

# STUDIES IN JUDAISM IN MODERN TIMES

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JACOB NEUSNER

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JANE S. GERBER  
JEWISH SOCIETY IN FEZ

1450-1700



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*Studies in Communal and Economic Life*

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Itinerant Sheikhs went from city to city spreading their doctrines. The movement, originating in the East, was thoroughly Moroccanized by the fifteenth century.<sup>75</sup>

One of the important Sheikhs of the period, al-Maghili, who blended the qualities of fanaticism, piety and militancy in his personal career, espoused a particularly insidious doctrine concerning the Jews. This fifteenth century Sheikh, whose grave was later venerated throughout southern Morocco, taught that:

...the Jews have no right to protection under Muslim law, and accordingly he denied that their blood was sacred, and declared their goods to be forfeit; and taught that it was more of a merit in a Muslim to kill and rob the Jews, than to wage war upon Christians or any other unbelievers.<sup>76</sup>

Al-Maghili based his teachings on the exegesis of an anti-Jewish Sura in the Qur'an and wrote a lengthy work defending his views. He was permitted to present these views to the scholars of Fez but was ultimately banished by the Sultan, Muhammed esh-Sheikh (1472-1505). He had greater success in the southern oasis of Touat where he is reported to have converted the Sultan of Timbuctoo to his doctrine and to have precipitated a wholesale slaughter against the Jews.<sup>77</sup>

Al-Maghili's career is illustrative of the anti-Jewish atmosphere generated by the preachings of many of the itinerant Sheikhs who roamed the Moroccan countryside in the fifteenth century.

The Marinids tried to contain the influence of these Sheikhs through an ambitious program of medreseh and mosque construction.<sup>78</sup> These efforts were largely abortive and, by the fifteenth century, these new institutions had been penetrated by the Sheikhs and their doctrines.<sup>79</sup>

<sup>75</sup> By the fifteenth century the distinction between Marabout, Sheikh, Faqir and Sharif was almost completely blurred. These propagators of a local mystical religion were no longer refugees from the East but products of the villages of Morocco.

<sup>76</sup> Ibn 'Askar, 6.

<sup>77</sup> *Ibid.*, 10-11. The important role played by Jews in the development of trans-Saharan trade was encouraged by the Marinid Sultans. Various religious scruples prevented Muslims from engaging in the exportation of gold dust and animal feathers from the region. Jews were also noted for their contributions to the development of agriculture in the area. Cf. E. Gautier, "Oasis Sahariennes," *Recueil de mémoires et de textes publié en l'honneur du XIV<sup>e</sup> congrès des orientalistes*, (Alger: 1905), 340-43. On these persecutions, see Leo Africanus, 436-43.

<sup>78</sup> M. A. Pérétie, "Les Medrasas de Fès," *Archives Marocaines*, XVIII, (1912), 257-373.

<sup>79</sup> M. A. Pérétie, "Le Rais al-Khadir Ghailan," *Archives Marocaines*, XVIII, (1912), 1-187; A. Bel, *op. cit.*, 351ff.; Levi-Provençal, *Les Historiens des Chorfa*, 43ff.

Even the 'Ulema of Fez, a class traditionally allied with the throne, were more closely identified with the Sheikhs than with the Sultan.

The precarious situation in Fez was compounded by the political weakness of the dynasty. A collateral branch of the Marinids, the Banu Wattas, were the all-powerful regents and vizirs in the *Makhzen*. The hand of the *Makhzen*, however, didn't reach beyond the ramparts of New Fez.

In 1437, the tomb of Idris II, the founder of Fez, was miraculously discovered with the King's inhumed body intact. The cult of Idris and the resurgence of the Idrisids had been a by-product of the religio-political situation in the Kingdom of Fez.<sup>80</sup> The reaction of the population of Fez to this discovery was one of delirium and heightened religious expectation. Soon thereafter, wine was reportedly found in the mosques of Fez and the Jews were blamed for this outrage.<sup>81</sup> Upon this pretext, a wholesale massacre of the Jews of Fez ensued. The Sultan intervened and transferred the Jews from their quarter on the periphery of the Kairouanian Bank to a more secure location behind the ramparts of the imperial city of *Fez el-Jedid*.<sup>82</sup>

The new Jewish quarter, called the *Mellah* due to the salty site on which it was located, became the prototype of the Moroccan ghetto. The very name was soon applied, along with *Juderia* or *Juiverie*, to all the Jewish ghettos of Morocco.<sup>83</sup> Although the Sultan 'Abd el-Haq ben Abu Said (1421-1465) had intended his move as a means of protecting the Jews, the Jews did not unanimously regard the move to the Mellah and the New City as a favorable turn of events.<sup>84</sup> Not only did the move entail economic hardship by removing the Jews from the economic hub of activity, but it also left the Jews in an extremely vulnerable position geographically.<sup>85</sup>

<sup>80</sup> M. G. Salmon, "Le Culte de Moulay Idris et la Mosquée des Chorfa de Fès," *Archives Marocaines*, III, (1905), 413-30.

<sup>81</sup> *Yabas Fes*, 9b; *Kisseh ha-Melakhim*, 22.

<sup>82</sup> Various dates for the transfer of the Jews to New Fez have been suggested. Massignon, for instance, suggests the early fourteenth century. Cf. *Le Maroc dans les premières années du XVI<sup>e</sup> siècle*, 175, 227. Hebrew accounts such as the *Yabas Fes* and the *Kisseh ha-Melakhim* agree on the essential details of the events of 1438 although they do not perceive any relation between the pogrom and religious events in Muslim circles.

<sup>83</sup> On the term *Mellah*, cf. Gaudefroy de Mombynes, "Mellah," *Journal Asiatique*, (I, 1914), 651-8.

<sup>84</sup> Le Tourneau, *Fès avant le Protectorat*, 66-67.

<sup>85</sup> Jews frequently found themselves caught in the middle of the anti-dynastic and sectional fights which occurred throughout the sixteenth and seventeenth century. in Fez. *Dibre ha-Yamim*, 24, 25, 26, 35, 36, 37.

religious  
fanaticism  
↓  
pogrom  
↓  
ghetto  
for their own  
protection

## CHAPTER TWO

THE COMMUNAL STRUCTURE OF THE JEWISH  
COMMUNITY OF FEZ

## THE DEMOGRAPHY AND INSTITUTIONS OF THE MELLAH

Muslim doctrine governing the *dhimmis* provided many guarantees which enabled the Jews to exercise full autonomy in their internal affairs. *Dhimmis* were to be governed by their own laws, were free to select their own leaders, could engage in most occupations<sup>1</sup> and could travel freely in the lands of Islam.<sup>2</sup> Jewish houses of worship and private property were guaranteed against pillage and plunder.<sup>3</sup>

All the guarantees in Muslim doctrine, however, were less essential than one would assume since no Moroccan government during the period was strong enough to back the guarantees by force or to offset the anti-Jewish feelings of the masses. Thus, for example, while official Jewish fiscal obligations were not particularly onerous, the official *jizya* was the least of the fiscal obligations which the Jews were forced to meet.<sup>4</sup> Freedom of mobility was a meaningless concept since the countryside was often too anarchic for Jews to pursue trade safely.<sup>5</sup> The inviolability of a *dhimmi's* property was often observed in the breach and no Muslim official was capable of punishing the violators.<sup>6</sup> Thus a consideration of the theoretical status of the Jews

<sup>1</sup> The occupational restriction that Jews not exercise dominion over Muslims was carefully adhered to during the period after the debacle surrounding the career of Haroun. See later discussion on the sensitive nature of Jacob Roti's position and how Muslim feelings were taken into account.

<sup>2</sup> The one restriction that had always been adhered to was the prohibition against Jewish travel in the North Arabian peninsula.

<sup>3</sup> For a discussion of the legal status of the Jews under Islam see al-Mawardi, *Les Statuts gouvernementaux*, tr. E. Fagnan, (Algiers: Braham, 1915), 52, 299ff. 362-497. On special disabilities see E. Fagnan, "Le Signe distinctif des Juifs au Maghreb," *Revue des Études Juives*, XXVIII, (1894), 294-8; E. Strauss (Ashtor), "The Social Isolation of the Ahl ad-Dhimma," *Études Orientales à la Mémoire de Paul Hirschler*, ed. O. Komlos, (Budapest: 1905), 73-94; A. S. Tritton, "The Caliphs and their Non-Muslim Subjects," (London: Oxford, 1930), and "Islam and the Protected Religions," *Journal of the Royal Asiatic Society*, X, (1931), 34-8; Georges S. Vajda, "Juifs et Musulmans Selon le Hadith," *Journal Asiatique*, 229 (1937), 57-127.

<sup>4</sup> See discussion in chapter VIII.

<sup>5</sup> *Dibre ba-Yamim*, 40, 47; *Mishpat u-Sedakah*, I, # 65, 62b.

<sup>6</sup> See discussion below.

in Morocco bears little relation to the conditions under which they frequently strove to maintain their autonomous institutions.

Internal autonomy of the Jews under Islam did not imply equality in the Muslim world. All contemporary travelers to Fez note the sense of scorn and superiority which colored all Muslim relations with Jews.<sup>7</sup> In addition, the negative aspects of the Covenant of 'Umar relating to distinctive clothing and other signs of inferiority were definitely implemented in our period.<sup>8</sup> This legal emphasis on Jewish inferiority meant that some of the theoretical guarantees of Jewish autonomy could be abrogated more easily during our period.<sup>9</sup>

The Jews were the only official non-Muslim community residing in Fez. There was a small group of Christians in the city who were engaged in trade or the ransoming of captives. They were housed in a special building near the Palace, known as the *Diwan* and headed by a consul, *Feitor*, who was probably synonymous with the Factor.<sup>10</sup> Their situation was not analogous to that of the Jews. Frequently they received the backing of ecclesiastical powers in Europe.<sup>11</sup>

The communal structure of the Jewish community of Fez was shaped by a number of factors. On the one hand, the religious and political climate in Morocco tended to minimize the scope of Jewish freedoms and occasionally led to actual inroads on Jewish autonomy. In addition, external pressures on the Jews added weight to the authority of those Jews who served as intermediaries with the government or were entrusted with Jewish fiscal affairs. On the other hand, all the institutions of the *Mellah* were tailored to meet the needs of a community of diverse origins. Despite the importance of external events in either strengthening or weakening certain aspects of Jewish autonomy, in the final analysis, it was Jewish precedent, both talmudic and historic, which determined the communal institutions of the Mellah.<sup>12</sup>

<sup>7</sup> Marmol, 170. "Cette nation estant fort maltraitée en Afrique. On leur crache au nez dans les rues, on les frappe, on ne leur permet pas de porter des souliers." Leo Africanus notes that Jews "are despised everywhere." Le Père Mouette, visiting Fez in the 1680's, observed the same degradation as that noted by Marmol. Cf. *Les Sources... France II*, 176-7.

<sup>8</sup> See discussion of such instances below.

<sup>9</sup> See discussion below.

<sup>10</sup> Robert Ricard, *Les Sources... Portugal*, III. Introduction; Le Tourneau, *Fès avant le protectorat*, 73.

<sup>11</sup> Clenardus, *Correspondence*, III, 137; Mendosa, 193.

<sup>12</sup> A full discussion of the constant and varying features of Jewish communal life in the Christian and Muslim milieus can be found in Salo W. Baron, *The Jewish Community*, (3 vols., Philadelphia: The Jewish Publication Society of America, 1942). For a discussion of communal life in North Africa prior to 1492 cf. Hirschberg, *Toledo*, I, 152-83.

*The Demographic Character of the Jewish Community of Fez*

The composition of the Jewish community of Fez during the sixteenth and seventeenth centuries is usually depicted as an amalgam of indigenous Jews (*Tosbavim*) and Spanish refugees (*Megorashim*). This simplification, however, masks the plurality of origins which characterized both main population groups.<sup>13</sup>

It is indeed a problem to determine the size of the Jewish community of Fez during this period. Although a number of estimates are offered by travelers, they differ markedly and all date from approximately the same period. In addition, the population was not static throughout the period. On the one hand, the population of the *Mellab* underwent drastic fluctuations as a result of natural disasters and political upheavals.<sup>14</sup> Constant emigration from Fez occurred during the period, only partially offset by immigration from Spain and Portugal and Jewish population transfers from elsewhere in Morocco.<sup>15</sup> On the other hand, Jewish sources barely mention the constant attrition caused by conversions to Islam.<sup>16</sup> In addition, none of the estimates takes into account the fact that many temporary residents resided in the *Mellab*. These Jews, generally bachelors from other Moroccan cities who had come to Fez to learn a trade or find a bride, did not share in all the burdens and responsibilities of the community.<sup>17</sup>

<sup>13</sup> Le Tourneau, *Fès avant le protectorat*, 133. The appellation of *Tosbavim* and *Megorashim* is constantly employed in the Hebrew sources, thereby, emphasizing the unity of these two groups vis-a-vis each other while ignoring the fact that each group was quite diversified internally.

<sup>14</sup> *Dibre ha-Yamim*, 14 records the death of 1,640 Jews in Fez in 1558. P. 20 records the death of 800 Jews in the famine of 1604-05. P. 31 notes the death of 150 Jews in the drought of 1614. P. 41 lists 150 Jewish deaths in 1627 from among the notables of the *Mellab*, 200 deaths from among the poor and 300 from among children under five years of age.

<sup>15</sup> See below on the breakdown of the two communities by origin and date of arrival in Fez.

<sup>16</sup> *Dibre ha-Yamim*, 20. The chronicler notes the conversion of 600 Jews to Islam in 1605. As early as the year of the advent of the Spaniards to Fez, the phenomenon of conversion to Islam in the time of adversity had been noted. Cf., Torrutiel, 113. These converts were a continual source of irritation to the Muslims. Fetwas from the sixteenth and seventeenth centuries indicate the unwillingness of the Muslims to accept them in good faith. Cf. L. Massignon, "L'Interdit," *op. cit.* These new converts continued to deal with Jews and exhibited many of the features associated with the New Christians of Spain, e.g. endogamous marriages and participation in traditionally Jewish professions.

<sup>17</sup> *Pinkas*, 22a mentions apprentices from outside Fez. *Mishpat u-Sedakah*, I, # 74, 65a, b deals with the exemption of bachelors residing temporarily in Fez from

Thus, all numbers mentioned by witnesses must be treated with a good deal of caution since they are unverifiable and all date from the period of great economic prosperity in Fez (1540's). General comments or laments of Jewish scholars from the end of the period reveal that the Jewish population of the *Mellab* in 1700 was markedly inferior to that of one century before. These same sources, however, do not explicitly state whether the *Mellab* was bereft of inhabitants or just of scholars and wealthy tax-payers.<sup>18</sup>

*The Tosbavim*

ט' ז' ל' א

All those Jews in Fez who did not originate in Spain or Portugal were known as the *Tosbavim* (settlers or natives). The nineteenth century chronicle *Yabas Fes* asserts that they numbered 1,450 families in 1438.<sup>19</sup> Undoubtedly, their numbers decreased as a result of the pogrom of 1465, the conversions to Islam following it and the exodus of many native Jews from Fez in the wake of these upheavals.<sup>20</sup>

Although the native Jewish community of Fez was sapped of much of its strength before the advent of the Sephardim, it still retained some of its former luster and Fez was regarded as a city of Jewish learning.<sup>21</sup> It is possible that the *Mellab* was bolstered by the influx of other Moroccan Jews following the Portuguese conquests of Tangier and Arzila in the 1470's.

The most important element among the *Tosbavim* from the point of view of communal leadership was a group of natives of Fez who had fled to Spain in the course of the fifteenth century and returned to Fez after 1492. Educated in Spain, they were in a unique position to understand the Sephardim and bridge the gap between Sephardim and native Jews.

The most outstanding representative of this group was the Ibn

contributing to the repair of water conduits in the *Mellab*. *Kerem Hemer*, II, # 47, 8a, b discusses problems arising from the contraction of marriages between these bachelors and local girls.

<sup>18</sup> See discussion in chapter VIII.

<sup>19</sup> *Yabas Fes*, 11b.

<sup>20</sup> See chapter I, *Malkhe Rabbanan*, 79b on the emigration of Issachar b. Susan in the mid-fifteenth century and 30a on the emigration of Chaim Gagin.

<sup>21</sup> Issachar b. Susan regarded Fez as a "city of great Jewish learning." The rabbi of Algiers, Simon b. Zemah lauded the scholarship of Fez at this time. Cf. Toledano, 42-4. *Responsa* of Simon b. Zemah, III, # 285-86 and of his son Solomon, # 406 as quoted by Hirschberg, I, 289. Probably this reputation, as well as the reputed kindness of the king of Fez, accounted for the fact that many Jews chose to settle in Fez when they were ousted from Spain.

Danan family. Fleeing from Fez in either 1438 or 1465, the Ibn Danans settled in Granada where Rabbi Moses b. Maimon Ibn Danan and his son Saadiah achieved fame as scholars.<sup>22</sup> Saadiah returned to Fez after the expulsion from Spain and served as a spiritual guide of the exiles while identifying himself with the native Jews.<sup>23</sup> The Ibn Danan family was among the intellectual and financial elite of Fez for centuries. While marrying into the most prominent Sephardi families<sup>24</sup> and participating in the Sephardi-oriented power structure of the community, the Ibn Danans maintained their allegiance to the *Toshavim* and were designated "the scholars of the Toshavim" in the *Takkanot* of 1555.<sup>25</sup> They maintained their own synagogue in Fez where the "ritual of Fez" was the mode of prayer.<sup>26</sup>

Like Saadiah Ibn Danan, Rabbi Chaim Gagin was an illustrious scion of one of Fez's leading families who went to Spain for scholarly or personal reasons.<sup>27</sup> He returned after 1492 and employed his halakhic training, acquired in Spain, to support the position of the native Jewish community when controversy between the two groups erupted into open conflict.<sup>28</sup>

There is no way of estimating how large this group of *Toshavim* was. From the time of the Visigoths, Jews had constantly been moving between Spain and Morocco. Their loyalty to Fez, combined with the erudition they had acquired in Spain and their knowledge of how to deal with the Sephardim enabled them to assume positions of leadership in the native community.

It is interesting to speculate whether other Jewish communities might have been as successful in resisting inundation by Sephardi customs as were the *Toshavim* of Fez had they also possessed a cadre

of "native sons," educated in Spain and faithful to the mores of their ancestors.

In addition to native inhabitants of the *Mellab*, the *Toshavim* included a sizable number of Jews from other Moroccan cities. For example, when the Turks of Algiers attacked Tlemcen in 1542, the 1,500 Jews (or Jewish families) faced great danger.<sup>29</sup> Many were killed or captured, while others succeeded in obtaining ransom from the Jews of Fez.

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Taza, like Tlemcen, was on the corridor between Morocco and Algeria and was the traditional target of conquest and pillage by invaders from the east.<sup>30</sup> When Taza was attacked in 1554, its Jewish community, numbering approximately 500 households,<sup>31</sup> sought refuge in neighboring Muslim hamlets. The Jews of Fez, under the guidance of Rabbi Judah Uzziel, set a priority on ransoming those Tazan Jews who had fled to the countryside and been betrayed by the Muslims. The Jews of Fez were unable to ransom all the Jews of Taza due to the drought in Fez and the devaluations accompanying it.<sup>32</sup> Yet, a sizeable number of Jews from Taza relocated themselves in Fez and maintained their own synagogue in the Mellab.<sup>33</sup>

Relations between the remaining Jewish community of Taza and the Jews of Fez were quite strong throughout the period. The remnant of the Jews in Taza were subjected to persecutions by Mulai Ismail in the 1690's. It is not clear whether or not they moved to Fez en masse at this time, retaining their separate status, since they continued to refer to themselves as the Jews of Taza in their legal exchanges with Rabbi Jacob ibn Sur in the eighteenth century.<sup>34</sup>

In 1668, Mulai Rashid attacked the town of Chaouya in the southern district of Tadla and vowed to raze the city.<sup>35</sup> The Jewish community, a group numbering 1,300 households and possessing great wealth, was given three days to leave. With their rabbi, Maimon

<sup>29</sup> Toledano, *Ner ha-Ma'arab*, 83; *Malkhe Rabbanan*, 51a; Joseph ha-Cohen, *Emek ha-Bachab*, (Jerusalem: Lewin-Epstein, 1947).

<sup>30</sup> Terrasse, *Histoire du Maroc*, I, 6.

<sup>31</sup> Leo Africanus, 303.

<sup>32</sup> *Malkhe Rabbanan*, 55b. Ben-Naim quotes as interesting communal ordinance in his possession granting Rabbi Joshua Gigi wide authority over affairs in Taza, signed by the leaders of Fez. It is dated 1702. Some Taza Jews therefore remained in Taza or returned to Taza in the seventeenth century.

<sup>33</sup> *Dibre ha-Yamim*, 47. It is listed among those destroyed in 1646.

<sup>34</sup> Meir Benayahu, "Morocco and Palestine" (Hebrew), *Sinai*, XXXV (1954), 318.

<sup>35</sup> *Dibre ha-Yamim*, 53; *Kisseh ha-Melakhim*, 25; Toledano, 113 and Hirschberg, II, 253.

<sup>22</sup> A reconstruction of the genealogy of the Ibn Danan family appears in Toledano, *Ner ha-Ma'arab*, (Jerusalem: Lunz, 1911), 84-85 and notes 36-40; *Malkhe Rabbanan*, 100b-101b; David Gaon, *The Jews of the Maghreb in Palestine*, (Hebrew), (2 vols., Jerusalem: Azriel, 1937), I, 216-17. For a separate study of the family, cf., Nahum Slouschz, "The History of Fez and the Ibn Danan Family," (Hebrew), *Sura*, III, (1957-58), 165-91.

<sup>23</sup> He is noted for his famous responsum on the *Anusim* (Jewish converts to Christianity). Cf. Z. H. Edelman, ed., *Hemdab Genuzah*, (Konigsberg: Gruber and Euphrat, 1856), 13-16.

<sup>24</sup> See discussion in chapter III on communal leaders.

<sup>25</sup> *Kerem Hemer*, II, # 22, 4a.

<sup>26</sup> Until today, the prayerbook of this synagogue is in use and is known as that of the *Toshavim*. Cf. A. ben Shimon, *Abavat ha-Kadmonim*, (Jerusalem: n.p., 1889).

<sup>27</sup> *Etz Chaim*, 1a; *Malkhe Rabbanan*, 30a.

<sup>28</sup> See a discussion of this conflict in chapter IV.

Aflalo, the Jews of Chaouya settled in Fez and were granted their own synagogue.<sup>36</sup> Maimon Aflalo served as a communal leader alongside Fez's own scholars, Judah Uzziel, Menahem Serero and Vidal ha-Sarfati, perhaps acting as a representative of the interests of his "constituency" in communal decisions.<sup>37</sup>

In 1703 the Jews of Chaouya residing in Fez petitioned Jacob ibn Sur for the right to be assessed separately for governmental taxes.<sup>38</sup> They disputed the portion allotted to them by the communal leaders. In addition, they apparently had poor relations with the rest of the community and were attempting to form a separate entity vis-a-vis the government.<sup>39</sup> They proposed that their community join forces with Jews from other Moroccan centers residing in Fez and be responsible for 50% of the governmental levy. The response of the rabbis Jacob ibn Sur, Abraham ibn Danan and Judah ibn 'Atar was negative; not only did this group threaten the well-being of the community through an attempted schism (this is not stated but implied) but it also was responsible for 2/3 of the taxes.

The aforementioned responsum reveals some of the tensions in the *Mellab* caused by the separate identities of its component parts. In addition, it provides some insight into the relative size or wealth of the diverse groups within the *Mellab*. In contrast to the usual assumption that the Sephardim were the most affluent group, this responsum furnishes positive proof of the preponderance of *Tosbavim* in 1700 (financially if not numerically).

### *The Megorashim*

All the Jews who had escaped from the Iberian peninsula, regardless of the date of their departure, were known as the *Megorashim* (from the Hebrew *gerush* meaning expulsion). Estimates of the total number of Jews who left Spain in 1492 are unreliable. No numbers exist concerning the number of Jews who sought refuge in Morocco nor of where in Morocco they settled. Moreover, the *Megorashim* did not all arrive at one time nor did they all remain in Fez. Thus, all estimates on the size of the population of *Megorashim* in Fez are extremely hypothetical.

<sup>36</sup> *Malkhe Rabbanan*, 69a, 81a.

<sup>37</sup> *Kerem Hemer*, II, # 45, 8a dated 1691 containing important sumptuary legislation.

<sup>38</sup> *Misbat u-Sedakab be-Ya'akov*, I, 202, 117b.

<sup>39</sup> *Ibid.* See chapter VIII.

Even before 1492, Fez had served as a haven for Spanish Jews. Logically, Fez, with its lively commerce and traditions of learning must have attracted some Jews after the widespread pogroms in 1391 in Spain and Majorca propelled scores of Jewish groups to seek refuge in Algeria, Tlemcen, Tunisia and the coastal ports of Morocco. Toledano conjectures that the accounts of the pogrom of 1465 in Fez which list the decimation of the Jews of *שכלא* refer to Jews from Seville.<sup>40</sup>

The arrival of the *Megorashim* to Fez was accompanied by many dangers and great hardship.<sup>41</sup> Countless refugees died in their encampment outside the city walls as a result of cold, hunger and the outbreak of the plague.<sup>42</sup> Abraham Torrutiel asserts that 20,000 Jews came to Fez in 1492 and an undetermined number died there or left during the first winter.<sup>43</sup> This figure of 20,000 is confirmed by the spiritual leader of the *Megorashim*, a young Sephardi scholar, Jacob Berab. Berab relates that he served as the teacher for 5,000 Jewish households in Fez before his departure in 1493.<sup>44</sup> He was probably the leader of the Spanish refugees and not of all the Jews of Fez since even a generation later the two groups maintained separate teachers.<sup>45</sup>

Many Sephardim left Fez almost immediately after their arrival. There is no way of estimating how great this exodus was since only the biographies of scholars were recorded for posterity.<sup>46</sup> Some approximate idea of the size of the *Megorashim* in Fez, as well as the extent of suffering they endured in the first years in Fez, can be derived from a comparison of the 1492 estimates of Berab and Torrutiel with those recorded in the sixteenth century.

In 1540, a remarkable European, Nicholas Clenardus, arrived in Fez and resided in the *Mellab* until the end of 1541.<sup>47</sup> In his letters of

<sup>40</sup> Toledano, *Ner ha-Ma'arab*, 45. Toledano ascribes the lack of clarity to a scribal mistake.

<sup>41</sup> See chapter I.

<sup>42</sup> See chapter I.

<sup>43</sup> *Sefer ha-Kabbalah*, 112.

<sup>44</sup> *Yabas Fes*, 11b; *Kisseh ha-Melakhim*, 22; Toledano, 55.

<sup>45</sup> See discussion on education later in the chapter.

<sup>46</sup> *Malkhe Rabbanan*, 46a on the departure of R. Judah Hiyat; Abraham Saba, *Sarur ha-Mor*, 36; *Malkhe Rabbanan*, contains numerous entries on less well known personalities who left Fez soon after their arrival.

<sup>47</sup> Nicholas Claynaerts or Clenardus was born in 1493, educated at the University of Louvain and was an ordained priest. In 1531 he went to Spain and served as a Professor of Greek and Latin at the University of Salamanca. In addition to his knowledge of these languages he also knew Hebrew and Arabic and served as the tutor to the brother of King Jean III of Portugal. He became obsessed with the idea

April 9 and April 12, 1541, Clenardus reported that the *Mellab* contained 4,000 Jews. He also ventured a guess of 50,000 Muslims inhabiting Fez el-Bali.<sup>48</sup>

The European traveler, Marmol, visited Fez in 1545 and noted the presence of more than 10,000 Jews in the *Mellab*. Marmol states further that the majority of these Jews were Sephardim.<sup>49</sup> Leo Africanus, an earlier visitor to Fez who was quite familiar with the city, notes that the number of Jews was so great that it was impossible to count them.<sup>50</sup>

According to Jeronimo de Mendosa, the *Mellab* contained 1,000 Jews at the end of the sixteenth century.<sup>51</sup> This figure appears to be a gross underevaluation. Saul b. Serero relates that more than 800 Jews died in the famine of 1603 and more than 600 apostasized.<sup>52</sup> Since the community did not vanish, nor did any of its institutions close, Mendosa's figure should be discounted.<sup>53</sup> At least in the case of apostasy, a native of Fez probably would be careful not to exaggerate too much.

The discrepancy between the figures dating from 1492 and those of the 1540's indicates that a large percentage of the Jews of Fez either died or emigrated in the early part of the sixteenth century. Many Sephardim apparently selected Fez as a transit point en route to more congenial asylums.<sup>54</sup> Others left for pious reasons to settle in

of converting the Muslims to Christianity and of establishing a school of missionaries to the Muslims in Louvain. In order to prepare himself for this task he went to Morocco in 1540 with the backing of some of the leading political and ecclesiastic personalities of Portugal. Because of the hostility of the Muslims to Christian clerics, Clenardus settled in the *Mellab* of Fez and formed a number of close friendships with the Jews who tutored him in Arabic and whom he in turn tutored in Latin. He sent back a series of very informative letters on his mission in Fez to his patrons in Europe which have been preserved in Latin and translated into French. Nicholas Clenardus, *Correspondence*, trans. Alphonse Roersch, 3 vols. (Brussels: Palais des Académies, 1941), III, 104-55.; Roger le Tourneau, "Notes sur les lettres Latines de Nicholas Clénard relatant son séjour dans le Royaume de Fès (1540-1541). *Hespéris*, XIX, (1934), pp. 45-63.

<sup>48</sup> Letter XXXIV (letter 55 in Latin edition), 12 avril 1541, pp. 132-40.

<sup>49</sup> Marmol, II, 170.

<sup>50</sup> Leo Africanus, 234.

<sup>51</sup> Robert Ricard, *op. cit.*, 183. His name also appears as Mendonsa.

<sup>52</sup> *Dibre ha-Yamim*, 20.

<sup>53</sup> Only one possible indicator of size exists in Hebrew records from the seventeenth century. *Dibre ha-Yamim*, 44, relates that a flood in Fez inundated one part of the *Mellab* which contained approximately 200 Jewish homes and another part of the *Mellab* which contained approximately 50 homes. This disaster of April 1639 did not destroy all the homes in the *Mellab*.

<sup>54</sup> Berab apparently represented such a case.

Palestine after its conquest by the Ottomans in 1516.<sup>55</sup> Some scholars departed in order to print their works in Italy or Constantinople.<sup>56</sup> Emigration on a smaller scale to Amsterdam also occurred during this period.<sup>57</sup> Towards the end of the period, many natives of Fez left either temporarily or permanently, gravitating to other Moroccan cities which held greater promise.<sup>58</sup>

The exodus of Sephardim and native Jews from Fez also occurred as a result of political upheavals. In 1549, for example, when Fez was besieged, 1,500 Jews left the *Mellab* and sought refuge in Meknes.<sup>59</sup> After the siege, some Jews from this group undoubtedly remained in Meknes.

Many Spanish and Portuguese Jews did not leave the Iberian Peninsula in 1492. The Portuguese Jews, compelled to remain and convert after the fictitious expulsion of 1497, did not, in many cases, feel pressured to flee until the Inquisition became more vigilant after 1520.<sup>60</sup> Throughout the sixteenth century, secret Jews or Marranos left Spain, Portugal and the Canaries. Efforts to help their departure were probably organized in Fez (among other important centers of Sephardi resettlement). It is possible that a special chest to assist Marranos existed in Fez.<sup>61</sup> Probably the *Nagid*, Jacob Roti, was in contact with Marrano circles during his diplomatic missions to Portugal on behalf of the King of Fez.<sup>62</sup> The Portuguese representative to Fez, Vargas, complained in a letter to Portugal in 1542 of the activities of Portuguese merchants who, under the pretext of conducting business affairs, moved from one Portuguese possession to the next in Morocco until they arrived in Fez and reverted to Judaism openly.<sup>63</sup>

The problem of Marrano reversions to Judaism in Fez became so troublesome to the Spanish authorities that, in 1532, the King of Spain

<sup>55</sup> Meir Benayahu, "The History of the Connections of Moroccan Jewry with Palestine," (Hebrew) *Sinai*, XXXV, (1954), 317-340; Jacob Toledano, "Manuscript Documents," *HUCA*, IV, (1927), 49-67. *Malkhe Rabbanan*, 10b.

<sup>56</sup> *Malkhe Rabbanan*, 62b.

<sup>57</sup> *Ibid.*, 72b.

<sup>58</sup> *Kerem Hemer*, II, 75, 12b; 203, 37a.

<sup>59</sup> *Les Sources inédites ... Espagne*, I, # 34.

<sup>60</sup> Its renewed truculence was associated with the excitement aroused in Marrano circles by the visit of David Reubeni to Portugal at this time.

<sup>61</sup> David Corcos, "Moroccan Jewry in the first half of the Sixteenth Century," (Hebrew) *Sefunot*, X (1966), 105.

<sup>62</sup> Hirschberg, I, 323.

<sup>63</sup> *Les Sources inédites ... Portugal*, IV, # 20.

forbade all trade between the Moors and the port of Agadir.<sup>64</sup> Possibly the same intention of curbing Judaism was behind the Spanish prohibition of exporting paper to Morocco, promulgated in 1521.<sup>65</sup>

\* Fez was one of the major centers in North Africa for the reversion of Marranos to Judaism.<sup>66</sup> Given their Marrano experience, these Sephardim were probably not immediately integrated into the community of *Megorashim* in Fez. The Hebrew sources from Fez are silent on the problem of Marranos in the midst of the community, a fact which does not necessarily mean that as elsewhere they presented no halakhic problems, but is attributable to the lack of rabbinic material from this period.

Unlike the evidence, albeit incomplete, attesting to the inner divisions within the camp of the *Tosbavim*, the Hebrew sources do not permit any generalization concerning divisions among the Sephardim along the lines of their geographic origin. True, the multiplicity of synagogues established by the Sephardim almost immediately after their arrival in Fez might be an indication of the same geographic identification and particularism which characterized Sephardi communities elsewhere.<sup>67</sup>

The population of the *Mellab* fluctuated throughout the period and was always extremely heterogeneous. The *Megorashim* were clearly a majority after their arrival. At the time of the communal conflict of 1526-31, the *Megorashim* still constituted a majority of the community.<sup>68</sup> On the other hand, any influx they received either from other Moroccan cities or recent arrivals from Portugal was probably more than offset by Sephardi emigration and natural attrition through plague and famine. While the *Tosbavim* also suffered great losses through disasters of nature, they were the chief beneficiaries of the influx of Jews from other Moroccan cities.

It is impossible to determine the number of Jews residing in Fez at the end of the period. We hear in a wholesale fashion of dwindling

<sup>64</sup> *Les Sources inédites ... Espagne*, I, # 5. In 1545 the Inquisition tried to restrict the passage of Moriscos (and possibly Marranos) from the Canaries to Morocco, R. Ricard, "Relations des Iles Canaries et de la Berbérie," *Hespéris*, XXI, (1935), 101.

<sup>65</sup> Corcos, "Moroccan Jewry..." *op. cit.*, 102. See discussion later on the Hebrew printing press in Fez and how this measure caused its demise.

<sup>66</sup> Haim Beinart, "Fez as a Centre of Return to Judaism in the Sixteenth Century" (Hebrew), *Sefunot*, VIII, (1964), 319-34.

<sup>67</sup> This phenomenon reached its height in sixteenth century Turkey. Cf. Morris Goodblatt, *op. cit.*, Salo Baron, *The Jewish Community*, I, 348, 351; II, 4, 8, 242.

<sup>68</sup> See discussion below in chapter IV.

numbers. If the mortality figures in the *Dibre ha-Yamim* bear any relation to reality, the community, by 1700, had contracted decisively. After 1700 Meknes carried on the tradition of Fez as the spokesman for all of Jewry in the Muslim court.<sup>69</sup> Economically, too, Fez no longer attracted as many Jewish and Muslim youth as in the previous century and numerous Jewish businessmen retained residence in Fez but actually spent most of their time elsewhere.<sup>70</sup>

Thus, while the communal structure which we shall analyze in the following pages is drawn primarily from Sephardi ordinances, it should be borne in mind that Sephardi intellectual and economic superiority did not necessarily mean numerical superiority.<sup>71</sup> This contradiction between size and importance might help to explain the persistence of native institutions which often duplicated the newly established communal structures as well as some of the resentments between the two groups.

### Communal Institutions

#### The Synagogue

The outstanding institution of the Jewish community of Fez was the synagogue. As the main gathering place of the community, the synagogue, or the main square in front of it, served as the site for public prayers, communal confessions and fasts during the disastrous droughts and famines of the sixteenth and seventeenth centuries.<sup>72</sup>

<sup>69</sup> *Malkhe Rabbanan*, 47a relates how Judah ibn 'Atar, one of the leading scholars of Fez, left Fez in 1701 as a result of the "persecutions at the time." When he returned to Fez in 1704, he and Samuel Ha-Şarfati were the only scholars in the *Mellab*. (The others remained in Meknes). Jacob ibn Şur, after leaving Fez in 1701, served as a judge in Meknes for 11 years. Cf. *Malkhe Rabbanan*, 64b. *Dibre ha-Yamim*, 59 notes the departure of many prominent Jews of Fez to represent the community of Fez at the court in Meknes. The biography of a minor scholar of the time, Hananiah ibn Zikhri, (*Malkhe Rabbanan*, 41b) reflects the same trend. Precisely at this moment, the Jews of Meknes had excellent relations with the court through their leaders Abraham Maimran and Moses Toledano. Cf. Hirschberg, II, 272.

<sup>70</sup> *Kerem Hemer*, II, 203, 37a. Fez still attracted some apprentices from the countryside. See discussion in chapter V on the economic organization of the *Mellab* and indications of Fez's diversified economy in the *Pinkas*.

<sup>71</sup> No precise numbers can be ventured since the primary material is insufficient.

<sup>72</sup> *Dibre ha-Yamim*, 18, 25, 27, 28, 36, 41, 57. The practice of public prayer and fasting in times of disaster was also common among the Muslims of Fez. Cf. A. Bel, "Quelques Rites pour Obtenir la Pluie en Temps de Sécheresse chez les Musulmans Maghribins," *Recueil de mémoires et de textes publié en l'honneur du XIVe congrès des orientalistes à Algiers*, (Algiers: Jourdan, 1905), 49-55. This custom, however, had ancient Jewish roots and need not be considered a form of acculturation by the



The synagogue also served as the site of pronouncements of all important notices. When, for example, the community was split in 1526 over the proper manner in which meat should be examined to determine whether it was kosher, the Jews of Fez "who had originated in Seville" drew up an agreement regarding what sort of meat they would purchase and read it with great solemnity in the synagogue.<sup>73</sup> At the time of the promulgation of this agreement, the leaders of this faction of the *Mellab* pronounced a ban on anyone who deviated from its terms.<sup>74</sup>

The synagogue also served as a frequent meeting place for the deliberations of the communal officers. When, in 1593 for example, the members of the communal council,<sup>75</sup> the head of the Jewish community (*Nagid*)<sup>76</sup> and the scholars of the community were confronted with the question of whether a man could take a second wife if his first wife had not borne him any children after ten years of marriage, they gathered in the synagogue to deliberate.<sup>77</sup>

Confronted by the problem of ascertaining the value of loans, pledges and dowries in the wake of the monetary devaluations of 1605, the rabbis of the community<sup>78</sup> met in the synagogue of Rabbi Saadiyah ben Rabuah<sup>79</sup> to clarify the confused economic situation.<sup>80</sup> In the same season of that year, they met in the synagogue of Rabbi Joseph ibn Şur to discuss problems of a legal nature arising from the fact that the rabbinical courts were often composed of only one judge.<sup>81</sup>

Jews to the Muslim environment. Cf. *Babylonian Talmud*, Ta'anit. In Ta'anit, 8a, a communal fast is considered more efficacious than an individual fast. Fasts for rain are described in great detail in Chapter I of this tractate. The dispensing of charity on a fast day is recommended as well in the Talmud (Sanhedrin, 35a).

<sup>73</sup> *Etz Chaim*, 4a. See discussion in chapter IV on this controversy.

<sup>74</sup> See later discussion on the use of the ban as a form of communal control. *Dibre ba-Yamim* 34 recounts the declaration of a ban against an adulterer in the square in front of the synagogue in 1616.

<sup>75</sup> See discussion in chapter III on the role of the communal council (*Ma'amid*).

<sup>76</sup> See discussion in chapter III on the functions of the *Nagid* and the definition of his office.

<sup>77</sup> *Kerem Hemer*, II, # 36, 6b.

<sup>78</sup> The rabbis in attendance were Saadiyah ibn Rabuah, Samuel ibn Danan, Vidal ha-Sarfati, Jacob Hajiz, Aaron ibn Chaim, Yishaya Bakish, Samuel ibn Habib, Yahya Berdugo and Saul Serero. *Kerem Hemer*, II, # 79, 13b.

<sup>79</sup> See discussion in chapter III on the Rabuah family.

<sup>80</sup> These devaluations occurred in the brief reigns of Mulai Zidan and al-Mamun (1603-1613), two of the sons of Ahmed el-Mansur (1578-1603) who repeatedly ousted each other from power in Fez in a contest over succession. Cf. Terrasse, II, 201ff.

<sup>81</sup> See later discussion on the courts. *Kerem Hemer*, II, # 83, 14b.

The synagogue also fulfilled its traditional function of serving as a house of worship and of study.<sup>82</sup>

The synagogues were located in the northern section of the *Mellab* along the main thoroughfare which bisected it and were in close proximity to the main center of business activity of the quarter.<sup>83</sup>

\* They were generally privately owned, located in or near the homes of prominent members of the community and bore their names.<sup>84</sup>

Private ownership of synagogues frequently posed communal problems. Could, for example, the owner or donor of the synagogue appoint the synagogue officials?<sup>85</sup> What control did the community have over physical alterations of the building which might inconvenience worshippers?<sup>86</sup> What prerogatives did the wife inherit to share in the synagogue income when her husband died?<sup>87</sup>

The leaders of Fez did not question the practice of private ownership of synagogues. On the contrary, they recognized that "every day in Fez and in the entire Maghreb individuals sell part of their share in a synagogue, either one-half, one-third or one-quarter and nobody says a word."<sup>88</sup> Although the owner or donor retained certain prerogatives, such as the right to read certain prayers publicly<sup>89</sup> or to enjoy the fruits of the synagogue income,<sup>90</sup> he could not do anything that would debase the dignity of the synagogue or the standards of its officers.<sup>91</sup> When such general admonitions were not heeded, Rabbis Jacob ibn Şur and Samuel b. Elbaz were finally forced to declare that no individual could build or donate a private synagogue without the approval of the rabbinical court.<sup>92</sup> Such a decision was not to apply retroactively to the existing synagogues.

<sup>82</sup> See discussion later in the chapter on education.

<sup>83</sup> Marmol, 170; En ce quartier est une grande place environnée de boutiques, de synagogues et de maisons bien baties. Leo Africanus confirms this description (p. 234). In modern times, the *Mellab* has retained this topography. Cf. Le Tourneau, *Fès avant le protectorat*, 104.

<sup>84</sup> Private ownership of synagogues was an ancient Jewish custom. Cf. *Encyclopedia Talmudit*, III, 190ff., "Bet ha-Knesset." In Spain many synagogues were originally built as houses or were attached to houses, as for example, the Abulafiah synagogue.

<sup>85</sup> *Kerem Hemer*, II, # 177, 31b.

<sup>86</sup> *Mishpat u-Sedakah be-Yakob*, I, # 57, 60b-61a.

<sup>87</sup> *Ibid.*, II, # 98, 53b-54a.

<sup>88</sup> *Ibid.*, I, # 57, 60b-61a.

<sup>89</sup> *Ibid.*, II, # 128, 70a-b.

<sup>90</sup> *Ibid.* Signed by Judah ibn 'Atar and Jacob ibn Sur in 1712.

<sup>91</sup> The owner, for example, couldn't erect a tannery, a bathhouse or a grain silo near the site. *Mishpat u-Sedakah be-Yakob*, I, # 57, 61a.

<sup>92</sup> *Kerem Hemer*, II, # 177, 31b. Dated 1750.

Private synagogues which bore the name of their owners, donors or important scholars of Fez were probably quite modest and inconspicuous structures. None of the gatherings of the entire community recorded in the *Dibre ha-Yamim* was held in a synagogue bearing the name of an individual.

Over one dozen names of synagogues from this period have been preserved: the synagogue of Benjamin Nahon,<sup>93</sup> of Isaac Abzardal,<sup>94</sup> of Saadiah Rabuah,<sup>95</sup> of Rabbi Chaim Uzziel,<sup>96</sup> of Joseph Almosnino,<sup>97</sup> of Joseph Ibn Şur,<sup>98</sup> of the Nagid Jacob Roti,<sup>99</sup> of Rabbi Nehemiah Cohen,<sup>100</sup> of Judah Uzziel,<sup>101</sup> of the Nagid Abraham Roti,<sup>102</sup> of the *Talmud Torah*,<sup>103</sup> and of the *Midrash Rishon*.<sup>104</sup> The last two structures, as indicated by their names, probably housed the schools of higher learning in the *Mellab*.<sup>105</sup>

Two other synagogues of particular interest are also mentioned in the Hebrew sources of the period: the synagogue of the Jews of Taza<sup>106</sup> and that of the Jews of Chaouya.<sup>107</sup> The existence of these two institutions is proof of the continuing sense of separateness which Jews from other parts of Morocco retained after their admission to

<sup>93</sup> *Dibre ha-Yamim*, 17. Signatory to Takkanah in 1575. *Kerem Hemer*, II, # 29, 5b.

<sup>94</sup> *Dibre ha-Yamim*, 17. Biography in *Malkhe Rabbanan*, 73b.

<sup>95</sup> Signatory to Takkanot in 1590's and early 1600's. *Kerem Hemer*, # 32, 6a dated 1600; # 34, 6a dated 1595; # 36, 6b dated 1603; # 37, 6b dated 1599; # 38, 7a dated 1599; # 40, 7a dated 1602; # 43, 7b-8a dated 1604; # 50, 9a dated 1603; # 51, 9a dated 1603; # 55, 9b dated 1603; # 59, 10a dated 1603; # 83, 14b dated 1609; # 84, 14b dated 1611; # 88, 15b dated 1605; # 89, 16a dated 1605. Biographical data on this communal leader appears in *Malkhe Rabbanan*, 99b.

<sup>96</sup> *Dibre ha-Yamim*, 25. Biography in *Malkhe Rabbanan*, 36b. Period of activity in the 1630's.

<sup>97</sup> *Dibre ha-Yamim*, 17, 25. Biography in *Malkhe Rabbanan*, 57a, b mentions the fact that he was a doctor as well as a scholar. *Kerem Hemer*, II, # 32, 6a dated 1600 includes his signature. Takkanah # 33 notes that although he was not a member of the Ma'amad in 1595, his opinion was solicited when the communal council was undecided on the resolution of a legal problem.

<sup>98</sup> *Kerem Hemer*, II, # 83, 14b dated 1609.

<sup>99</sup> *Ibid.*, # 86, 14b. See discussion on this personality in chapter III.

<sup>100</sup> *Mishpat u-Sedakah be-Yakob*, I, # 102, 62b-63a.

<sup>101</sup> Biographical data in *Malkhe Rabbanan*, 51b. Signatory to Takkanot in the 1590's and early 1600's. *Kerem Hemer*, II, # 34, 6a dated 1593; # 35, 6a-b dated 1593; # 43, 7a-8a dated 1604; # 50, 9a dated 1603; # 51, 9a dated 1603; # 59, 10a dated 1603.

<sup>102</sup> *Malkhe Rabbanan*, 59b. See discussion of this personality in chapter III.

<sup>103</sup> *Dibre ha-Yamim*, 47.

<sup>104</sup> *Kerem Hemer*, II, # 36, 6b.

<sup>105</sup> See discussion on education later in this chapter.

<sup>106</sup> *Dibre ha-Yamim*, 47.

<sup>107</sup> *Malkhe Rabbanan*, 55b.

Fez. Indeed, the retention of a separate synagogue appears to have been among the demands of these groups when they were admitted to Fez.<sup>108</sup>

became  
more  
decentralized

The number of private synagogues increased throughout the period either as a result of the growth of the population or as a by-product of internal divisions along lines of geographic origin. Such subdivisions along geographic lines characterized Jewish communal life after the advent of the Spaniards to Salonica. The reason for the proliferation of synagogues in Fez, unfortunately, is not explained in the sources from the period.

In the first communal ordinance of the Castilian community in Fez, dated 1497, the ordinance is "accepted by all the communities in all four synagogues of the *Mellab*."<sup>109</sup> An ordinance from 1545 mentions the five synagogues of the *Megorashim* as well as "the synagogues of the *Toshavim*."<sup>110</sup> At approximately the same time, Clenardus states that the *Mellab* possessed eight or nine synagogues.<sup>111</sup>

Three additional synagogues are mentioned in contemporary accounts with particular emphasis, the synagogue of the *Toshavim*, the synagogue of the *Megorashim* and the Great Synagogue.<sup>112</sup> One would assume from the names of the first two synagogues, that worship followed strictly communal lines. This was not, however, always the case. Following an earthquake in 1642, "all the men gathered in the synagogue of the *Toshavim*" to recite psalms and offer prayers of Thanksgiving that no one in the *Mellab* had been injured.<sup>113</sup>

The Synagogue of the *Toshavim*, the Synagogue of the *Megorashim* and the Great Synagogue were larger structures where the entire community met on occasions of public importance. As the names of the first two synagogues indicate, they probably were distinguished by their separate rituals. Although accessible to the entire community, these synagogues probably reflected communal or geographic and ethnic affiliation in daily worship. The chronicler of the events in the *Mellab* in 1617 implies such an arrangement when he states "I ordered the Jews to go and pray in the two synagogues."<sup>114</sup> Later, these two

<sup>108</sup> See discussion of demography at the beginning of this chapter.

<sup>109</sup> *Kerem Hemer*, II, # 15, 3a.

<sup>110</sup> *Ibid.*, 22, 4a.

<sup>111</sup> Nicholas Clenardus, *Correspondence*, 121.

<sup>112</sup> *Kerem Hemer*, II, # 79, 13b.

<sup>113</sup> *Dibre ha-Yamim*, 41; *Etz Chaim*, 24b, 27a.

<sup>114</sup> *Ibid.*, 33.

synagogues are more explicitly mentioned as the synagogues of the *Toshavim* and the *Megorashim*.<sup>115</sup>

The synagogue of the *Toshavim*, also known as the synagogue of the Ibn Danans, maintained the ritual of the original inhabitants of Fez throughout the period.<sup>116</sup> The ritual was distinct in melody, order of certain services and included liturgical poems composed by the Ibn Danans.<sup>117</sup>

The synagogues were probably initially endowed with money derived from the sale of seats. Private ownership of synagogue seats was a universal practice in Jewish communities in the Diaspora.<sup>118</sup> Such a practice is alluded to in records from Fez.<sup>119</sup> Maintenance of the synagogue and the salaries of some of its functionaries was dependent upon other sources of income. Foremost among these was the sale of *Misvot* or honorary functions. People bought the honor of reading certain portions of the Torah or of participating prominently in synagogue rituals.<sup>120</sup> This source of income is known as the *rinta* (Sp. *renta*) in twentieth century accounts of the religious institutions of Fez.<sup>121</sup> The sale of such honors to the detriment of the decorum and proper order of the service was so common in North Africa among the native Jews at the time of the first influx of the Spanish refugees after 1391 that the leaders of Sephardi origin repeatedly censured the practice.<sup>122</sup>

Synagogue appurtenances were contributed to the synagogue by individuals in the community. Torah scrolls,<sup>123</sup> Torah coverings and finials,<sup>124</sup> chandeliers or candelabra<sup>125</sup> and candles<sup>126</sup> donated by pious Jews are among those items most frequently mentioned. Such

donations often posed problems for the community. In one undated responsum from the responsa collection of Rabbi Jacob ibn Ṣur, a bequest of money for the purpose of purchasing Torah scrolls became the subject of debate.<sup>127</sup> The question was raised whether the community was free to utilize the bequest in a more fruitful manner. Had the bequest been specifically earmarked for the purchase of candles or a candelabrum, it could, according to Rabbis Judah b. 'Atar and Jacob ibn Ṣur, have been utilized in the manner which the community desired. The bequest intended for the purchase of Torah scrolls, however, was different on two counts. First of all, donations of Torah scrolls with ornamental coverings expressed the desire of the donor to be remembered favorably each time the Torah was removed from the ark. Secondly, such a bequest carried special weight in the eyes of mankind.<sup>128</sup>

In 1731, Rabbi Jacob ibn Ṣur was confronted with a more thorny problem regarding ownership of a scroll donated to the synagogue. The father of a Jew in Fez (Moses b. Shalom ad-Dar'i) had dedicated a Torah scroll to the synagogue. Now the correspondent was ill and his entire family faced hunger and tragedy. He wanted to know whether he could use the Torah scroll as a pledge in order to buy food for the family since surely his father hadn't intended to donate a Torah to the community while his family was dying of hunger. The second party in this dispute, a certain Jacob ha-Cohen b. Moses b. Asolin, asserted that the Torah had indeed been dedicated to the synagogue as a sort of pious endowment (*bekdesh*)<sup>129</sup> and as such was no longer the personal property of the ad-Dar'i family. Moreover, he had even seen the deed in which the donor stated that the Torah scroll would be a *bekdesh* even if the family were destitute and on the threshold of death.

Rabbi Jacob ibn Ṣur was forced to decide between upholding the principle of the irrevocability of certain types of synagogue donations and the human problem of alleviating suffering. His response ingeniously upheld the primacy of both aims. After examining the deed in question, Rabbi Jacob ibn Ṣur found it to be invalid since it hadn't been drawn up in keeping with the reforms of the rabbis of Fez.<sup>130</sup>

<sup>127</sup> *Mishpat u-Sedakah*, II, # 62, 39b-40a.

<sup>128</sup> *Ibid.*, II, # 62, 39b-40a.

<sup>129</sup> On the types of charitable donations and detailed laws covering their ownership and disposition see *Encyclopedia Talmudit*, "Hekdesh," V. X, columns 352-442.

<sup>130</sup> *Kerem Hemer*, II, # 117, 21b. The Takkanah, dated 1660, provides that every

<sup>115</sup> *Ibid.*, 36.

<sup>116</sup> *Abavat ha-Kadmonim*, *op. cit.*

<sup>117</sup> *Nohag be-Hokhmah*, Library of the Jewish Theological Seminary of America, Photocopy from anonymous collection. Ben-Naim's list of the customs of Fez includes an enumeration of the main differences between the ritual of the *Toshavim* and that of the *Megorashim*, (p. 156ff.).

<sup>118</sup> Baron, *The Jewish Community*, II, 130.

<sup>119</sup> *Mishpat u-Sedakah be-Yakob*, I, # 57, 60b-61a implies that a man could certainly dispose of his seat in a synagogue as if it were his private property.

<sup>120</sup> Baron, *The Jewish Community*, II, 133.

<sup>121</sup> *Yabas Fes*, 2a; Brunot-Malka, *Textes Judéo-Arabes de Fès*, 246-7.

<sup>122</sup> Isidore Epstein, *The Responsa of Rabbi Simon b. Zemah Duran*, (Oxford: Oxford University Press, 1930), 74.

<sup>123</sup> *Kerem Hemer*, II, # 122, 22a.

<sup>124</sup> *Mishpat u-Sedakah be-Yakob*, II, # 62, 39b-40a.

<sup>125</sup> *Dibre ha-Yamim*, 60.

<sup>126</sup> *Mishpat u-Sedakah be-Yakob*, II, # 83, 45b.

Thus, the bequest could be given to the destitute family and ibn Šur wasn't forced to deny the irrevocability of a Torah donation.

On the other hand, when the issue was simply that of a rich man who had donated a Torah to the synagogue and now wanted it back because he was moving from the neighborhood, the scholars of Fez upheld the principle of the communal ownership of synagogue property.<sup>131</sup>

There is no indication that the government interfered with the internal affairs of the synagogues of the *Mellab* during the period under review. On the other hand, they were incapable of providing adequate protection to spare the synagogues from minor or major vandalism. Thus, for example, robbers entered the synagogue of Joseph Almosnino on January 5, 1612 and despoiled everything they found there.<sup>132</sup> The chronicler of Fez relates that although the robbers were well-known "there was no recourse against them because the great chieftains were their accomplices."

In 1646 the synagogues of Fez were destroyed by Muhammed el-Hajj, sheikh of a religious order in the district of Tadla who dominated the affairs of Fez for one generation.<sup>133</sup> The following words of Saul Serero provide a most graphic description of the breakdown in order and the ensuing destruction of Jewish religious institutions:

On the 15th of Elul 5406 (16/26 August 1646) he (Muhammed el-Hajj) sent men to destroy the synagogues in the *Mellab*.<sup>134</sup> On the 18th of Elul, because of our iniquities, the great synagogue of the *Toshavim* was destroyed; the 23rd, it was the turn of the synagogue of the *Megorashim*, and the community tried in vain to bribe them. All the sacred objects of the synagogues were destroyed except for the Torah scrolls which were saved through bribes.... Because of our iniquities in the year 5406 of Creation, all the synagogues were closed... by order of the head of the zawiya, Muhammed el-Hajj. This operation was executed on Wednesday, the 11th of Elul. On Sunday the fifteenth

document be signed by two scribes of the rabbinical court. Any other method of drawing up a contract would render it invalid.

<sup>131</sup> *Ibid.*, # 122, 22a; # 177, 31b.

<sup>132</sup> *Dibre ha-Yamim*, 25.

<sup>133</sup> *Dibre ha-Yamim*, 46, 53. The Jews of Tadla were expelled and moved to Fez in 1668 as a result of the campaign of Mulai Rashid to wipe out this popular and refractory leader and his zawiya.

<sup>134</sup> This is my translation of the extracts from *Dibre ha-Yamim*, 46-47. After describing the destruction of the two main synagogues, the author recapitulates and describes the destruction of the smaller synagogues. I have eliminated from the translation some of the lamentations of the chronicler.

of Elul, the enemies penetrated our Temple, despoiled our sanctuary, demolished our synagogue. Woe to the eyes which beheld such an event, sorrow to the author who describes it! On that day they left the ark and the women's gallery intact, but on the following Thursday they destroyed these too. Their ruin is as grave as the destruction of the Temple of Jerusalem. The following week the Gentiles came to destroy the synagogue of the Tazans and caused enormous damage there. On the day of the fast of Gedaliah<sup>135</sup> the enemies attacked the synagogue of Talmud Torah and destroyed it. On the morrow, the synagogue of R. Isaac Abzardal met the same fate.... May God avenge these deeds. May God cast a compassionate glance on our misery, our indigence and our debased state... On the eve of Yom Kippur (9 Tishri), they destroyed the old and the new houses of study. The synagogues of Saadiah Rabuh and Jacob Roti were spared by offering bribes. Between Yom Kippur and Succoth, the synagogue of R. Chaim Uzziel was destroyed.

Because of the impoverished state of the *Mellab*, the synagogues were not immediately rebuilt. The chronicler, Samuel ibn Danan, recounts that the entire community met in the synagogue of the *Toshavim* in 1658 to fast for rain and "the synagogue was still in ruins." In 1701 this structure was in existence. The chronicle does not relate when it was rebuilt. It is significant that the candelabras of the synagogue were not communal property but rather, a gift purchased in Tetouan by the father of Samuel ibn Danan.<sup>136</sup>

The pretext upon which the synagogues of Fez were destroyed is unfortunately lacking in the accounts. Given the religious personality of Muhammed el-Hajj and the desecration of ritual objects, it appears that the destructions of 1646 represented more than acts of vandalism. They were apparently a coordinated act of a group of religious fanatics bent upon enforcing some stipulations of the Covenant of 'Umar.<sup>137</sup>

#### *The Beth Din-Rabbinical Court*

Muslim doctrine governing the *ahl al-Kitab* recognized the right of the Jews to be governed by their own laws and to appoint their own judges.<sup>138</sup> This right of judicial autonomy enabled the Jews to apply

<sup>135</sup> The third of Tishri, September 1646.

<sup>136</sup> *Dibre ha-Yamim*, 62.

<sup>137</sup> The Covenant of 'Umar forbade the construction of new synagogues. Although its stipulations on synagogues were not generally enforced, some religious fanatics throughout the history of Islam have invoked them.

<sup>138</sup> *The Glorious Koran*, tr. Marduke Picthall, (New York: Mentor Books, 1952), I: 51. "The people of the Book shall be judged according to the Book." Al-Mawardi

Jewish law in all spheres of life in the *Mellab*. Traditional Jewish legal precedents, therefore, held undisputed sway in the field of personal law, e.g. marriage, divorce and inheritance. Precisely in these areas of Jewish law, the rabbis of the period were most repeatedly challenged to give their judicial opinions since personal law constituted one of the primary areas of conflict between the Spaniards and the Jews of Moroccan origin.

Since the Jews of Fez did have extensive economic dealings with the Muslims, it was inevitable that numerous instances of procedural substantive conflicts should arise. These legal differences in areas touching on property and finance, rather than arbitrary interferences in Jewish legal autonomy, proved quite troublesome to the Jewish leaders of the period.

The religious leaders of Fez were adamant that Jews should not summon other Jews before Gentile courts. In 1603, they promulgated an ordinance prohibiting Jews from bringing their cases before Muslim courts, threatening any violators of the ordinance with the *herem* or ban.<sup>139</sup> They even applied this prohibition to situations in which the deeds of the matter in dispute had been registered in Muslim courts.<sup>140</sup> The only exception they recognized was one in which the Jewish creditor to the dispute refused to appear before the *Beth Din*.<sup>141</sup>

Since many Jews took their disputes to Muslim judges despite rabbinic opposition, the rabbis of Fez attempted to exercise some control by legitimizing this practice while retaining certain prerogatives for the *Beth Din*. This process of accommodation is implicit in four *Takkanot* from the communal ordinances of Fez. Two of these *Takkanot* are undated and unsigned while two of them date from 1585.<sup>142</sup>

One of these *Takkanot* reveals that some Jews attempted to exploit the discrepancies which existed between Jewish and Muslim law to

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elaborates on this further. "If there be quarrels among the infidels with respect to their religion, or if their opinions be divided in regard to their religious principles, one must not interfere in their affairs and exercise any pressure upon them. If there be litigation among them and they submit to their own judge, one shall not prevent them from doing so." Cf. Baron, *The Jewish Community*, I, 162 from E. Tyran, *Organisation judiciaire en pays d'Islam*, (Leiden: E. J. Brill, 1938), I, 125, 240.

<sup>139</sup> *Kerem Hemer*, II, # 77, 13a.

<sup>140</sup> See explanation to follow.

<sup>141</sup> This exception provides an interesting admission of the rabbis that even the threat of *herem* was not a sufficient deterrent and that they were powerless to implement decisions when one party to a dispute did not recognize the binding nature of the decisions or the prerogatives of the *Beth Din*.

<sup>142</sup> *Kerem Hemer*, II, # 52, 9a; # 53, 9a-b; # 54, 9b; # 55, 9b.

their advantage and to the detriment of a Jewish creditor. For example, if a man gave his house as a pledge but continued to live in it, according to Muslim law, the holder of the pledge would have no claim on the house.<sup>143</sup> In some instances, a Jewish creditor possessing land or money in surety from his Jewish debtor would register his deed of surety in a Muslim court with a Muslim silent partner. When the time limit of the pledge expired, a sale would be instituted and the debtor would frequently be duped out of his pledge.<sup>144</sup>

To avoid such abuses or other instances where a creditor himself could suffer losses, the rabbis of Fez decreed that any deed of sale or pledge executed by Jewish scribes must also be registered with the civil authorities.<sup>145</sup> Failure to do so would be punished by imprisonment. In addition, Jewish deeds, at least superficially, must correspond to Muslim deeds.<sup>146</sup> If the deeds of rental or indebtedness were properly executed, Muslim law was binding on the litigants.<sup>147</sup>

Despite the peremptory nature of these *Takkanot*, very few deeds in the *Pinkas* of Fez mention business transactions where a contract was registered in the Muslim courts. In the three instances in the *Pinkas* when mention is made that a Muslim contract (*'akd*) was also executed, the business transactions involved simple store rentals.<sup>148</sup> Perhaps many similar instances of store rentals also were accompanied by registration of deeds in Muslim courts but were simply not mentioned in the Jewish deed (*Shetar*) since the practice was so common.

Muslim interference in Jewish judicial autonomy was not confined to the sphere of business and the problem of overlapping or conflicting legal traditions. Disputes of this nature were comparatively simple to solve without denigrating either Jewish or Muslim law. However, instances did arise in Fez when the decisions of the rabbis of Fez or indeed of Jewish rabbinic tradition in general were jeopardized, or at the least challenged, by the Muslims.

Problems of conflicts in the area of personal law were sometimes a product of Jewish adoption of Muslim practices while others were the direct result of royal interference in Jewish family law. One of the most blatant forms of acculturation to the Muslim environment

<sup>143</sup> *Kerem Hemer*, II, # 52, 9a; # 55, 9b.

<sup>144</sup> *Ibid.*, # 53, 92-b.

<sup>145</sup> *Ibid.*, # 52, 9a; # 53, 9a-b.

<sup>146</sup> *Ibid.*, # 53, 9b. See Appendix, p. 201.

<sup>147</sup> *Ibid.* This appears to be the meaning of the text. See Appendix, p. 201.

<sup>148</sup> *Pinkas*, 12a, 12b.

which the post 1391 Spanish rabbis had encountered in North Africa had been the practice of drawing up marriage agreements in the Muslim courts.<sup>149</sup> The Jewish marriage contract (*Ketubah*) stipulated the amount of money a husband was to pay his wife in the event of divorce or his death, the extra settlement (*Tosephet*) which the husband granted his wife in addition to the traditional formula and the amount of money or type of property which the wife brought with her as a dowry. This Jewish writ was not recognized as valid by the Muslim courts and Jewish women therefore resorted to insuring their settlement by having a similar deed registered in Muslim courts in accordance with Muslim marriage practice. The deed (*Ṣadak*) differed from the Jewish marriage contract in granting the wife one-half of her marriage portion at the time of marriage and the other half during her husband's life-time.

The rabbis of Fez not only accepted this practice but even decreed it incumbent upon the Jews to draw up a *Ṣadak* in accordance with Muslim law.<sup>150</sup> They kept rabbinic supervision of the practice through decreeing that the amount of settlement in the *Ṣadak* was to be determined by the *Beth Din*.<sup>151</sup>

Some instances of Muslim encroachment in the domain of Jewish family law could not, however, be resolved so harmoniously. While the Jews were guided by the ancient dictum "dina de-malkhuta dina," the law of the kingdom is the law, especially in circumstances where the Jews were not being singled out to carry special tax burdens,<sup>152</sup> they refused to countenance Muslim interference in matters of Jewish morality.

One instance of Muslim interference in Jewish marriage practice which threatened Jewish morality occurred in 1599. Problems of monogamy vs. polygamy had vexed Jewish scholars since Talmudic times. The rabbis of North Africa were no exception to the widespread preoccupation of the rabbis with maximizing morality and marital harmony through limiting the circumstances under which a man could

<sup>149</sup> Isadore Epstein, *Simon ben Zemah*, 79-83.

<sup>150</sup> *Kerem Hemer*, II, # 52, 9a, undated and unsigned; # 55, 9b, addenda signed by Saadya b. Rabuah, Isaac Ibn Zur and Samuel ibn Danan, 1603.

<sup>151</sup> *Kerem Hemer*, II, # 55, 9b.

<sup>152</sup> S. Albeck, "Dina de-Malkhuta Dina be-Kehilot Sepharad," *Sefer ha-Yobel l'icb'od ha-Rav Abraham Weiss*, (New York, 1964), 109-128; Leo Landman, *Jewish Law in the Diaspora: Confrontation and Accommodation* (Philadelphia: Dropsie College, 1968), 35-85. See following discussion on an instance in which this dictum is accepted.

take a second wife.<sup>153</sup> Their problems were complicated by the fact that North African Jewish practices diverged from those in Spain in this area of Jewish life: the Jews of North Africa minimized the prevalence of polygamy through inserting a clause in the marriage contract in which the husband disavowed any intention of taking a second wife. Polygamy wasn't eradicated however since Oriental Jewish wives would frequently assent to polygamy provided that the husband would make elaborate arrangements to insure the equality of the two women.<sup>154</sup>

The rabbis of Fez legislated repeatedly on the permissibility of polygamy throughout the period.<sup>155</sup> Indeed, the frequency of discussions on this matter leaves one with the impression that they had a great deal of difficulty in enforcing their strictures against polygamy.

In 1599, the King of Fez decreed that any Jew could take a second wife. When the Jews of Fez immediately began to violate all rabbinic precedents and remarry, invoking the dictum that "the law of the kingdom is the law," the *Mellah* was reduced to pandemonium and the rabbis were alarmed.<sup>156</sup> Rather than overrule the King's decree through a counter-decree, the rabbis sent a delegation of influential Jews who were "privy to the King" to explain the gravity of the matter to the monarch.

The rabbis of Fez did not oppose all governmental intervention in Jewish affairs, however. In 1669 the rabbis of Fez were queried by the Jewish community of Tetouan concerning property rented by certain Jews from a royal favorite. It appears that a certain Naxos family had acquired a monopoly on some properties in Tetouan from the King. When a new King was enthroned, the monopoly was revoked and the new monarch demanded compensation from the entire Jewish community of Tetouan. The rabbis of Fez acknowledged the prerogative of Kings to grant and revoke monopolies by invoking the dictum "dina de-malkhuta dina" and decided that the lessees rather than the community should be responsible for damages.<sup>157</sup> The distinction drawn by the rabbis between lawful and unlawful govern-

<sup>153</sup> Ze'ev Falk, *Jewish Matrimonial Law in the Middle Ages*, (Scripta Judaica; VI, Oxford University Press, 1966); M. Mielziner, *The Jewish Law of Marriage and Divorce in Ancient and Modern Times* (Cincinnati: Bloch, 1884).

<sup>154</sup> Isidore Epstein, *The Responsa of Rabbi Simon b. Zemah Duran as a source of History of the Jews in North Africa* (London: Oxford University Press, 1930), 31-33.

<sup>155</sup> *Kerem Hemer*, II, # 36, 6b; # 37, 6b; # 38, 7a; # 118, 21b etc.

<sup>156</sup> *Ibid.*, # 39, 7a.

<sup>157</sup> *Kerem Hemer*, II, # 175, 31b.

rabbis  
against  
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mental interference in Jewish matters, between intervention which could undermine Jewish morality and that which was harmless to the vital interests of the Jewish community, was in keeping with similar interpretations of the principle that "the law of the kingdom is the law" which had been evolving in medieval Europe.<sup>158</sup>

Traditionally, the rabbinic court was supposed to consist of three judges.<sup>159</sup> In many instances the *Beth Din* of Fez was comprised of three judges. Frequently, however, due to decimations by plague and emigration of scholars, only two or even one judge adjudicated.<sup>160</sup> In Fez, as elsewhere, no close relatives could serve as judges on the same court. This principle was also applied to the selection of witnesses to the court.<sup>161</sup>

Even the judicial arm of the Jewish community of Fez was influenced by the profound divisions of the population of the *Mellab*. The account of the sixteenth century communal controversy in the *Etz Chaim* mentions a separate *Beth Din* of the *Toshavim*.<sup>162</sup> The *Pinkas* of Fez, originating almost two hundred years later, mentions the rental of a store near the *Beth Din* of the *Toshavim*.<sup>163</sup> We possess no further information about the court of the *Toshavim*—its composition, its judges, or its decisions—yet its continuous existence for at least two hundred years is ample evidence of the perpetuation of a feeling of distinctiveness in the vital area of judicial decisions.

The leaders of Fez made concerted efforts to strengthen the powers and increase the functions of the judges of the *Beth Din*. In this context, they decreed that judges be present at important occasions such as betrothals and last bequests.<sup>164</sup> Occasionally the judges alone promulgated communal ordinances.<sup>165</sup>

It was inevitable that situations arose in which one of the litigants would not accept the decisions of the *Beth Din*. In addition to resorting to the Muslim authorities under such circumstances,<sup>166</sup> the communal elders could apply sanctions, such as excluding the litigant from the

<sup>158</sup> See discussion in Albeck and Landman.

<sup>159</sup> Babylonian Talmud, Sanhedrin I, 1-4.

<sup>160</sup> *Malkhe Rabbanan*, 31a.

<sup>161</sup> Ben-Tov, "Omanin u-Ba'alei Melakhah be-Fes," *Sefunot*, X, (Jerusalem: Ben-Zvi Institute, 1966), 421, n. 47.

<sup>162</sup> *Etz Chaim*, 23b.

<sup>163</sup> *Pinkas*, 28b.

<sup>164</sup> *Kerem Hemer*, II, # 11, 2b; # 47, 8a.

<sup>165</sup> *Ibid.*, # 26, 4b.

<sup>166</sup> *Ibid.*, # 55, 9b.

synagogue or denial of Jewish burials, to assure adherence to their decisions.<sup>167</sup> Sometimes an unhappy litigant would attempt to set up a rival court more sympathetic to his cause: such action was also condemned strongly by the rabbis.<sup>168</sup>

Although the decisions of the court of Fez were only binding on the community of Fez, they were circulated throughout Morocco. They were frequently invoked in Responsa between Fez and other Moroccan Jewish centers and could not fail to have an impact beyond the area of jurisdiction of the court of Fez.<sup>169</sup>

### *The Cemeteries of Fez*

The cemetery of the Jewish community of Fez constituted one of the community's most important institutions. In addition to the traditional stress placed on the care of the dead in classical rabbinic teachings,<sup>170</sup> the cemetery played an important role in the social life of both Jews and Muslims in North Africa.

When the *Mellab* was founded in 1438, the ancient Jewish cemetery remained outside the walls of the new Jewish quarter and was subsequently reserved as a burial place for people who had died outside the city.<sup>171</sup> This ancient cemetery, known as the *gisa*, derived its name from its proximity to the gate of the Muslim city called the *Bab el-Gisa*.<sup>172</sup> The ravine surrounding the *Mellab* was called the *Wad'-el-gisa* since it originated near the ancient *gisa* cemetery.

The establishment of a new cemetery in the fifteenth century to meet the needs of the *Mellab* probably represented the royal granting of a request by the Jewish community. The victims of the pogrom of 1465 were buried in a special site at the entrance to the *Mellab*.<sup>173</sup> This site became the nucleus of the new cemetery.

The Jewish cemetery of Fez was subject to the same forces of heterogeneity of place of origin and political instability as the other institu-

<sup>166</sup> *Kerem Hemer* II, # 55, 9b.

<sup>168</sup> *Mishpat u-Sedakah be-Yakob*, I, # 262, 144b.

<sup>169</sup> *Ibid.*, # 249, 135b, 136a. *Ib.* Sur acknowledges the customs (*minhag*) of other communities as equally legitimate in their areas of jurisdiction while making it a point to describe how similar matters are handled in Fez.

<sup>170</sup> Salo Baron, *The Jewish Community*, II, 146.

<sup>171</sup> In Morocco, both Jews and Muslims were prohibited from bringing the corpse of a man who had died *extra muros* inside the city. *Textes Judéo-Arabes de Fès*, 204, n. 18; *Dibre ha-Yamim*, 57, 77.

<sup>172</sup> Louis Brunot and Elie Malka, *Glossaire Judéo-Arabe de Fès*, (Rabat: Publications de l'Institut des Hautes Études Marocaines, XXXVII,) 111-12.

<sup>173</sup> *Dibre ha-Yamim*, 32. Jews of priestly descent (*Kohanim*) did not traverse this area since Jewish law proscribed their being near a corpse.

tions of the *Mellab*. Even at the time of death, the dual origin or loyalty of the population of the *Mellab* was not effaced and the *Mellab* contained a separate cemetery for the *Toshavim* and the *Megorashim*.<sup>174</sup> Probably the two communities maintained their cemeteries.

One burial society, the *hebrab kadisha* existed in the *Mellab* to arrange burial in the ritually prescribed manner.<sup>175</sup> This institution was one of the most ancient in the *Mellab*. It was named after the second century rabbi *Simon ben Yohai*.<sup>176</sup> The head of the organization held office by virtue of family lineage (he inherited the honor from his father) and the members of the *Hebrab* were known for their particular piety.<sup>177</sup> During the sixteenth century, the members of the *Hebrab* delivered eulogies at funerals because of their particular reputation of piety.<sup>178</sup>

Although the customs of burial conformed to halakhic prescription in the main, certain special features, unique to North African Jewry, can be discerned. It was customary for the entire community to accompany the coffin to the cemetery, carrying it on their shoulders "like the ark of God" to the accompaniment of the sounding of the *Shofar*<sup>179</sup> (ram's horn used to usher in the new year, the Sabbath and blown at the time of issuing the ban against a member of the community). During the seven days of mourning, the family of the deceased camped at the gravesite and the community converged on the grave and publicly proclaimed their charitable contributions in memory of the deceased.

The intermingling of the sexes at the cemetery, as well as the spectacle of the entire community at the cemetery, prompted the rabbis to modify some of the burial customs of Fez through *Takkanot*. In 1735 the rabbis decreed that the women in the community shouldn't intermingle with the men during the processional to the cemetery and should be required to stand at an appropriate distance from the entrance to the cemetery.<sup>180</sup>

Local burial customs which did not endanger the morality or the physical safety of the community were not opposed by the rabbis, even

if they happened to run counter to rabbinic prescription. For example, the community had many elaborate rituals of burial which drew distinctions between the deceased according to their status in life. A deceased man of wealth and status was honored at his grave by a procession which encircled his grave during the seven days of mourning, on the thirtieth day following his death and on the anniversary of his death.<sup>181</sup> In addition, a special part of the cemetery, named Hebron (probably since Hebron in Palestine contained the graves of the Patriarchs) was set aside for the gravesites of scholars.<sup>182</sup>

The cemetery was not a site of occasional pilgrimages by mourners but entered into the ritual of many important events in the lives of the Jews of Fez. At the time of droughts and other calamities, the entire community of Fez would go to the two cemeteries (of the *Toshavim* and the *Megorashim*) and would recite special prayers at the graves of particularly righteous individuals in the hope that they would intercede on their behalf. Thus, for example, the Jewish community of Fez prayed for rain at the gravesites of scholars in 1616.<sup>183</sup>

Certain graves of "saints" had only local importance while others were the object of pilgrimages from all over Morocco, by Jews as well as Muslims.<sup>184</sup> The Jewish customs of praying at graves of "saints" may have been influenced by the Muslim custom of praying at such sites. In the severe drought of 1616, the Jews of Fez paid special homage at the tomb of Jacob Qenizal.<sup>185</sup>

Praying at graves of "saints" was customary for barren women. It was also performed by the community on the fast of Esther.<sup>186</sup> Even the study of the *Zohar* was performed at the tombs of the righteous.<sup>187</sup> Not only local scholars, but also envoys from Palestine who died in Morocco while collecting funds for the schools and com-

<sup>181</sup> Information from Dr. Chaim Toledano, whose father served as a judge in Meknes.

<sup>182</sup> *Dibre ha-Yamim*, 57.

<sup>183</sup> *Ibid.*, 31-32. P. 57 records a similar occurrence in 1658. In addition, the community prayed at the site of the graves of the martyrs of 1465 and at a site outside the Mellah (possibly at the ancient cemetery). (P. 58).

<sup>184</sup> Pierre Flamand, *Quelques manifestations de l'esprit populaire dans les juiveries du Sud Marocain*, Casablanca; n.d.). Voinot, L, *Pèlerinages Judéo-Musulmans du Maroc*, (Paris: Editions Larose, 1948). Most of Voinot's findings center on joint sites in southern Morocco.

<sup>185</sup> *Dibre ha-Yamim*, 31.

<sup>186</sup> *Malkbe Rabbanan*, 71a, b.

<sup>187</sup> *Ibid.*, 21b.

<sup>174</sup> *Dibre ha-Yamim*, 32, 57, 58.

<sup>175</sup> Brunot-Malka, *Recueil de textes Judéo-Arabes de Fès*, 231. If there was one society for each community, the sources are silent on this point.

<sup>176</sup> *Ibid.*, 233, n. 2. This ancient Palestinian scholar played a particularly prominent role in Moroccan Jewish folklore.

<sup>177</sup> *Yabas Fes*, 2b. By the nineteenth century the *Hebrab Kadisha* had evolved into a general organization devoted to the performance of "good deeds."

<sup>178</sup> *Dibre ha-Yamim*, 56; *Malkbe Rabbanan*, 39b.

<sup>179</sup> Ben-Naim, *Nobag be-Hokhmah*, 8ff.

<sup>180</sup> *Kerem Hemer*, II, # 166, 30b.



munities in the Holy Land were honored with special tombs and pilgrimages. 188

The tombs of "saints" were also considered efficacious localities for assuring communal discipline. Thus in 1616/17, an adulterer was excommunicated from the community and his ban was proclaimed in the synagogue and the cemetery. 189

Since the cemetery played such an important role in the lives of the Jews in Fez, it is understandable that the threat of withholding the privilege of a proper burial was one of the most important weapons in the hands of the communal elders to insure conformity. When the rabbis issued an ordinance on tax apportionment in 1568, they strengthened their *Takkanah* with the threat of denying the transgressor a proper burial befitting his status. Furthermore, his heirs would be barred from burying him until they paid the taxes levied upon him. 190 The threat of withholding burial was also employed in business contracts. 191

The cemetery played a prominent role in local liturgy unconnected with contemporary tragic events. A local holiday marking the death of Simon bar Yohai, occurring at the beginning of May and known as Hilloula, (probably joined with Lag be-Omer) was celebrated by communal meals in the cemetery. 192 The Jews of Fez would also sleep in tents in the cemetery at this time. Collections donated on this occasion were used for the support of the cemetery.

Throughout the period, the cemetery was spared from attacks by Muslims. In the eighteenth and nineteenth centuries, however, it suffered repeated instances of vandalism. 193

#### *Charitable Institutions in the Mellab*

Prophetic and Rabbinic Jewish tradition have placed great emphasis on the duty of each individual to dispense charity. Coupled with the numerous exhortations in traditional sources to contribute to charity, the Jews of medieval times realized the importance of caring for their less fortunate co-religionists since the entire community was subject to the ravages of plague, extortion, homelessness and vicissitudes of

188 Ya'ari, A. *Shelube Ereš Yisrael* (Jerusalem: Mosad ha-Rav Kook, 1951), 30.

189 *Dibre ha-Yamim*, 34. This procedure doesn't appear in the *Takkanot* and was probably reserved for a transgression of this enormity.

190 *Kerem Hemer*, II, # 88, 15b, # 135, 24b.

191 *Pinkas*, 9a.

192 Brunot-Malka, *Recueil*, 276-81 and *Le Tourneau*, 581.

193 *Malkbe Rabbanan*, 71a.

fortune. Indeed, the particularly charitable individual received the same privilege of tax exemption as did the scholar or teacher. 194

General institutional patterns of dispensing charity can be discerned in far-flung communities: the example of Fez provides another case study of this important aspect of Jewish self-government. 195 Since the medieval state took no cognizance of problems of indigence, hunger, or the welfare of widows and orphans, it devolved upon the individual communities in Islam and Christendom to meet these contingencies. Just as Muslim patrons and rulers established charitable foundations (*wāqf*, pl. *awqaf*) whose assets were devoted to supporting charitable causes, so too in Jewish society the charitable foundation (*Hekdesb*) was one means of providing for the needy. 196

In the period under analysis, the Jewish community of Fez was a community of exemplary generosity. While local conditions caused progressive impoverishment of the majority of the community, still the inhabitants of the *Mellab* did not turn a deaf ear to the needs of both local and foreign Jews. We do not know what arrangements were made to absorb the hundreds or thousands of Jews who sought refuge in Fez, but clearly the task devolved upon the native community since few refugees had the chance to take their possessions with them. 197 The leaders of Fez noted that smaller demands were constantly being made upon them from beggars from other Moroccan cities. 198 In addition, Fez was a main center of collection for envoys from Palestine. 199

One common means of dispensing charity in Fez was to exempt scholars, students, scribes, synagogue officials and pious men from contributing their share to the poll-tax levied on the Jewish community as a whole. 200 This act meant an increased burden on the rest of the community and was frequently contested by many Jews in the *Mellab*. 201

194 *Mishpat u-Sedakah be-Yakob*, I, # 51, 45a, b.

195 Salo W. Baron, *The Jewish Community*, II, 290-351.

196 The *Hekdesb* was an ancient institution meticulously governed by Jewish law. Cf. *Encyclopedia Talmudit*, X, Columns 352-442.

197 Abraham Torrutiel, 112ff. The Jews who arrived after 1492 were often penniless by the time they reached Fez.

198 *Kerem Hemer*, II, # 46, 8a. The advent of 6 or 7 beggars from other Moroccan cities each week is noted in 1664.

199 See discussion below.

200 *Kerem Hemer*, II, #s 126, 127, 128, 129, 147, 148, 149, 150, *Mishpat u-Sedakah be-Yakob*, I, #s 31, 213, 253, 256, 257, 258, 259, 261.

201 The aforementioned *Takkanot* and Responsa are almost always reiterated in response to a protest by members of the community. See below chapter VIII.

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A variety of charitable institutions, both public and private, existed in Fez. The most frequently mentioned was a fund known as the *Kerem Hemer*, the alms chest, or the *Kuppah Shel Sedakah* and *Kuppah ha-Hemer*. Contributions to this fund were donated by the members of the community at set times during the year, e.g., *Passover*, *Shabuoth*, *Succoth*.<sup>202</sup> In addition, it received individual donations on joyous occasions such as the birth of a son, the *bar-mitzvah* (when a thirteen year old boy reached majority from the point of view of Jewish law) and at the time of a wedding.<sup>203</sup> It was enriched by donations made during the week of mourning at the gravesite of the deceased.<sup>204</sup> When calamity befell the community, such as the long drought of 1616, donations were voluntarily or involuntarily collected in the belief that acts of charity would avert individual and collective disaster.<sup>205</sup> This chest was probably, but not necessarily, synonymous with the *Kuppah 'Aniim*.<sup>206</sup>

One frequently mentioned source of income of the charitable foundations was derived from fines. Numerous communal ordinances and contracts stipulated that any transgression of the agreement in question would be punishable by a contribution to the *Kuppah*.<sup>207</sup> For example, anyone transgressing the sumptuary legislation would be required to pay 100 *oukiyot* to the *Kuppah*;<sup>208</sup> anyone found engaging in usurious business practices would be fined 20 *oukiyot*;<sup>209</sup> anyone indulging in lavish feasts and adorning a bride with extravagant clothes and jewelry was to pay the community a set sum to be determined by the court and the officers of the community of that month.<sup>210</sup> A *Takkanah* of 1649 fined a certain David Murciano  $1/8$  *oukiyah* weekly for indulging in fraudulent business practices.<sup>211</sup> In addition, each store which had committed the same offense of mixing good flour with bad was to be fined two liters of flour each Sabbath "for the poor

<sup>202</sup> *Yabas Fes*, 4b.

<sup>203</sup> *Kerem Hemer*, II, # 48, 8b.

<sup>204</sup> See previous discussion of cemeteries.

<sup>205</sup> *Dibre ha-Yamim*, 33.

<sup>206</sup> The terminology is not precise. Sometimes the *Kuppah 'Aniim* appears to be used interchangeably with *Kuppah ha-Kahal* as well. Cf., *Kerem Hemer*, II, # 139, 26b.

<sup>207</sup> *Kerem Hemer*, II, # 139, 25b.

<sup>208</sup> *Ibid.*, # 94, 18a.

<sup>209</sup> *Ibid.*, # 151, 28b. See Appendix on currency.

<sup>210</sup> *Ibid.*, # 139, 25b.

<sup>211</sup> *Ibid.*, # 153, 28b.

of the city."<sup>212</sup> Anyone defaulting in the payment of a debt was to pay an unspecified sum to charity.<sup>213</sup>

Consideration for the welfare of the poor was explicit in the sumptuary legislation of the community. One reason offered by the rabbis for limiting expenditures at weddings was that such practices were "detrimental to the poor" who felt compelled to keep up with their neighbors and were forced to borrow money at interest to bedeck their daughters and provide substantial dowries.<sup>214</sup>

Contributions to the poor were also made in the form of food and clothing, dowries for orphans and the indigent and the provision of proper burials for the needy.<sup>215</sup> The special needs of the sickly were also recognized in this ordinance.

The *Kuppah* of the community also distributed alms to the needy from other cities.<sup>216</sup> In one case, the leaders of the community invoked the ancient dictum, however, that the poor of their own city took precedence over the poor from other cities.<sup>217</sup>

Fines to the charitable foundations were also levied for infractions of laws or regulations designed to assure religious conformity. Any person who did not sign a marriage contract in the presence of one of the scholars of the *Ma'amad*<sup>218</sup> or a head of a *Yeshiva* was to be fined an unspecified amount to be determined by the *Nagid* and the *Dayyanim*.<sup>219</sup> If a foreign Jew did not petition the court before contracting marriage he, his betrothed and the scribe who drew up the contract were each to be fined a set sum for the alms chest.<sup>220</sup>

In most cases, the fines mentioned were accompanied by threats of greater gravity. These fines probably did not provide the chief revenues to the charitable foundations of Fez. One of the most important sources of revenue, common in most medieval Jewish communities, was the tax collected by the community on ritually slaughtered meat—a tax known as the *sigā*. The characteristic feature of the *sigā* in Fez was that it was farmed out to individuals or to partners for a set period

<sup>212</sup> *Kerem Hemer*, II, # 152, 28b.

<sup>213</sup> *Pinkas*, 9a.

<sup>214</sup> *Op. cit.*, II, # 45, 8a, # 139, 25b.

<sup>215</sup> *Ibid.*, # 137, 25a dated 1678. *Yabas Fes*, 4b mentions weekly distribution of flour and the distribution of clothes in the month of Kislev. *Takkanah* # 137 mentions biannual contributions based on property assessments.

<sup>216</sup> *Ibid.*

<sup>217</sup> *Ibid.*, # 79, 13a.

<sup>218</sup> See definition in chapter III.

<sup>219</sup> *Op. cit.*, II, # 34, 6a.

<sup>220</sup> *Ibid.*, # 47, 8a-b.

807<sup>16</sup>/<sub>16</sub><sup>3</sup>

of time. Frequently, legal problems arose concerning payments to the community from the *sigā*. For example, Jacob ibn Ṣūr was petitioned when a group of men bought a monopoly on the *sigā* as a speculative venture and agreed to pay the community a set sum of money in return. Since, however, no slaughtering of animals occurred during that year, the holders of the monopoly sued the community for the return of their investment.<sup>221</sup> Ibn Ṣūr decided that they were still responsible. Another responsum, dated 1721, deals with problems arising in connection with the sale of one quarter of the *sigā* by the heads of an unnamed Jewish community. In contrast to the previous case in which the investor assumed the responsibility of paying the community, in this case, the community assumed the responsibility in case of losses. The case was complicated by the fact that the investor sold his share to a third party who incurred losses as a result of famines during that year.<sup>222</sup> The sale of a share of the *sigā* is also recorded in the *Pinkas* of Fez.<sup>223</sup>

A *Takkanah* from 1603 regulating the amount of the *sigā* to be levied on each small or large animal mentions that the proceeds of the *sigā* were earmarked for foreign beggars in Fez as well as Fez's own indigents.<sup>224</sup> This charitable levy constituted an important source of communal income in Fez whereas it had assumed minor importance in wealthier communities in the Middle Ages.<sup>225</sup>

Special private foundations were established to care for the needy. Known as the *Hekdesb 'Aniim*, the foundation for the needy was scrupulously administered by special officers. It consisted of either land or money. The assets of the foundation could not be given as a pledge for more than one year nor, in the case of land, could it be rented out by the trustees for more than one year.<sup>226</sup> This rule could be changed only with the consent of a majority of the *Ma'amad*. The only condition on which land belonging to the *Hekdesb 'Aniim* could be sold was if more lucrative property was to be purchased with its proceeds. Similar rules

<sup>221</sup> *Mishpat u-Sedakah be-Ya'akob*, I, # 30, 45a. Also signed by Samuel el-Baz and Shalom Ad-Dar'i, undated.

<sup>222</sup> *Mishpat u-Sedakah be-Ya'akob*, I, # 94, 75a-b. A variation of this problem arose in Meknes in the same period. Cf. *Ibid.*, # 140, 95b.

<sup>223</sup> *Pinkas*, 13a. Two partners sell their share of the "sigā of the community" to a third party.

<sup>224</sup> *Kerem Hemer*, II, # 78, 13a-b.

<sup>225</sup> S. D. Goitein, "The Social Services of the Jewish Community as reflected in the Cairo Geniza Records," *Jewish Social Studies*, XXVI, (January, 1964), 20.

<sup>226</sup> *Kerem Hemer*, II, # 79, 13b.

were established to regulate the foundations devoted to needy orphans.<sup>227</sup> Despite these safeguards, the community was forced to borrow from the *Hekdesb 'Aniim* in 1709 to meet the royal levies.<sup>228</sup>

The administrators of the *Hekdesb 'Aniim* were appointed for a one year term of office and were expected to give detailed accounts of the funds or property which were entrusted to their care.<sup>229</sup>

For centuries, no cause was dearer to the hearts of the Jews of Fez than that of Palestine. In our period, the links between Palestine and Morocco were not merely sentimental: numerous Jews from Fez settled in Palestine, leaving behind many members of their family.<sup>230</sup> Indeed, the rabbis of Fez consented to divorces in families where the wife would not follow her husband to Palestine.<sup>231</sup>

After the Ottoman conquest of Palestine in 1516, conditions became favorable for increased Jewish settlement. Those who came to Palestine were chiefly concerned with study, contemplation and ending their days in the Holy Land. Their resettlement efforts bore little relationship to the modern Jewish impetus of rebuilding the land and restructuring the Jewish people economically. Palestinian Jews did manage despite their difficulties with local Turkish pashas to establish a new economic foothold in Palestine, particularly in Safed.<sup>232</sup>

One important source of revenue of 16th century Palestinian Jewry was derived from contributions donated by pious Jews in the Diaspora. To assure these contributions, the communities and Jewish institutions in Palestine revived and elaborated upon the ancient custom of sending envoys to the Diaspora to collect funds. Although the Palestinian Jewish population was divided into Jews from Italy, the Ashkenazic realm, the Musta'aribi's (or native Jews) and Jews of Sephardi origin, the communities agreed in 1623 to send one general envoy to each locale.<sup>233</sup> Thus the funds collected by the envoys from Safed, Hebron

<sup>227</sup> *Kerem Hemer*, II, # 80, 13b.

<sup>228</sup> *Ibid.*, # 140, 25b-26a.

<sup>229</sup> *Ibid.*, # 79, 13b.

<sup>230</sup> *Malkbe Rabbanan*, 10b on Abraham Azulai, II; *Ibid.*, 118b regarding Solomon el-Aluf who left Fez for Jerusalem; *Ibid.*, 99b on Suleiman Uhnah, a Jew from Fez who became one of the leading figures in the Kabbalistic movement in sixteenth century Safed. Further details in Gaon, *op. cit.*; M. Benayahu, "Le Toldot Kishreyhem Shel Yehude Marocco 'im Eretz Yisrael," *Sinai*, XXXV (1954), 317-40.

<sup>231</sup> *Mishpat u-Sedakah be-Ya'akob*, I, # 28, 44a.

<sup>232</sup> Uriel Heyd, *Ottoman Documents on Palestine, 1552-1615*. (Oxford: Clarendon Press, 1960). Y. Ben-Zvi, *Eretz-Yisrael ve-Yisbuvah be-Yimai ha-Sbilon ha-Othmani* (Jerusalem: Mosad Bialik, 1955), 205-264.

<sup>233</sup> Abraham Ya'ari, *Sbelube Erez Yisrael*, 23.

and Jerusalem were to be distributed to the entire community in that locale. In 1678, the North African Jewish leaders in Jerusalem decided to send a special envoy to the Maghreb in order to raise funds for a Maghrebi Yeshiva in Jerusalem.<sup>234</sup> Periodically, individual Yeshivot were given permission to send separate envoys to the Diaspora on a one time basis.

By the seventeenth century, the routes of the Palestinian envoys were well-defined. Fez was one of the important stops on the itinerary of the North African envoy.<sup>235</sup> It was not uncommon for the Jewish settlements in Palestine to dispatch an envoy of Moroccan origin to Morocco.<sup>236</sup> Thus, for example, a Jew from Demnat in Morocco who had immigrated to Palestine, was sent to the Maghreb in 1707.<sup>237</sup>

The emissary from Palestine came armed with letters of introduction and often with religious books. He recorded his receipts and frequently kept notes on his adventures.<sup>238</sup> Upon his return to Palestine, he was expected to give a detailed accounting of his collections.<sup>239</sup> The native Jewish communities, in turn, collected and recorded the sayings, sermons and legal decisions of the Palestinian envoys.<sup>240</sup>

When an envoy arrived in Fez, especially one of local origin, great celebrations ensued. The esteemed visitor was received with honor and delivered a sermon in the great synagogue of Fez.<sup>241</sup> Special songs were composed in his honor. If he died on Moroccan soil, as was frequently the case, his tomb was carefully demarcated and became the site of pilgrimages of both Jews and Muslims.<sup>242</sup>

As early as 1603, if not before then, the Jews of Fez made special provisions for receiving an envoy from Jerusalem and collecting funds

<sup>234</sup> *Ibid.*, 848.

<sup>235</sup> *Ya'ari*, 23.

<sup>236</sup> *Malkhe Rabbanan*, 12b, 14b, 32b.

<sup>237</sup> *Ibid.*, 80b. It was also not unknown for a Palestinian envoy to settle permanently in Morocco. Cf. *Malkhe Rabbanan* 32b on Hiyya Dayyan, an envoy from Hebron who settled in Sale and afterwards in Meknes. He arrived in Morocco in 1561.

<sup>238</sup> The most famous diary of an envoy was that of Chaim Joseph David Azulai in the eighteenth century.

<sup>239</sup> *Ya'ari*, 16.

<sup>240</sup> Jacob ibn Šur, *Leshon Limudim*, EMC # 884 contains letters from envoys from Safed and Jerusalem. *Leshon Limudim*, # 0060 contains letters of envoys to the Maghreb between 1670-1750.

<sup>241</sup> *Kerem Hemer*, II, # 155, 29a.

<sup>242</sup> *Malkhe Rabbanan*, 102a, b on veneration of the grave of Amram Diwan, an envoy from Hebron who died in the Moroccan interior in 1682. The pilgrimage to his grave became linked with the holiday of Hilloula, cf. *Textes Judéo-Arabes*.

on his behalf.<sup>243</sup> It was decreed by the communal leaders Isaac ibn Šur, Judah Uzziel and Samuel ibn Danan that each synagogue in the Mellab establish a special fund for Jerusalem. Contributions to this fund were to be made by each man on his wedding day,<sup>244</sup> at the birth of a son, at the time of the son's circumcision,<sup>245</sup> on the first day of the month of Adar and at the holiday of Purim. A special treasurer was appointed for this purpose in each synagogue. At the end of the year the treasurers would deposit their collections with three outstanding men of the community, Samuel ibn Danan, Solomon ha-Cohen el-Haddad and Pinhas ha-Cohen b. Nehemiah. This ordinance was deemed to be sufficiently important to be co-signed by more than one dozen dignitaries of the community, including the Negidim Moses Roti, Jacob Gikatilia and David ibn Zamiro.

Since the community of Fez was so hard pressed to make ends meet and one emissary would arrive right on the heels of another, it was extremely difficult to show equal magnanimity to all the envoys from Palestine. The leaders of Fez set priorities in the amounts to be donated to each of the Holy Cities, Jerusalem, Hebron and Safed.<sup>244</sup> In a *Takkanah* of 1678 they decided that envoys from Jerusalem should be given a maximum of 400 *oukiyot*, those from Hebron 300 *oukiyot* and those from Safed 200 *oukiyot*.<sup>245</sup>

In the 1690's, seven envoys reportedly visited Morocco.<sup>246</sup> Between 1700-1707, six envoys arrived in Fez for an extended length of time.<sup>247</sup> The envoys occasionally appointed someone from the local community to travel into the Saharan area or the Atlas mountains to solicit contributions. This period of repeated visits by Palestinian envoys coincided with a decade of great hardship in Fez. Continuous levies as well as severe droughts made it difficult for the Jews of Fez to collect sufficient funds. They apologized to the envoys, sometimes sending the envoy on his route with part of the contributions and promising to fill their quota upon his return from other communities in the country.<sup>248</sup> In one such instance, the Jews of Fez forwarded

<sup>243</sup> *Kerem Hemer*, II, 48, 8b.

<sup>244</sup> Tiberias, as a result of local political conditions had declined by this time. Fez recognized the independent envoys from the Ashkenazim in Jerusalem and the Maghrebi settlement in Jerusalem. Benayahu, 324.

<sup>245</sup> *Kerem Hemer*, II, # 137, 25a.

<sup>246</sup> *Ya'ari*, 307.

<sup>247</sup> Benayahu, 318. Rabbis Jacob ha-Levi Beruhim, Isaac Biton (of North African origin), Solomon Emanuel Moreno, Solomon Waron de Campos, Samuel Yoakil (envoy of Hebron and of the Maghrebi Yeshiva in Jerusalem).

<sup>248</sup> Benayahu, 324.

their contribution to a treasurer in Tetouan, R. Moses ibn Ezra, since they couldn't collect enough money during the stay of the envoy in Fez.<sup>249</sup> Unfortunately, the boat of the envoy caught fire en route to Algiers and all the collections from Morocco were lost. The Jews of Fez duplicated their contribution and Rabbi Jacob ibn Sur even sent a letter to the Rabbi of Tlemcen, Saadiah Chouraqui, explaining the plight of the envoy and suggesting that the Jews of Tlemcen also contribute again.<sup>250</sup>

The frequency of visits of envoys apparently decreased in the eighteenth century.<sup>251</sup> Perhaps it was this fact which motivated the leaders of Fez in 1728 to revert to an old practice of allowing the envoys to go from house to house in the *Mellab* and solicit each family individually in accordance with pre-arranged assessments.<sup>252</sup>

Among the documents on the relations between Palestine and Morocco are letters of introduction which immigrants from Fez carried to Jerusalem.<sup>253</sup> Rabbi Jacob ibn Sur, in introducing two immigrants, Rabbis Solomon ha-Sarfati and Yom Tov Krispi, expresses most vividly the deep aspirations of the Jews of Fez for their redemption and that of Palestine. These documents reveal the spirit in which the Jews of Fez unselfishly shared their meager funds with envoys.

The Jews of Fez also established special funds for envoys from Poland. Following the Cossack massacres of 1648, survivors even reached Fez to collect money for the ransoming of captives. Since the ransoming of captives was always considered to be among the most important charitable acts of a Jew, the inhabitants of the *Mellab* could not dismiss the requests of these envoys. It appears that numerous abuses arose in dispensing charity to individuals whom the Jews did not know and whose society was unfamiliar to them. These beggars from "Ashkenaz and Poland" arrived with officially signed letters of introduction, asserting that they were collecting money to ransom captives. Later, it was discovered that many of the letters were forgeries. Therefore, in 1700, the leaders of Fez promulgated an ordinance that no envoy from "Poland, Ashkenaz and their environs" could be given

<sup>249</sup> On Moses ibn Ezra, cf. *Malkhe Rabbanan*, 94b. The document quoted by Benayahu, 326 is from *Lesbon Limudim*.

<sup>250</sup> Benayahu, 326 from *Lesbon Limudim*.

<sup>251</sup> Ya'ari, 360.

<sup>252</sup> *Kerem Hemer*, II, # 155, 29a.

<sup>253</sup> Benayahu, 339-40 from *Lesbon Limudim*. See Jane S. Gerber, "Palestine and Morocco and the Bonds of Peoplehood" in *Shivim*, (New York: Ktav, 1977), pp. 119-25.

more than two *reals* by the community, regardless of the status of the individual envoy.<sup>254</sup> The Takkanah of 1678 which apportioned the amount to be contributed to envoys from Palestine also stated that no envoy from Poland be awarded more than 100 *oukiyot*.<sup>255</sup>

The charitable institutions of Fez were among the few institutions of the *Mellab* which belonged to the entire community. Clearly, consensus regarding the importance of charitable chests obviated the need for institutional duplication. In addition, sudden reverses of fortune were not confined to any one segment of the population (at least, as far as can be determined by contemporary Hebrew accounts). The fact that many individuals who had been noted for their generosity were venerated after their deaths indicates that the institution of charity held an esteemed place in the hierarchy of values in the *Mellab*.

#### *Educational Institutions*

Although education was a central preoccupation of all medieval Jewish communities, contemporary sources from Fez are almost bereft of all information on schools, curriculum, teachers or students. This omission is probably the result of the problem-oriented nature of the most valuable primary source, *Mishpat u-Sedakah be-Yakob* as well as the fact that much of the education in the *Mellab* was private and informal in character. A good deal of consensus probably existed in the Jewish community of Fez on educational matters, thus obviating the need for rabbinic responsa and communal decrees on the subject. In addition, learning was a communal responsibility only in the case of the needy and orphans.

Only one of the scores of communal decrees promulgated in Fez is concerned with education per se. In 1711, the rabbis of Fez (residing in Meknes) decided to tackle the problems caused by the early apprenticeship of boys. By the age of seven, youths were being sent to masters to learn the art of carding while they hadn't yet learned how to read and pray. The rabbis decreed that no master could hire a youth or train him (without wages) until he reached the age of thirteen. Even then, the master would be required to allow the youth to attend synagogue during working hours. Disobedience could result in the application of the ban.<sup>256</sup>

<sup>254</sup> *Kerem Hemer*, II, # 46, 8a. *Lesbon Limudim*, 8b contains a letter from a Polish envoy in Fez in 1700.

<sup>255</sup> *Ibid.*, # 137, 25a.

<sup>256</sup> *Ibid.*, # 146, 27a. See Appendix, p. 202.

*Other Institutions*

Among the necessary institutions in all Jewish communities was the ritual bath, *Mikveh*. In Fez the ritual baths were located in the heart of the Mellab near the homes of the wealthy members of the community. Although ritual baths were an essential institution in every community, they were not communally owned in Fez. The Responsa of Jacob ibn Sur reveal that ritual baths in private homes were frequently held in partnership and their income given as pledges.<sup>293</sup> The owner of the *Mikveh* would employ a female attendant. One such ritual bath was owned by the important family, Roti, who furnished many of the *Negidim* of Fez. When Rabbi Jacob ibn Sur was called upon to adjudicate in a matter concerning a partnership in the income of the *Mikveh*, his legal arguments were based solely on the laws concerning partnerships and pledges without consideration of the special nature of the property in question.

Another necessary institution to any Jewish community, that of the slaughterhouse, was communally owned in Fez.<sup>294</sup> Yet, it possessed separate meat slaughterers for *Tosbavim* and *Megorashim*.<sup>295</sup> The whole question of the manner of koshering meat and slaughtering meat in the *Mellab* received a good deal of attention even after the resolution of the conflict in the early sixteenth century. The rabbis of Fez repeatedly supervised the honesty of ritual slaughterers and the weights of meats to be sold.<sup>296</sup>

A communal oven for making bread also existed in the *Mellab*, although private ovens were not unknown. The original oven, known as the "oven of the fassis" because it pre-dated the advent of the Sephardim, was supplemented by other communal ovens.<sup>297</sup> Information from modern times reveals that workers in the oven were all Muslim, a situation which might not have prevailed in our period.

<sup>293</sup> *Mishpat u-Sedakah be-Yakob*, I, # 267, p. 150b; # 6, pp. 18b-23b and # 7, p. 23 concern a partnership in which each of the partners has a mikveh in his house and both decide to form a partnership and share the combined income from their two ritual baths.

<sup>294</sup> One of the catalysts of the controversy between *Tosbavim* and *Megorashim* in the 1520's was the fact that all the meat leaving the abattoir was being prepared in accordance with the customs of the *Megorashim*. Cf. *Etz Chaim*.

<sup>295</sup> *Etz Chaim*, 3b.

<sup>296</sup> *Kerem Hemer*, II, 138, 25b, # 163, 30a; # 164, 30a; # 167, 30b; # 168, 30b; # 169, 30b.

<sup>297</sup> Brunot-Malka, *Textes Judéo-Arabs*, 203.

## CHAPTER THREE

COMMUNAL FUNCTIONARIES OF THE  
JEWISH COMMUNITY OF FEZ

The communal structure of the Jewish community of Fez in the period under analysis was characterized by a wide diversity of communal functionaries and a great degree of specialization in their tasks. This was not the case in smaller Moroccan communities where one man served simultaneously as rabbi, ritual slaughterer, teacher, judge and scribe due to the paucity of qualified individuals to perform these functions.<sup>1</sup>

The most striking characteristic of the communal leadership in the *Mellab* was the concentration of almost all positions of authority, prestige and scholarship in the hands of the Sephardi emigres. These families arrived with a tradition and the credentials of leadership and quickly resumed the roles which they had played in Spain. For example, the ha-Şarfati family traced its scholarly ancestry back to medieval France and produced generation after generation of scholars and leaders.<sup>2</sup> In similar manner, the Toledano family was extremely conscious of its long tradition of scholarship and leadership. To this day, the marriage contracts of the Toledanos cite hundreds of years of illustrious ancestors in Spain and Morocco.<sup>3</sup> In the case of the Ibn Sur, Serero, Corcos, Ibn Zimra, and Ibn Danan families, as well as numerous less known families, the same phenomenon of scholarly families consciously bequeathing their traditions of leadership and lauding their illustrious ancestry is discernible.<sup>4</sup> The tradition of communal service combined with scholarly achievements had been nurtured and articulated

<sup>1</sup> *Mishpat u-Sedakah be-Yakob*, I, # 47, 53b-54a. The responsum in question originated in the Jewish community of Sefrou where one man filled all the necessary functions in the synagogue as well as the community since "the place is small and its inhabitants are few in number."

<sup>2</sup> Toledano, *Ner ha-Ma'arab*, 74, lists 18 generations of the ha-Şarfati family in Spain. The original ha-Şarfatis claimed descent from Rabbenu Tam. The author of the *Yabas Fes* in the nineteenth century claimed descent from this family and his heirs continued to provide communal leadership in Fez under the French protectorate.

<sup>3</sup> Original *Ketubot* of the Toledanos of Meknes which Dr. Chaim Toledano kindly permitted me to peruse; Toledano, *Ner*, 74.

<sup>4</sup> On the pride of the Sephardi exiles and their racial concepts, cf. H. H. Ben-Sasson, "Dor Golai Sefarad al Atzmoh," *Zion*, XXVI, (1961), 23-64.

concerning details in the contract, the scribes possessed a readily available means of verifying the original terms of the contract.

Court scribes required a formal appointment by the community. Other scribes were often students who drew up deeds to earn some money or simply individual Jews noted for their fine penmanship.<sup>138</sup> Although these scribes were not communal officers strictly speaking, they too were exempt from paying taxes.<sup>139</sup>

The quality of the work of the scribes of Fez varied markedly. Within the *Pinkas* of Fez, a work containing samples of the penmanship of one dozen scribes of Fez in 1700, some examples are very fine while others are most illegible.<sup>140</sup> Since, however, it wasn't possible for the regulations of 1611 regarding the required presence of two proficient scribes at the drawing up of deeds to be implemented, Jacob ibn Şur tried to improve scribal standards in another manner. He proposed that one professional scribe from the *Bet Din* and one qualified witness be present at the time that all legal deeds were drawn up by amateur scribes.<sup>141</sup>

Evidence of varying levels of knowledge within the scribal profession is apparent from the stipulations of a communal ordinance of Fez dating from the end of the seventeenth century.<sup>142</sup> Rabbis Jacob ibn Şur and Judah ibn 'Atar were queried about tax exemptions of scribes, some of whom were "scholars who were adept in Bible, the Talmud and the Poskim" and others who knew a little Bible and the laws relating to their profession. Since both types of scribe engaged in "sacred work" both were tax exempt. Those who were accomplished scholars were organized in a study association or *Hebrab* which met at regular intervals in addition to its daily study sessions following the morning prayers.

The professional scribes of Fez were drawn from the same families that provided the communal leadership in other fields. From 1550-1590 communal ordinances were signed by Jacob ibn Danan and Mahluf Asolin. In the seventeenth century Joshua ibn Şur and Judah ibn 'Atar served as scribes. The *Pinkas* of Fez is signed by Joshua Serero, Jacob ibn Şur, Judah ibn 'Atar, Jacob b. Samuel ibn Danan,

<sup>138</sup> *Yabas Fes*, 5a.

<sup>139</sup> *Kerem Hemer*, II, # 147, 27b.

<sup>140</sup> See, for example, entries on p. 5a of the *Pinkas*.

<sup>141</sup> *Mishpat u-Sedakah be-Yakob*, I, # 2, 4a.

<sup>142</sup> *Kerem Hemer*, II, # 147, 27a, b; *Mishpat u-Sedakah*, I, # 254, 140. This responsum is a replica of the *Takkanah*.

Samuel b. Saul ibn Danan etc. The genealogies of the various scribes reveal that they were frequently intermarried, trained under one another and were also intermarried into scribal families of other cities. For example, one of the signatories of the *Pinkas*, R. Yeshaya b. Zichri, was the son of a scribe and *dayyan* of Meknes.<sup>143</sup>

#### *Other Communal Functionaries*

Every sizeable Jewish community possessed special functionaries to perform vital religious services. These functionaries such as *Hazzan* (reader in the synagogue), *Mobel* (circumcizer) and *Shobet* (ritual slaughterer) inherited their positions. In the case of the *Mobel*, not only was his position acquired through heredity but even the clientele of his father was passed on to him.<sup>144</sup>

The jobs of both *Shobet* and meat inspector were carefully scrutinized by the community and their salaries were set by communal ordinances.<sup>145</sup> Specialization existed within the profession of meat slaughterer.<sup>146</sup> Since the problem of divergent customs in determining kosher meat arose wherever the Sephardim settled in large numbers and introduced their own customs, it is not surprising that *Tosbavim* and *Megorashim* possessed their own meat inspectors and butchers.<sup>147</sup> By agreement, each community purchased its meat from its own butcher.

#### *The Scope and Nature of Communal Controls*

Jewish self-government in Fez transcended the bounds of purely religious matters. While the Jewish community took a natural interest in the maintenance of schools, the support of indigents and scholars and the upholding of halakhic norms, it also assumed responsibility in areas not usually associated with the maintenance of religion. Medieval political theory as well as talmudic precedent widened the scope of Jewish self-government to include police protection of the Mellab<sup>148</sup> maintenance of the Mellab's water supply,<sup>149</sup> sanitation and the fixing of weights and measures.<sup>150</sup> Such measures were necessary since the

<sup>143</sup> Toledano, *Ner*, 145.

<sup>144</sup> *Mishpat u-Sedakah be-Yakob*, I, # 317, 167a.

<sup>145</sup> *Kerem Hemer*, II, # 167, 30b; # 168, 30b; 169, 30b.

<sup>146</sup> A slaughterer of chickens received less for his work than one of cows.

<sup>147</sup> *Etz Chaim*, *passim*. See chapter IV.

<sup>148</sup> *Etz Chaim*, 23. The Jews paid the Muslim guards.

<sup>149</sup> *Mishpat u-Sedakah be-Yakob*, I, # 74, 65a, b.

<sup>150</sup> *Kerem Hemer*, II, # 151, 28b; 150, 30b.

Muslim state did not provide these services on the one hand, and the entire community would be held responsible for misdemeanors on the other.

Obedience and inner harmony were achieved through a variety of means. Public opinion and public pressure provided a powerful weapon in assuring discipline and conformity. When this did not suffice, the elders of the community could apply a ban or the more solemn Herem (excommunication). This ban was proclaimed in the main synagogue or square of the community, heralded by the sounding of the ram's horn.<sup>151</sup> The excommunicated individual was deprived of his religious privileges until he made amends. Fines could be imposed by communal leaders; the *Mellab* also possessed its own prison to incarcerate transgressors.<sup>152</sup> As a last resort, the *Nagid* could hand over offenders to the Muslim authorities.<sup>153</sup>

Sometimes exhortations by the rabbis sufficed to uphold public morality; at other times, special directives were issued and recorded in public record books known as *Sifrei Zicharon*.<sup>154</sup> Sometimes the rabbis achieved communal harmony through the use of public confessions.<sup>155</sup> Through this method of public pressure a case of adultery was publicly disclosed<sup>156</sup> and property illegally acquired as much as thirty years before the confessions was restituted.<sup>157</sup> Although these actions were intended primarily to bring forth rain they undoubtedly had a positive therapeutic effect upon the community.

The most important means of assuring harmony, justice and conformity within the *Mellab*, particularly from the point of view of the student of Moroccan Jewish history, was the utilization by communal elders of the prerogative of promulgating *Takkanot* (communal ordinances) and *Haskamot* (communal agreements).<sup>158</sup> Although some of the *Takkanot* are specifically directed towards the Sephardim in Fez, e.g. regulations of Sephardi marriage customs, many transcend the interest of the Sephardim in preserving their particular customs and

<sup>151</sup> *Kerem Hemer*, II, # 93, 17b; *Etz Chaim*, 4a.

<sup>152</sup> See p. 88.

<sup>153</sup> *Ibid.*

<sup>154</sup> *Kerem Hemer*, II, # 210, 38a. Measures inscribed in such books were considered to be of temporary duration in contrast to *Takkanot* which were binding for generations.

<sup>155</sup> *Dibre ha-Yamim*, 29.

<sup>156</sup> *Ibid.*, 34.

<sup>157</sup> *Ibid.*, 28.

<sup>158</sup> The juridical basis of the *Takkanot* is discussed by Martin B. Golding, "The Juridical Basis of Communal Associations in Medieval Rabbinic Legal Thought," *JSS*, XVIII, 2, (April, 1966) 63-78.

encompass the interests of all the Jews of the *Mellab*. Although we know that a book of *Takkanot* for the *Tosbavim* existed,<sup>159</sup> there is no evidence from the extant records of Fez that the *Tosbavim* opposed those regulations of the Sephardim which were communal in scope.

An examination of some of the regulations embodied in the *Takkanot* of the Castilian Community of Fez reveals the extent to which the communal authorities were involved in the personal lives of the members of the community. Such intervention was recognized as permissible since any indiscretion on the part of a single Jew could bring down the wrath of the Muslims on the entire community.<sup>160</sup> Some of the *Takkanot* were specifically limited in duration<sup>161</sup> while others were considered to be perpetually binding unless they were annulled by future ordinances.<sup>162</sup> The *Takkanah* was backed by the force of religious or fiscal sanctions. This method of communal control was particularly apposite when the behavior in question endangered the community but was not irregular from the point of view of *Halakhab*.

The communal elders addressed themselves to a host of problematical situations in an effort to clarify religious principles and assure harmonious relations among the Jews. Sometimes they enacted regulations which, in effect, nullified scriptural law in the name of communal harmony. As in Aragon in 1432, in Ferrara in 1554 and in Candia in 1509, the leaders of Fez decreed that no marriage should be contracted or consummated except in the presence of ten male witnesses (one of whom would be a recognized scholar of the city or a judge of the community).<sup>163</sup> This early *Takkanah* (possibly dating from the end of the fifteenth century) might be a reflection of the regnant confusion concerning marriages among Jews, many of whom may have been New Christians in Spain. Such a decree stood in contradiction to the Torah where the presence of two male Jewish witnesses sufficed in contracting marriages.

The most vivid example of the scope of the powers arrogated by the communal leaders of Fez is contained in the sumptuary legislation. This legislation is not limited to any decade in particular but appears in the sixteenth, seventeenth and eighteenth centuries. The aims of the

<sup>159</sup> See discussion of sources in Chapter I, Introduction.

<sup>160</sup> Examples of collective punishment in *Dibre ha-Yamim*, 18, 19, 20, 24, 38.

<sup>161</sup> *Kerem Hemer*, II, # 32, 7b. The sale of wine to Muslim and Christians is prohibited for ten years.

<sup>162</sup> *Ibid.*, # 81, 14a. The legislation is perpetual; *Ibid.*, # 15, 3a.

<sup>163</sup> Finkelstein, *Jewish Self-Government*, 305, 364; *Kerem Hemer*, II, # 2, 2a. It is accompanied by a Ladino translation.



sumptuary legislation were manifold. On the one hand, the elders intervened in minute details of the private lives of the Jews because of the danger of arousing Muslim cupidity at the sight of lavish feasts and ornate clothing in the Mellab.<sup>164</sup> On the other hand, problems of morality arose at gala banquets where men and women co-mingled and imbibed wine.<sup>165</sup> Of greatest concern to the promulgators of the *Takkanot* was the economic pressure placed on poorer members of the community who felt compelled to keep up with their neighbors in bestowing elaborate dowries and providing lavish feasts for crowds on the occasions of weddings, circumcisions and the redemption of the first-born son.<sup>166</sup> Fathers were forced to mortgage their holdings and borrow at high rates of interest in order to marry off their daughters.<sup>167</sup> In addition, such expenses frequently led to the indefinite postponement of marriages.

All of the above-mentioned considerations led the rabbis of Fez to promulgate a series of detailed decrees which went far beyond what one would conceive of as the ordinary powers of communal leaders. For example, in 1593, a *Takkanah* was proclaimed which forbade any woman from wearing garments embroidered with gold or precious stones.<sup>168</sup> It was forbidden for a bride to wear any gown or veil containing glittering ornamentation; only a veil of silk was permissible. Such a veil was to be worn upon approaching the entrance to the house of the groom.<sup>169</sup> Moreover, this processional to the house of the groom should only occur after sunset.<sup>170</sup> Since the populace was unable to restrain itself concerning the simplicity of the marriage gown (פרוטטאל, kaftan) the rabbis were forced to emend the decree declaring the wearing of such a kaftan illegal altogether.<sup>171</sup>

In similar manner, the rabbis regulated the menu at banquets and feasts. It was (and still is) customary in Morocco for relatives to send gifts of food to the house of the bride and groom, to the father of a new-born son or to the home of a Bar Mitzvah boy. Such gifts were henceforth (in a *Takkanah* of 1696) to be limited to the consumption

<sup>164</sup> Kerem Hemer, II, # 81, 14a.

<sup>165</sup> *Ibid.*, # 92, 17b; # 94, 18a.

<sup>166</sup> *Ibid.*, # 45, 8a; # 94, 18a.

<sup>167</sup> *Ibid.*, # 139, 25b.

<sup>168</sup> *Ibid.*, 81, 13b, 14a.

<sup>169</sup> *Ibid.*, # 92, 17b.

<sup>170</sup> *Ibid.*, # 94, 18a.

<sup>171</sup> *Ibid.*, # 81, 14a, emendation of 1604/1605.

by the newlyweds and were not to include chickens or doves.<sup>172</sup> The popular custom of exchanging food on certain Sabbaths (i.e. at the festival of Shabuot and on Shabbat Hazon) was also to be limited to inexpensive foods.<sup>173</sup> This decree was applicable for five years; afterwards the court of Fez could renew it.

In the interest of economy, the rabbis limited the number of guests who could attend family celebrations to close relatives (the number is unspecified) and limited the value of the gifts which they could bring with them.<sup>174</sup>

The traditional Moroccan wedding was an elaborate and expensive affair. Wedding ceremonials lasted for almost one month. Two Sabbaths before the wedding, the groom ceremonially asked for the bride's hand (*Tulb el-'Ars*), on the Sabbath preceding the wedding the father of the bride invited all the guests to his synagogue and then to his home to partake in a banquet (*Shabbat Ara'i*), on Monday before the wedding a banquet was held in the bride's home followed by an evaluation of the trousseau in the presence of a scribe and the groom. This celebration was followed by festivities in the home of the groom. On Tuesday night, the bride was led to the ritual bath (*Mikveh*) by her new relatives to the accompaniment of musicians.<sup>175</sup> On Wednesday, the wedding day, the bride was accompanied by musicians to the house of the groom and then returned to her house for the actual betrothal. After the betrothal, a gala party was held at the house of the groom. This party was repeated on the following day. That same evening (Thursday) everyone gathered to present their gifts to the newlyweds. On Sabbath, all the guests prayed in the synagogue of the groom and then proceeded to his home and on Sunday further celebrations were held.

It is no wonder that the rabbis tried to limit the number of guests at such affairs. Lifetime indebtedness could easily result from celebrations of such proportions.

In the area of folk culture, however, the rabbis were less successful in curbing popular customs. One curious aspect of rabbinic intervention in such practices as the widespread use of amulets as good luck charms

<sup>172</sup> Kerem Hemer, II, # 45, 8a.

<sup>173</sup> *Ibid.* These suppers on special Sabbaths were known colloquially as סבות and אשאי (עשא). This information was kindly provided by an aged woman from Meknes now residing in Queens.

<sup>174</sup> Kerem Hemer, II, # 45, 8a.

<sup>175</sup> *Ibid.*, # 139, 25b.

was that they were not criticized on the grounds that they were superstitious rites. Rather, the rabbis warned against using amulets at the home of a new-born child lest they be trod upon in the commotion.<sup>176</sup> In the case of mock marriages commonly performed at the age of seven, known as *el-Kettaim*, the rabbis condemned them because of the lavish feasts they entailed.<sup>177</sup> Probably their mild responses to these customs were based on the fact that these rites were deeply ingrained in the social life of the Jews of Fez and had, moreover, been judaized over the centuries. *El-Kettaim* for instance was linked with the holiday of Shabuot and the symbolic marriage of the people of Israel with the Torah.

The communal functionaries of Fez played a crucial role in keeping Jewish values alive and in safeguarding the well-being of the Jewish community. Learned in Jewish tradition and guided by Jewish precedent, they were preservers rather than innovators. Although those functionaries most involved with the authorities were not models of Jewish practice (e.g. the *Respetor*) their influence does not appear to have penetrated the religious life of the community.

As we shall see, the communal life of the Jewish community of Fez was not a harmonious expression of egalitarianism. Particularly in the area of taxation, injustices were not uncommon. Yet, the leaders of Fez managed to work out a *modus vivendi* among the different groups in the *Mellab*, guiding the community through a period of great tribulations.

<sup>176</sup> *Kerem Hemer*, II, # 45, 8a; # 139, 25b.

<sup>177</sup> Brunot-Malka, *Textes*, 313-14.

#### CHAPTER FOUR

### COMMUNAL CONFLICT IN THE *MELLAB* AS REFLECTED IN THE *ETZ CHAIM* OF RABBI CHAIM GAGIN

From 1526 until 1531 the *Mellab* of Fez was torn by bitter dissension. The details of the controversy are contained in the manuscript *Etz Chaim* which was composed by one of the participants in the controversy.<sup>1</sup> The purpose of the author of this account is to deliver rabbinic as well as Biblical proofs that the manner of slaughtering kosher meat practiced by the *Tosbavim* was the properly prescribed manner. Moreover, their method was binding since it was derived from the Torah and not simply from the Rabbis.

The *Etz Chaim* is an important primary source of information on the era of the Sephardi adjustment to Fez which has not heretofore been utilized as a historic document to reconstruct the communal history of the Jews of Fez. Toledano includes significant portions of the manuscript in his history of Morocco<sup>2</sup> but does not examine these extracts critically.

This chapter shall attempt to employ the data contained in the *Etz Chaim* for a reconstruction of the clash between the two main population groups of the *Mellab*. It will attempt to assay whether the controversy was solely a religious one or whether it also represented a political attempt by the Sephardim to wrest the reigns of power in the *Mellab* from the *Tosbavim*.

The question of the binding and legal nature of local usage or custom (*minhag*) has been discussed by the rabbis throughout the long period of Jewish dispersion. Many divergent views have been expressed concerning whether local usage assumed the character of law.<sup>3</sup> The problem became particularly acute in the sixteenth century when Sephardi refugees arrived as groups after their expulsions from Spain and Portugal.

<sup>1</sup> Chaim Gagin, *Etz Chaim*, The Library of the Jewish Theological Seminary of America, EMC # 474.

<sup>2</sup> Toledano, *Ner ha-Ma'arab*, *op. cit.*, 58-68.

<sup>3</sup> Zimmels, *Ashkenazim and Sephardim*, (London: Oxford University Press, 1958). Zimmels discusses the rabbinic points of view of *minhag* as well as the actual divergencies of practice between Sephardim and Ashkenazim through the ages.

CHAPTER EIGHT  
TAXATION OF THE JEWISH COMMUNITY

No study of the economic and communal life of the Jews would be complete without considering the problems of taxation and tax apportionment. The fiscal policies of the Moroccan governments and the manner in which the Jews confronted these policies contributed to the decline of communal institutions and the erosion of the economy of the *Mellab* by the end of the seventeenth century.

The area of effective governmental control was most circumscribed precisely at the moment when the monetary demands of the Kings of Fez were greatest. Not only were large sums of money needed to counter foreign and domestic rivals, but these rivals also claimed illegal sums from the subjected populations. The *Makhzen*, in the meantime, losing all control over the wealthier tribes,<sup>1</sup> confronting devastation in vast areas<sup>2</sup> and suffering reduced income as a result of droughts, famines and a cyclical recurrence of plagues, turned to the dwindling number of taxpayers under its control with increasing rapacity.

The progressive impoverishment of the Kingdom of Fez and of Marrakech characterized the period. The Jewish community was not the only group to suffer from the economic decline of the realm in the seventeenth century. The Jewish situation was unique in one respect. Since the degree of dependence of any group upon the government was in direct proportion to the extent of that group's fiscal liability<sup>3</sup> and no group was more dependent upon the government for its very right to exist, the Jewish community of Fez was most vulnerable to exploitation. The Jewish community recognized the connection between its political dependence upon the *Makhzen* and the fiscal exploitation it endured. It readily acknowledged that the Sultan was its "salvation"<sup>4</sup> and realized that tax remittals assured the community of its right to exercise its religion.<sup>5</sup>

<sup>1</sup> Ch.-André Julien, *Histoire de l'Afrique du Nord* (Paris: Payot, 1961), 212; Massignon, *Le Maroc* ... 172-84; Georges Marcais, *Les Arabes en Berbérie du XI au XIV Siècle* (Paris: Ernest Leroux, 1913), 722.

<sup>2</sup> Leo Africanus, *passim*. Almost every entry mentions recent devastations of villages.

<sup>3</sup> Ed. Michaux-Bellaire, "L'Organisation des Finances au Maroc," *Archives Marocaines*, XI, (1907), 172.

<sup>4</sup> *Dibre ba-Yamim*, 38.

<sup>5</sup> *Kerem Hemer*, II, # 88, 15b.

Travelers to Morocco during the period noted the large sums of money which the Jews were forced to pay in regular taxes. During his visit to Fez in 1516, Leo Africanus noted that the Jews paid a capitation tax of 400 ducats a month.<sup>6</sup> The Jewish contribution of 4,800 ducats annually to the royal treasury represented a large percentage of the annual collection of 10,650 ducats from Fez.<sup>7</sup> Between 1540-46, the Jews of Fez paid a capitation tax of 2,000 ducats annually.<sup>8</sup> Nicolas Clenardus bemoaned the fate of the Jews who were compelled to pay extremely high monthly taxes and, according to him, had to resort to chicanery to meet their assessments.<sup>9</sup> From 1544-49, the levies were so high that the rich men in the *Mellab* had to pay the assessment of the poor as well as contributing 1,000 ducats monthly to the communal charity chest.<sup>10</sup> Again in 1555, the Jews were caught in the middle of dynastic conflicts and paid heavily.<sup>11</sup> At the end of the period, not only were the Jews forced to contribute greater sums to the government, but the per capita assessment was higher since fewer men in the community still had the ability to remit payments.<sup>12</sup>

Thus, when the Jews of Fez were fined 20 *kikars* of silver in 1701<sup>13</sup> equivalent to 220,000 *oukiyot*,<sup>14</sup> the only recourse of many Jews was emigration.<sup>15</sup>

The Jews of Fez paid a variety of legal, as well as illegal, taxes. They were required to pay an unspecified sum on all manufactured goods and merchandise which they sold.<sup>16</sup> Certain goods, e.g. animal skins, required seals, purchased from government officials.<sup>17</sup> In addition, Jews bought their exemption from the corvee, sometimes providing for payments of this fee, known as *el-sukbra*, in contracts for store rentals.<sup>18</sup> This special fee was also levied on businessmen by the government.<sup>19</sup>

<sup>6</sup> Leo Africanus, 234.

<sup>7</sup> Massignon, *Le Maroc*, 179-80.

<sup>8</sup> *Les Sources inédites ... Espagne*, I, # XXXIV.

<sup>9</sup> Clenardus, *Correspondence*, Letter of April 12, 1541.

<sup>10</sup> *Les Sources inédites ... Espagne*, I, # XXXIV.

<sup>11</sup> *Kisseh ba-Malakhim*, 2b.

<sup>12</sup> *Kerem Hemer*, II, # 150, 25b.

<sup>13</sup> *Mishpat u-Sedakah be-Yakob*, I, # 78, 68a; *Dibre ba-Yamim*, 61.

<sup>14</sup> *Mishpat u-Sedakah be-Yakob*, II, # 121, 63a.

<sup>15</sup> See chapter II on demography. The Jews also sent a delegation to Meknes to protest this levy. *Dibre ba-Yamim*, 65.

<sup>16</sup> Marmol, 170.

<sup>17</sup> *Pinkas*, 31a.

<sup>18</sup> *Pinkas*, 31a.

<sup>19</sup> *Mishpat u-Sedakah be-Yakob*, I, # 119, 61a.

The capitation tax or *jizya* and the taxes on manufactured items were the least troublesome financial obligations which the Jewish community of Fez was forced to meet during the period. In the final analysis, it was the bribes, levies and arbitrary fines which paralyzed the economy of the *Mellab*. An indication of the enormity of this burden can be obtained from a random selection of these levies recounted in the *Dibre ha-Yamim*.

In 1552, the Turks from Algiers besieged Fez and levied a fine of 20,000 dinars on the Jews of Fez.<sup>20</sup> Mulai Muhammed esh-Sheikh repulsed the Turks and demanded 20,000 dinars from the Jews. His rival, Bu-Hassoun extorted another 12,000 dinars from the Jews. In 1576, Mulai Abdel Malik of Algiers besieged Fez, the King of Fez fled to Marrakech and the Jews of Fez were fined 140,000 *oukiyot*.<sup>21</sup> In 1595, a Jew from Fez slapped a Muslim in the course of an altercation. The Jew was tortured and killed and the community was fined 2,000 *oukiyot*.<sup>22</sup> On the eighth of Tishri, 1610, Mulai Zidan levied a tax of 10,000 *oukiyot* on the *Mellab* as payment for saving the *Mellab* from some unspecified pillage.<sup>23</sup> The king stipulated that the fine be paid that evening or else it would be doubled. Since the Jews couldn't collect the money, they were forced to pay 20,000 *oukiyot* on the Day of Atonement.

On the eleventh of Tishri, Mulai Zidan was killed outside Fez by his rival al-Ma'mun. Upon entering Fez, al-Ma'mun refused to meet the Jewish delegation that was traditionally sent to greet a new sovereign until the Jews of Fez paid him 20,000 *oukiyot* as compensation for the sum they had paid his rival.<sup>24</sup>

On the first day of Tebet, 1610, the Jews were fined 10,000 *oukiyot*. Two months later, they were forced to make another contribution of 8,000 *oukiyot*. A number of scholars from the *Mellab* were held as hostages until these levies were paid.<sup>25</sup>

In Iyyar, 1611, the Jews were forced to contribute 4,000 *oukiyot* to the King's war treasury. In the same month, they were forced to make

<sup>20</sup> *Dibre ha-Yamim*, 12.

<sup>21</sup> In *Mishpat uSedakah be-Yakob*, I, # 55, 59a the exchange rate in 1704 is 15 *oukiyot* per gold dinar and 10 *oukiyot* per silver coin. According to Massignon, *Le Maroc* ... p. 101 the dinar was equivalent to 15 *oukiyot* in the sixteenth century as well.

<sup>22</sup> *Dibre ha-Yamim*, 19-20.

<sup>23</sup> *Ibid.*, 21.

<sup>24</sup> *Ibid.*, 22.

<sup>25</sup> *Ibid.*, 23.

another contribution to the chief *qadi* of Fez. Eighteen days later, the king sent a *qadi* to extort 25,000 *oukiyot* from the *Nagid*, Jacob Roti.<sup>26</sup> The community was responsible for the fine in accordance with a communal agreement protecting their leaders from extortion which had been promulgated at an earlier date.<sup>27</sup>

At the end of 1612, the *Nagid* and eleven other leading personalities in the *Mellab* were denounced and imprisoned.<sup>28</sup> Their ransom was set at 600 *mithqals* (equivalent to 10,000 *oukiyot*).<sup>29</sup> "A week did not pass", recounts the chronicles, "when we were not forced to pay 400 *oukiyot* in addition to 1,000 *oukiyot* to the Sultan every fortnight. All this in addition to our regular taxes."<sup>30</sup>

Extraordinary levies did not abate during the seventeenth century. At the close of the period, the Jewish community of Fez was subjected to such fiscal abuse that they finally had to obtain the intercession of the *Nagid* of Meknes, Abraham Ma'imran, who enjoyed particularly close relations with the King.<sup>31</sup>

Levies in the form of soap,<sup>32</sup> gold rings,<sup>33</sup> silk garments,<sup>34</sup> scarlet kaftans<sup>35</sup> and other luxury items also entailed great hardship and expenditure.

In most instances, these levies were paid through great sacrifice on the part of the community. In at least one instance that we know of, the *Nagid* received a grace period from the Sultan during which he could collect the required sums from the community.<sup>36</sup>

All these levies occurred against the background of plagues, droughts, famines and inflation. They were frequently announced without warning and prompt remittals were demanded.

In the light of all the fiscal demands inundating the community, the rabbis of Fez were often compelled to resort to emergency measures. Sometimes the Jewish community resorted to borrowing at

<sup>26</sup> *Ibid.*, 23.

<sup>27</sup> *Kerem Hemer*, II, # 165, 30a, b. See Appendix, p. 205.

<sup>28</sup> *Dibre ha-Yamim*, 25.

<sup>29</sup> *Mishpat u-Sedakah be-Yakob*, I, # 55, 59b. This was the exchange rate in the early eighteenth century. There is no data on what the exchange rate was in the 1600's.

<sup>30</sup> *Dibre ha-Yamim*, 25.

<sup>31</sup> *Dibre ha-Yamim*, 65.

<sup>32</sup> *Ibid.*, 64 exacted by petty princes.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

interest from non-Jews.<sup>37</sup> In one instance, the communal leaders reluctantly agreed to rent the *Hekdesb* (charitable foundations) of orphans for one year's duration and the income was earmarked for communal taxes.<sup>38</sup> Occasionally, the proceeds from the communal meat tax (*sigu*) were set aside to meet the community's tax obligations.<sup>39</sup> All these emergency measures naturally entailed a diminution of available funds for charitable causes in the *Mellab*. Even the property of the synagogue was requisitioned in the emergency situation of 1701.<sup>40</sup> Torah finials as well as candelabra were requisitioned. When all other measures failed, the Jews of Fez would enlist the aid of other Jewish communities. This alternative was probably not commonly practiced since other Moroccan Jewish communities were similarly oppressed and impoverished. In at least one instance in the early eighteenth century, Jacob Ibn Sur went in person to Meknes to solicit funds from the Jews of Meknes.<sup>41</sup>

In general, tax assessment and apportionment in the *Mellab* was methodically arranged. The abovementioned levies, while instilling panic in the Jewish community of Fez, were probably met in the same manner in which the Jews met their regular financial obligations. The manner of assessment and apportionment of tax burdens was fixed by local custom and acquired the authority of law.<sup>42</sup> While the Jews of Fez were aware of the mode of tax assessment in Tetouan, Sale and Sefrou, and even in such distant cities as Constantinople and Salonica, occasionally even invoking these foreign precedents in their disputes, they were forced to abide by the customs which had evolved in Fez.<sup>43</sup> On the other hand, Jews from other Moroccan communities frequently queried the leaders of Fez about the method of tax collection in Fez.<sup>44</sup>

The Jewish community was assessed in one lump sum by the Muslim authorities. The Jews had complete freedom to determine how the tax burden should be divided among themselves. Objective standards were established to determine a man's ability to pay the capitation

<sup>37</sup> *Dibre ha-Yamim*, 12 in order to pay back a loan from the Jews of Meknes.

<sup>38</sup> *Kerem Hemer*, II, # 140, 25b.

<sup>39</sup> *Mishpat u-Sedakah be-Yakob*, II, # 174, 102a-b.

<sup>40</sup> *Dibre ha-Yamim*, 61.

<sup>41</sup> *Lesbon Limudim*, EMC 884, 13b.

<sup>42</sup> *Mishpat u-Sedakah be-Yakob*, I, # 249, 134a-135b.

<sup>43</sup> *Ibid.*, # 250, 136b.

<sup>44</sup> *Kerem Hemer*, II, # 156, 29a; *Mishpat u-Sedakah be-Yakob*, I, # 78, 78a, b; *Ibid.*, # 249, 135a. Meknes claimed that it had always followed Fez in taxation customs.

tax and the extraordinary levies.<sup>45</sup> Objects taken into account to determine a man's net worth were cash, grain in storage, gold and silver objects, copper implements, land, pledges from which the creditor was entitled to enjoy the fruits, precious stones, women's Sabbath clothing (which was usually expensively embroidered and jewel-encrusted fabric), a woman's dowry and any object worth more than 50 *oukiyot*. These objects were assessed at a very low rate; every 1,000 *oukiyot's* worth of property was taxed 1/4 of an *oukiyah*.<sup>46</sup> Gold and silver objects as well as jewels were also taxed at the rate of 1/4 *oukiyah* per 1,000 *oukiyot*.<sup>47</sup> Land and movable property were only taxed 1/8 *oukiyah* per 1,000 *oukiyot's* worth.<sup>48</sup> Net worth could be determined in one of two ways: a man could declare his net worth on oath or could have his assets assessed by a communal functionary specially appointed for this purpose.<sup>49</sup> In the latter case, a method preferred by the Jewish community, a man could vow on a Torah scroll that the assessment was incorrect if he disagreed with the appraisal of the assessor and could thereupon receive a tax reduction.<sup>50</sup>

The amount of money which each individual was required to contribute, based on the computations of an assessor, was entered in a tax registry which was known as the *Pinkas ha-Prutot*, or colloquially, as the *Zemam el-Felous*.<sup>51</sup> The tax registry based on self-assessment was known as the *Pinkas el-qu't'a* or the *Zemam el-Qu't'a*.

Assessors were chosen by the *Nagid* and the *Ma'amad*.<sup>52</sup> Sometimes, they were elected by the Jewish community.<sup>53</sup> Their number varied throughout the period. In one instance, (in 1605) the assessors appointed by the congregation were counterbalanced by three men of "unimpeachable character" designated by each trade to arrive at their own assessments.<sup>54</sup> Presumably, this method of dual assessment by two different groups of individuals, each representative of different class interests, would neutralize the possible bias of the assessor group. In the instance of these two separate groups of assessors, final assessment

<sup>45</sup> *Kerem Hemer*, II, # 156, 29a.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, II, 157, 29b.

<sup>50</sup> *Ibid.*, II, # 156, 29a. # 159, 29b states the preference of the community for this method.

<sup>51</sup> *Ibid.*, # 159, 29b. See Appendix, p. 203-4.

<sup>52</sup> *Kerem Hemer*, II, # 88, 15a-b. See Appendix, p. 204.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

was probably arrived at through some form of compromise between the appointees of the congregation or its officers (known as *Memunei ha-Kahal*) and the appointees of the trade associations.

In a *Takkanah* of 1716, the number of assessors appointed by the community was listed as twelve.<sup>55</sup> In another instance, eighteen assessors were appointed.<sup>56</sup>

The tax registry was not immutable: it was revised at certain intervals (mentioned in one instance as an annual procedure) and people whose fortunes reversed could receive credit against future payments.<sup>57</sup> One interesting aspect of the tax registries that is not clearly explained in the responsa of Rabbi Jacob ibn Šur was the manner of listing tax apportionments. Apparently, the tax rolls compiled by the Jewish community could be scrutinized by governmental authorities. It was therefore the custom in both Fez and Tetouan not to list the highest taxpayer separately.<sup>58</sup> This custom spread from Tetouan to Sale, and Meknes because of the wisdom of its motivation. To protect the wealthiest Jew from being singled out by the Muslims for special levies, his name was paired with that of the next wealthiest man. The public registry did not list his true assessment. He paid the extra amount apportioned to him in secret.<sup>59</sup> If the fortunes of the wealthier man reversed, then the other who was paired with him on the tax rolls also paid less in taxes.<sup>60</sup>

The reason for pairing assessments in the registry offered by the rabbis of Tetouan and Fez was vigorously and justly countered by the rabbis of Meknes. After all, the wealthiest man was usually known throughout Morocco by Jews, Muslims and Christians alike by virtue of his business reputation. After a lengthy correspondence between the leaders of Fez and the leaders of Meknes on this principle of not listing the wealthiest man of the community individually, Jacob ibn Šur concluded that the custom was just, ancient (which enhanced its validity) and prudent and should continue to be applied.<sup>61</sup> Only a ruling by the rabbinical courts could change this ancient custom of the community.<sup>62</sup>

<sup>55</sup> *Kerem Hemer*, II, # 156, 29a.

<sup>56</sup> *Ibid.*, # 157, 29b.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Mishpat u-Sedakah be-Yakob*, I, # 249, 134b-136b.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*, and # 250, 136b-137a.

<sup>62</sup> *Ibid.*, # 250, 136b-137a.

A related problem was known to arise in Fez. Frequently individual Jews were singled out by Muslim authorities to pay special levies, not only because of their reputed and apparent wealth, but also because of their prominence in Jewish communal affairs. To protect Jews from this eventuality, and also to encourage members to assume the burdens and dangers of holding positions of communal responsibility, the communal leaders promulgated an ordinance in 1635 emphasizing the principle of collective responsibility for the payment of all taxes and extraordinary levies.<sup>63</sup> This *Takkanah* was a reiteration of an earlier ordinance to that effect. When, for instance, the *Nagid* Jacob Roti was fined 25,000 *oukiyot* by the ruler, Mulai esh-Sheikh in 1610, he produced a document in which the community had undertaken to reimburse him for any monetary damages which might result from his service to the Jewish community.<sup>64</sup>

Responsa collections and communal ordinances are ideal sources from which one can learn about conflict situations in a particular Jewish community. Such material from Fez reveals that one frequent area of communal conflict was in the matter of tax exemptions. All Jewish males who were not on the welfare rolls of the community were required to contribute their share to communal taxes levied by the government. Certain exceptions were made to this rule. These exceptions were repeatedly challenged by the taxpaying members of the community.

It was customary in Fez, as in other Jewish as well as Muslim and Christian communities, to exempt religious scholars from paying taxes. Yet, the leaders of Fez were compelled to reiterate this principle throughout the sixteenth, seventeenth and eighteenth centuries because of opposition within the community.<sup>65</sup> They even lent their ordinances added authority by including similar regulations promulgated in Jerusalem in the seventeenth century.<sup>66</sup>

Tax exemptions for scholars were not as clearcut as it would seem.

<sup>63</sup> *Kerem Hemer*, II, # 165, 30a-b. See Appendix, p. 205.

<sup>64</sup> *Dibre ha-Yamim*, 23. The agreement drawn up by the *Toshavim* to protect their envoys to the King in the *terefab* controversy was similar in intent. See discussion above in chapter IV.

<sup>65</sup> *Kerem Hemer*, II, # 147, 27a, b; # 148, 27b; *Mishpat u-Sedakah be-Yakob*, I, # 31, 45a, b; # 253, 139a; # 256, 142a, b; # 257, 142b; # 258, 142b; # 259, 143a; # 261, 143b.

<sup>66</sup> *Kerem Hemer*, II, # 126, 22b; # 127, 22b-23a; # 128, 23a; # 129, 23a; # 130, 23a; # 131, 23b. These *Takkanot* from sixteenth century Egypt and Jerusalem exempting scholars from paying taxes were brought to Fez by envoys from Palestine and were incorporated verbatim in the *Sefer ha-Takkanot*. Ya'ari, 106.

Some scholars engaged in trade as well as study, while others were men of independent means. In both cases, the rabbis of Fez declared them to be tax exempt. <sup>67</sup> Functionaries of the synagogue were exempt from paying communal taxes, as were scribes. <sup>68</sup> The latter exemption was also contested since many scribes received substantial remuneration for their work. <sup>69</sup> The leaders of the Jewish community of Fez countered that the exemption of scribes was an ancient custom. Moreover, its roots resided in the Talmud and as such could not be overruled simply by the will of the community of Fez. <sup>70</sup> In the case of businessmen who were primarily scholars, the rabbis decided that tax exemptions held if the business provided sustenance and kept the scholars off the welfare rolls while they engaged in their studies. <sup>71</sup>

The rabbis recognized the tax exemption of a man of means who devoted his spare time to visiting the sick and other charitable acts. <sup>72</sup> Elderly men, even if gainfully employed, as well as widows and orphans, were also exempt. <sup>73</sup> A most interesting exemption was accorded to civil servants in the Muslim government on the grounds that they always lacked money. <sup>74</sup>

*Baron* (It has been estimated that only 1/3 to 1/4 of the Jewish community in medieval times actually paid the taxes levied on the entire community.) <sup>75</sup> No information from Fez is available to confirm this figure. One would assume from this startling figure that the rich bore all the fiscal burdens of the community. This was clearly not the case in Fez since the Jewish community also levied many excise taxes on a variety of products such as meat, butter, oil, and liquor (mahia). Excise taxes on these items were usually, although not at all times, collected from scholars, widows and orphans alike. <sup>76</sup>

As a result of the economic deterioration in Fez, many Jews from Fez conducted some of their business outside the city. The problem arose whether a man was responsible for his share of the levies on the *Mellah* even if he wasn't in Fez at the time that the levy was paid. The rabbis of Sale and Rabat, in studying this situation,

<sup>67</sup> *Kerem Hemer*, II, # 148, 27b; *Mishpat u-Sedakah be-Yakob*, I, # 256, 142a.

<sup>68</sup> *Kerem Hemer*, II, # 147, 27a, b; # 148, 27b-28a.

<sup>69</sup> *Ibid.*, # 149, 28a.

<sup>70</sup> *Ibid.*, # 147, 27b.

<sup>71</sup> *Ibid.*, # 148, 27b-28a; *Mishpat u-Sedakah be-Yakob*, I, # 256, 142a.

<sup>72</sup> *Ibid.*, # 31, 45a, b.

<sup>73</sup> *Mishpat u-Sedakah be-Yakob*, I, # 248, 134b.

<sup>74</sup> *Kerem Hemer*, II, # 88, 15a-b.

<sup>75</sup> Salo Baron, *A Social and Religious History of the Jews*, 1st ed. I, 320.

<sup>76</sup> *Mishpat u-Sedakah be-Yakob*, I, # 213, 124a. The tax was known as the *אנביליאם*.

invoked a precedent of Fez where it was customary for a man to contribute his share to a levy if he left the city after the levy had been pronounced but before it had been paid. <sup>77</sup> Once a man had settled permanently in a new city, however, he was no longer liable for new levies in his old home town but was required to contribute his share to the tax burdens of his new place of residence. <sup>78</sup> Such situations are recorded to have arisen in cities which were either quite close, such as Fez and Meknes, or actually contiguous, such as Rabat and Sale.

The Jewish community of Fez was vexed by the problem of tax evasion or tax exemptions resulting from governmental favoritism. Sometimes people with connections at court would receive drastic tax reductions and nobody dared protest. <sup>79</sup> The elders of the community tried to curtail or eliminate such abuses by appealing to the individual's sense of collective responsibility, and, if this failed, by the threat of the ban. <sup>80</sup> No one, they decreed, could be individually taxed or released from the obligation of paying taxes by the king, but must share in the common burdens of the community since "the Jewish community is one and each individual is responsible for the other." <sup>81</sup>

Tax evasions are recorded in only a few instances. This problem probably did not arise more frequently because of the overwhelming force of public opinion, the weapons of persuasion of the communal leaders as well as the option that an individual had to emigrate. Many people, precisely because of the communal tax burdens, did avail themselves of this opportunity, a fact noted with dismay in the *Takkanot*. <sup>82</sup>

The whole area of fiscal administration placed a great deal of authority in the hands of the communal leaders. Real tensions arose in the community as a result of the irresponsible and avaricious fiscal policies of the Muslim leaders of Fez. The approach of the Jewish leaders of Fez was not entirely satisfactory. While they recognized the burdens placed on the poor and middle classes and didn't want to cause further indebtedness among the poor, they didn't revoke the principle of exempting rich scholars from taxes. Such a revocation might have eased the economic plight of the community at large and

<sup>77</sup> *Kerem Hemer*, II, # 235, 41b-42a. The levy was known as the *el-mashura*.

<sup>78</sup> *Ibid.*, # 238, 42a.

<sup>79</sup> *Ibid.*, # 156, 29a.

<sup>80</sup> *Kerem Hemer*, II, # 156, 29a-b.

<sup>81</sup> *Ibid.*, # 88, 15a, b. See text, p. 204.

<sup>82</sup> *Ibid.*, # 156, 29a-b. The *Takkanah* mentions that they moved to coastal cities.

have mitigated class antagonisms. The whole problem of class consciousness and class antagonisms is only briefly alluded to in the *Takkanot* of Fez. The reference is significant however. In a *Takkanah* signed by Judah ibn 'Atar (undated, probably dating from Judah ibn 'Atar's communal service at the end of the seventeenth century), representatives of "the middle class and the poor" protested about the unfair tax burden they were forced to assume.<sup>83</sup>

It is significant that the only real threat to communal unity after the resolution of the sixteenth century ritual conflict between *Toshavim* and *Megorashim* was precipitated by the prolonged fiscal crisis in the *Mellab* at the end of the seventeenth century. Tax apportionment and tax assessment had become such a controversial issue that the Jews deriving from Chaouya and those Moroccan Jews allied with them actually attempted to secede from the Jewish community.<sup>84</sup> Although the attempt was unsuccessful, its occurrence as well as the fact that the rabbis and the community of Chaouya differed so markedly on tax apportionment (the leaders of Fez felt that the Jews from Chaouya should assume 2/3 of the tax burdens while the Jews of Chaouya felt that only 1/2 was their allotment) reveals the strains within the community resulting from matters of taxation.

Despite the crushing levies of the seventeenth and early eighteenth centuries, considerable fortunes remained in the hands of individual Jews. Thus in 1701, some Jews were able to contribute as much as five, eight or ten thousand *oukiyot* towards a communal levy.<sup>85</sup> Wealth of individual Jews, such as Joshua Serero, in the early 1700's is amply illustrated in the entries of the *Pinkas* of Fez as well.<sup>86</sup> It is impossible to ascertain whether Serero retained such extensive real estate holdings and other business interests in the *Mellab* at a time of considerable and progressive impoverishment as a result of communal tax policies which protected the assets of the rich or whether he was merely an isolated and exceptional case. The accumulated evidence from fragmentary comments, however, leads one to the conclusion that the manner of tax assessment was not always equitable and that the fiscal policies of the period tended to aggravate the divisions of wealth and geographic origin which existed within the community throughout the period.

<sup>83</sup> *Kerem Hemer*, II, # 157, 29a, b.

<sup>84</sup> *Mishpat u-Sedakah be-Yakob*, I, # 202, 117b. A description of this group is contained in chapter II.

<sup>85</sup> *Dibre ha-Yamim*, 61.

<sup>86</sup> *Pinkas*, 62-87. All the entries pertain to rentals of stores owned either individually or in partnership by Joshua Serero or to Serero's private affairs and accounts.

## CONCLUSIONS

The advent of the Sephardim inaugurated a new era in the lives of the Jews of Fez. On the one hand, the community had been severely shaken by the pogroms of 1465. On the other hand, the introduction of a sizeable group with great potentialities into the *Mellab* conjured up a host of social, communal, religious and potential economic conflicts. Moroccan Jewry was not the only group nor even the most important Mediterranean Jewish group to confront these problems. Yet, the adjustments in Fez were individual.

If the vicissitudes of Moroccan politics have been stressed in this study, it is precisely because the events in the *Mellab* were intertwined with the larger drama unfolding in Morocco. The era of Sephardi adjustment, coinciding as it did with the general erosion of the political climate vis-a-vis the Jews, forced some communal institutions to be relegated to a secondary position and others to assume a position of primacy. Thus, charitable institutions and questions of taxation loom largest in the sources while concerns about education are almost completely absent or at least unarticulated.

Communal functionaries reflected the changes occurring in Moroccan society. Since Spain and Portugal loomed so large in Moroccan politics, it was inevitable that Sephardim should be recruited by Muslim princes for delicate diplomatic assignments. Since diplomacy and commerce were so closely allied in this era, it was only a matter of time before certain Sephardi families, such as the Rotis, became powerful figures in the *Mellab*. In the final analysis, all communal functionaries were responsible for assuring Jewish cultural and physical survival. Hence those personalities with access to the Kings quickly assumed or were permitted to assume the helm of Jewish affairs. The somewhat cloudy personality of the *Respetor* which emerges in the *Dibre ha-Yamim* proves that leadership was not always entrusted to the most meritorious. Despite the onesided nature of the *Takkanot*, emanating from the councils of Sephardim, one sees an emergent picture of newcomers who were sensitive to the problems of the *Mellab* as a whole.

Communal functionaries and communal institutions in Fez bore many resemblances to those in other Mediterranean Jewish communities. This study has not dealt with the similarities but rather with