest behavior.

Interestingly, during the 14th century, the same privilege allowing reimbursement for stolen goods was extended to Lombard and Cahorsin moneylenders in the German Empire. However, these privileges were generally more favorable than the Jewish one, as the Lombards and Cahorsins did not have to prove purchase in good faith, and were usually able to collect the amount of the pawn together with the accrued interest.⁶⁶ Thus, it becomes evident that the risks inherent in credit transactions at the time were perceived to be different for Jews and Christians, and that the same privilege, when applied to Christian lenders, did not require the same legally prescribed oversight and public recognition to ensure its integrity. This raises the question as to why credit transactions with Jews were different.

At this point, it should also be noted, that quite a different picture of Jewish economic activity arises from the Hebrew sources compared to that depicted by the Latin and mainly vernacular sources

⁶⁵ Ample evidence of such shared living spaces and arrangements is available. For example, the Cologne *Judenschreibsbuch*, a real-estate registry from the city of Cologne, evidences the entanglement of Jewish and Christian residencies, while recording property transfers in the parish owning the land occupied by most of the Jewish residents of the city. Robert Hoeniger and Moritz Stern, *Das Judenschreibsbuch der Laurenzpfarre zu Köln* (Berlin 1888) 172-179. Furthermore, tax lists from Erfurt similarly attest to the interwoven nature of Jewish and Christian residency of the city. Theodor Kroner, *Die Geschichte Der Juden in Erfurt* (Erfurt: Koenig, 1884).

⁶⁶ Guido Kisch, "Das "jüdische Hehlerrecht";" *Ausgewählte Schriften* 1 (Sigmaringen, 1978) 127.

referred to in this article. Although both bodies of sources are legal in nature, they were based on differing legal traditions. Perhaps even more importantly, they served different purposes in daily life, and therefore express different outlooks on Jewish economic activity. Thus, it may not be surprising that, over time, the vernacular sources present more and more forms of restriction and supervision of Jewish economic activity. In particular, the different variations of the Jewish trade privilege all provide examples of ways in which local authorities understood the flaw in the original Jewish trade privilege and tried to provide a remedy that would allow for the smooth conduct of trade while preventing wrongdoing in light of the local economic reality. In contrast, the Hebrew sources provide a detailed account of the daily dilemmas and points of friction among Jews themselves and in their interactions with their Christian neighbors. Nonetheless, while the attitude towards Jewish economic activity reflected in each body of sources differs, all the sources indicate the recognition of the spatial boundaries in which economic exchange took place.

Returning to the Jewish trade privilege and its various manifestations in the German Empire, it is possible to speculate as to whether the Jews entered the physical marketplace in their business endeavors, or whether the marketplace and its norms entered into spaces of Jewish economic activity, which may have centered around other localities in the city, such as a public street, the threshold to the house, and or in the privacy of their homes. What did it mean for Jews and their economic relations with their neighbors that their homes, whether as a legal sanctuary or as a forbidden location, became a space marked off as the site of questionable economic exchange? Further research is required to fully understand the meaning of the spatial divide in relation to Jews' economic activity, and whether it sparked a difference in Jews' and Christians' attitudes towards themselves and each other when coming together for economic exchanges. Additionally, it is necessary to further examine how the change in attitude reflected in the Jewish trade privilege is linked to growing anti-Jewish sentiments and the eventual violence perpetrated against Jews in the Empire. What is clear is the normative role the marketplace played, serving as the main economic hub of the city, shaping the rules of conduct in economic interactions between Jews and Christians, and reflecting the perceived role of public display and oversight in ensuring honest behavior among both Christians and Jews.