



Open and Shut Case

The Space of Conducting Business

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Rachel claimed against Leah: "I gave you two sheets and a belt to sell" ... And she [Leah] replied: "I lost the sheets and the belt with my own [property], for many things were stolen from me" ... And Leah countered and claimed against Rachel: "I have lost for myself three quarters, because gentiles had also given me [merchandise] to sell, and when I told them that I have lost theirs with mine I would have been exempt from paying them back, only that you [Rachel] came and yelled in front of all my neighbors and said: 'you say that [things] were stolen, but it isn't so; rather, you have saved [these items] for yourself and claim they were stolen.'

And my neighbors went and repeated this to those gentiles, and they came and stated: 'one of yours says that you yourself kept the merchandise while you say that it was stolen,' and I was made to repay them..."¹

Anonymous author, included in *Responsa of Rabbi Meir of Rothenburg and his Colleagues*, Germany, first half of the fourteenth century

Throughout the Middle Ages, public scrutiny and oversight of transactions were crucial features of economic exchange. Specifically, it was the marketplace, the most basic and accessible economic hub of the city, where transactions occurred in the open and during the day, that created a place for public or community oversight and circumstantial witnessing and that, in turn, accorded transactions legitimacy. Whereas the marketplace was perhaps the ultimate space where such oversight could take place, the norms of public transparency and scrutiny, dictated by the nature of exchange conducted in the marketplace, went beyond the physical boundaries of the marketplace and was regularly applied to other spaces in the city. As testified to in this early fourteenth-century responsum, whose recipient is unknown, the close living arrangements in the urban settlements of the German Empire created implicit oversight over one's more or less private business endeavors. Consequently, while Rachel aired her grievances against Leah in front of the neighbors, it was their voluntary intervention in the conflict that caused Leah to incur even greater financial losses. Given the importance of communal oversight in validating transactions, how did Christian authorities employ the public space of the city to regulate economic interactions between Jews and Christians living in the German Empire during the thirteenth and fourteenth centuries?

One important source of evidence for such regulation is the legislation that has become known as the Jewish trade privilege, which first appeared in the privileges granted by Henry IV to the Jews of Worms and Speyer in 1090 and remained valid until as late as the fifteenth century. These state that in the event that an item sold or given to a Jew as a pawn is claimed as stolen, the Jew has the right to receive monetary compensation. Accordingly, this compensation should be given to the Jew by the person claiming to be the rightful owner.² This privilege differed from the contemporaneous legal codes in the German Empire, wherein an individual caught with stolen goods was tried as a thief. Over time, the eleventh-century imperial privilege permeated into customary law, resulting in its use in territorial courts and eventually its codification in local legislation.

The first instance where an essential change in the privilege is found is in the provision of the *Sachsenspiegel*, a compilation of territorial customary law in Saxony written by a local juror named Eike von Repgow between 1225 and 1235. Contrary to the previous versions of this privilege, the *Sachsenspiegel* introduced the issue of transparency, or public oversight, in relation to the initial transaction between a Jew and a Christian, stating that Jews could retain their privilege as long as they could prove using the testimony of two witnesses that they had

1 Simcha Emanuel, ed., *Responsa of Rabbi Meir of Rothenburg and his Colleagues* (Jerusalem: World Union of Jewish Studies, 2012), 759–760, §388.

2 Dietrich von Gladiss and Alfred Gawlik, eds., MGH *Diplomata Regum et Imperatorum Germaniae VI: Heinrici IV. Diplomata* (Weimar: Harrassowitz Verlag, 1952), Speyer: no. 411, 543–47; Worms: no. 412, 547–49.

received the pawn during the day and not behind closed doors.³ The significance of the space in which the transaction occurred, as one enabling transparency and public oversight of the exchange, is reinforced by the function of the witnesses in the provision, who were expected to validate not that said goods were purchased in good faith, but rather that the transaction took place in a public setting.

Following the *Sachsenspiegel*, later compilations of customary law all included some variations on the necessity of the public nature of the initial transaction. Additionally, legislation from Nürnberg from the second half of the thirteenth century further detailed the public validation of the initial exchange. In the Jewish regulations of the city (*Judenordnungen*), which regulated Jews' receipt of pawns among other matters, there appears a clause relating to the acceptance of stolen goods, not only requiring Jews to swear an oath of purchase in good faith, but also to prove that they received the pawn in front of their door, not inside the house.⁴ Thus, the specification of the space is more explicit than in the *Sachsenspiegel*, as the regulation clearly addresses the Jewish home, specifically the door, as the barrier between the outer, public space, subject to oversight, and the inner space of the home. In such a way, even though witnesses were not necessary for the procedure of redeeming the pawn, proof was required of the public oversight of the initial transaction.

Even though some provisions stressed the importance of the public execution of transactions, specific stipulations of the Jewish trade privilege appeared around the second half of the thirteenth century that not only dealt with the public nature of the initial transaction, but also with business conducted in private within the Jewish home. Such was the case in the statutes of the royal city of Dortmund from the middle of the thirteenth century. Among other matters, these state that once a Jew took a defaulted pawn beyond the threshold of his or her house for resale, he or she could no longer provide assurances of the legality of the possession if the goods were later claimed as stolen.⁵ This provision is notable as it acknowledged a frequent outcome of lending on pawns: namely, the debtor's default that resulted in the lender having to sell the pawn to redeem the initial loan. Considering that the Jewish trade privilege dealt with the receipt of stolen goods as pawns, in such cases selling the pawn was perhaps the only recourse for Jews to profit from the transaction, as the thief was unlikely to return and pay the debt.

Interestingly, this provision moves the inclusion of the marketplace and its norms from the initial transaction to the final sale on the market. By revoking the Jews' right to provide warranties on items that were claimed to be stolen outside the threshold of their home, the Dortmund statute used public space to deter Jews from dealing in stolen goods. Similar to the regulation from Nürnberg, by stating that the Jew could not provide the warranty for the goods outside the threshold of the home, even though it appears in the context of sending the pawn to the marketplace, a clear line is drawn between transactions that occurred privately, inside one's home and without public oversight, and those that were subject to public oversight anywhere outside the home. While focusing on a different stage of the transaction, the Dortmund statute provided the same distinction between honest and dishonest activities, and therefore between activity that was subject to legal protection and activity that was not.

³ Friedrich Ebel, ed., *Sachsenspiegel Landrecht und Lehnrecht*, Book III/7 (Stuttgart: P. Reclam, 1953), 120.

⁴ Moritz Stern, ed., *Die israelitische Bevölkerung der deutschen Städte. Ein Beitrag zur deutschen Städtegeschichte mit Benutzung archivalischer Quellen*, vol. 3: Nürnberg im Mittelalter (Kiel, 1894–1896), 215.

⁵ Ferdinand Frensdorff and Otto Francke, *Hansische Geschichtsquellen: Dortmunder Statuten und Urtheile* (Halle: Georg Olms Verlag, 1882), 40–41, no. 39; Bernhardt Brilling and Helmut Richter, *Westfalia Judaica: Urkunden und Regesten zur Geschichte der Juden in Westfalen und Lippe* (Stuttgart: W. Kohlhammer, 1967) 3: 41–43 (no. 17).

While the meaning of oversight in relation to Jewish economic activities was subject to different interpretations in different localities throughout the German Empire, the norms of transparency and public oversight prescribed by the marketplace were enlisted to serve as surety, whether to the advantage or disadvantage of Jews. The case of Rachel and Leah indeed demonstrates how powerful implicit oversight was in determining one's economic standing, with individuals crossing religious boundaries to impose punishment against perceived transgressors. Even though the exact location where Rachel yelled in front of the neighbors is not mentioned, it is clear that this interaction was somehow exposed to the neighbors' oversight. Likewise, Leah believed that Rachel had somehow encroached on her rights by allowing the neighbors a glimpse into their personal affairs and conflict. Thus, whether deliberately or not, Rachel's outburst propelled a greater chain of events, wherein public oversight played a decisive role, not only in bringing the details of the case to the Christians' knowledge, but also in subsequently providing validation for the Christians' claims. This powerful tool, which relied on informal participation, was indeed adopted by municipal authorities and inserted into formal legal codes regulating economic transactions that were sensitive, or prone to dishonest behavior. As a result, the stipulations to the trade privilege created a distinction between the home which, as a space for economic activity, was considered private, secretive, and questionable, and the public space of the city, whether street or market, which was subject to communal or social oversight and was therefore considered legitimate.

Further Reading

- ❖ Christine Magin, "*Wie es umb der iuden recht stet*: Der Status der Juden in spätmittelalterlichen deutschen Rechtsbüchern." Göttingen: Wallstein Verlag, 1999.
- ❖ James Masschaele, "The Public Space of the Marketplace in Medieval England," *Speculum* 77 (2002): 383–421.
- ❖ Jörg R. Müller, "Gestolen und an ainem juden versetzt. Jüdische Pfandleiher zwischen legaler Geschäftspraxis und Hehlereivorwur," *Aschkenas* 20 (2010): 439–78.
- ❖ Michael Toch, "Economic Activities of German Jews in the Middle Ages." In *Wirtschaftsgeschichte der mittelalterlichen Juden: Fragen und Einschätzungen*, edited by Michael Toch, 181–210. München: Oldenbourg, 2008.
- ❖ Giacomo Todeschini, "Christian Perceptions of Jewish Economic Activity in the Middle Ages." In *Wirtschaftsgeschichte der Mittelalterlichen Juden*, edited by Michael Toch, 1–16. München: Oldenbourg, 2008.