

**Between Law and Society: Mahariq's Responsum on the "Ways of the Gentiles" (Huqqot Ha-'Akkum)**



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BETWEEN LAW AND SOCIETY:  
MAHARIQ'S RESPONSUM ON  
THE "WAYS OF THE GENTILES"  
(*HUQQOT HA-'AKKUM*)\*

by

JEFFREY R. WOOLF

I

The late Professor Jacob Katz was wont to observe that the student seeking to properly study and evaluate rabbinic responsa must read his sources twice. First, he must examine the text from the point of view of the halakhist, and evaluate it as an integral part of halakhic literature and tradition, respecting the general assumption of the halakhist that Jewish law is a closed system, which operates according to its own rules.<sup>1</sup> After this, he must don the spectacles of the historian and evaluate, as best he can, the degree to which contemporary circumstances had an impact (if any) upon or are reflected in the decisor's ruling.<sup>2</sup> This dual challenge is quite daunting in so highly nuanced and idiomatically opaque a literature as the halakhah. Caution and sensitivity must be the hallmark of all efforts to achieve both of the aims posited by Katz, especially the latter.<sup>3</sup> As a result of the sagacity of Katz's admonition, halakhic historiography in recent years

\* This study is an extensively revised and expanded version of a portion of the fourth chapter of my doctoral dissertation, "The Life and Responsa of Rabbi Joseph Colon b. Solomon Trabotto Maharik" (Harvard University, 1991). I am grateful for the comments of Professors Reuven Bonfil and Daniel Sperber. Responsibility for its contents remains solely my own. (Note: All translations are my own, unless otherwise indicated).

1. J. Katz, Introduction to *Halakhah ve-qabbalah* (Jerusalem, 1985), pp. 1–3. See also idem, "Post-Zoharic Relations Between Halakhah and Kabbalah," in *Jewish Thought in the Sixteenth Century*, ed. B. Cooperman (Cambridge, 1983), pp. 283–87.

2. J. Katz, *'Et lahqor ve-'et le-hitbonen* (Jerusalem, 1998), pp. 1–5.

3. See the cautionary remarks of Professor Haym Soloveitchik in his study, "Can Halakhic Texts Talk History?" *AJS Review* 3 (1978): 174–76 and idem, "Religious Law and Change," *AJS Review* 12 (1987): 205–6.

has made heavy use of the medium of case studies (carried out within specific periods and geographical areas). Recourse to these has proven fruitful in advancing the historian's goal of carefully and responsibly reconstructing the history of halakhah *per se* and the annals of the societies and cultures within which halakhic traditions were developed and which, in turn, left their impact thereupon.<sup>4</sup>

This essay represents an effort to present just such a case study, taking as its point of departure the well-known responsum of the fifteenth-century Franco-Italian scholar, R. Joseph b. Solomon Colon Trabotto (1420–1480/84; Mahariq),<sup>5</sup> which addresses the question whether the donning of an academic robe known as the *cappa* constitutes a violation of the biblical injunction not to walk in the ways of the Gentiles (*huqqot ha-'akkum*).<sup>6</sup> The first portion of the paper will analyze the responsum itself against the background of both earlier legal traditions and contemporary discussions of the question of *huqqot ha-'akkum*. In the second portion, an effort will be made to see just what this and other responsa of Colon's might imply regarding the state of Jewish-Christian relations in northern Italy in the mid-fifteenth century.<sup>7</sup>

## II

Colon's responsum on the *cappa* was written in the late 1460s,<sup>8</sup> and was occasioned by an urgent inquiry from Padua, authored by two scholars, R. Judah

4. In this connection, one need only recall the pioneering work of Professors H. Soloveitchik, I. Ta-Shema, and A. Grossman in the literature of classical Ashkenaz. Recently E. Zimmer has followed the same model in reconstructing the divide between the Rhenish and Austrian components of later medieval German Jewry, in E. Zimmer, *'Olam ke-minhago noheg* (Jerusalem, 1997), pt. 2. See also Soloveitchik's recent review of Zimmer's book in *AJS Review* 23 (1998): 223–34.

5. Details concerning his life may be obtained in Y. Buksboim's introduction to *She'elot u-teshuvot u-fisqe Mahariq ha-ḥadashim*, ed. E. D. Pines, 2nd ed. (Jerusalem, 1984), pp. 19–48; Woolf, "Life and Responsa of Rabbi Joseph Colon," pp. 1–66; and idem, "New Light on the Life and Career of Rabbi Joseph Colon," *Italia* 13 [Forthcoming].

6. Lev. 18: 3. The text is found in Colon's responsa (editio princeps: Venice, 1519), shoresh 88. All references are to this edition. Colon's ruling on the issue was adopted by R. Moses Isserles in his glosses to the Tur and the Shulhan 'Arukh (Yoreh De'ah 178:2). As a result, it set the agenda for all subsequent discussion of the topic. See Woolf, "Life and Responsa of Rabbi Joseph Colon," pp. 218–36.

7. As pointed out by A. Toaff, the social history of Italian Jewry (or for that fact any Jewish community) must be based upon a sensitive, thorough, and balanced comparison of both archival and rabbinic sources. I hope that this study will contribute to a better appreciation of the role played by the latter. See A. Toaff, *Love, Work, and Death: Jewish Life in Medieval Umbria* (London, 1998), p. 2.

8. It was apparently completed prior to Colon's arrival in Mantua around 1469. See Woolf, "Life and Responsa of Rabbi Joseph Colon," p. 42.

Messer Leon, the well-known philosopher, halakhist, and rhetorician,<sup>9</sup> and R. Samuel da Modena, a close disciple of Colon.<sup>10</sup> The specific garment that prompted the inquiry is described by Colon as “falling fore and aft of the wearer, pulled over the head and open at the sides.”<sup>11</sup> This description tallies with a contemporary academic gown known as the *cappa manicata*, which was widely worn in Italian universities, especially the one in Bologna.<sup>12</sup> The ecclesiastical origins of the universities<sup>13</sup> and of the dress adopted by their faculty members<sup>14</sup> was probably responsible for the protests reported by Messer

9. Concerning him, see D. Carpi, “Rabbi Yehudah Messer Le’ on u-fe’ulato ke-rofe,” *Michael* 1 (1972): 277–301; idem, “Notes on the Life of Rabbi Judah Messer Leon,” in *Studi sull’ebraismo italiano: in memoria di Cecil Roth*, ed. E. Toaff (Rome, 1976), pp. 39–62; R. Bonfil, “Introduction to *Nofet Sufim*” (Hebrew) (Jerusalem, 1981), pp. 7–6; idem, “The Book of the Honeycomb’s Flow by Judah Messer Leon: The Rhetorical Dimension of Jewish Humanism in Fifteenth Century Italy,” in *Frank Talmage Memorial Volume*, ed. B. Walfish (Jerusalem, 1992), pp. 21–33; H. Tirosh-Rothschild, *Between Worlds: The Life and Thought of Rabbi David ben Judah Messer Leon* (New York, 1991), pp. 24–33.

10. Regarding Modena, see N. Pavoncello, *Antiche famiglie ebraiche italiane*, vol. 1 (1982), pp. 71–72. Colon refers to him in *shorashim* 9, 22, 85, 128, and 149. These are among his best-known decisions.

11. *Shoresh* 88.

12. R. A. S. Macalister, *Ecclesiastical Vestments: Their Development and History* (London, 1896), pp. 253ff. In the universities, the wearing of the *cappa manicata* was restricted to scholars of standing. This fact, together with the timing of the question to Colon, could lead to the conclusion that the person whose wearing of the *cappa manicata* set off the controversy was none other than the questioner, R. Judah Messer Leon. As demonstrated by Carpi (“Notes on the Life of Rabbi Judah Messer Leon,” pp. 44–49), in 1469 the emperor awarded Messer Leon the right to grant doctorates in medicine, a privilege never before given a Jew. In light of what we know of Messer Leon’s life and personality, he might well have begun to affect an air of academic standing, in this instance expressed by the wearing of the distinctive *cappa manicata*. See M. A. Shulvass, “Mahloqotav shel Messer Leon ‘im rabbane doro ve-nisyono le-hatil maruto ‘al Yehude ‘Italyah,” *Siyon* 12 (1947): 17–23, and Tirosh-Rothschild, *Between Worlds*, p. 29. (It is pertinent to note that Messer Leon was living in Bologna when he received this imperial distinction. See Carpi, “Notes,” p. 49.) Several contemporary illustrations portray Jewish physicians as wearing a different robe, known as the *cappa clausa*, which is closer in design to contemporary academic gowns and was generally red in color. At present it is unclear whether the opposition to this innovation in the garb of physicians played a role in the inquiry to Mahariq. See T. and M. Metzger, *La vie juive au Moyen Age* (Fribourg, 1982), pp. 171, no. 238, 174 ff, and 242–43.

13. C. H. Haskins, *The Rise of Universities* [1923] (Ithaca, 1957), pp. 1–10. The standard study of the origins of the European university is still H. Rashdall, *The Universities of Europe in the Middle Ages*, new ed. by F. M. Powicke and A. B. Emnden (Oxford, 1936). See also the pertinent remarks of R. Betts, “The University of Prague: 1348,” in *Essays in Czech History* (London, 1969), pp. 1–12.

14. See Macalister, *Ecclesiastical Vestments*, p. 253: “There is no doubt that the university dress of the Middle Ages is an adaptation of monastic costume. The original schools from which the universities developed were of a clerical character, and their members wore clerical dress.” See also

Leon and Da Modena “that this mode of dress constituted a violation of the prohibition, ‘thou shall not walk in the ways of the gentiles’ (*huqqot ha-‘akkum*).”<sup>15</sup>

In his response, Colon forcefully rejected this contention, setting out to prove his point by precisely defining the legal parameters of the prohibition in question. He declares that in order to be prohibited as *huqqot ha-‘akkum*, a behavior must fall into one of two categories. It must either (1) lack any evident rational function or (2) be immodest, arrogant, or lewd.

To prove his first point, Colon undertakes an analysis of the word *hoq* as it is used in the Pentateuch. He observes that while the verse containing the prohibition is vague as to the exact meaning of *hoq*, many of the Torah’s prescriptions are described as *huqqim*, and these were clearly characterized by rabbinic tradition.<sup>16</sup> Assuming the consistency of biblical usage, he adduces these definitions of *huqqim* as they relate to the *mišvot* and then relates them to the forbidden Gentile practices.

In formulating his definition of a *hoq*, Colon relied upon the biblical commentaries of Rashi and Naḥmanides.<sup>17</sup> Although differing somewhat on the exact nature of *huqqim*, the two concur that this category of commandment mandates practices that do not possess easily discernible rationales.<sup>18</sup> Their

W. N. Hargreaves-Mawdsley, *A History of Academical Dress in Europe until the End of the Eighteenth Century* (Oxford, 1963), p. 4.

15. *Shoresh* 88. See Macalister, *Ecclesiastical Vestments*, pp. 78–79. It is likely that local Jews were very much aware of ecclesiastical costume, even of the robes worn during Mass. Jews on occasion took such garments in pawn. Moreover, Italy was known for its elaborate religious processions, where Jews could not have avoided seeing such robes. See J. Burckhardt, *The Civilization of the Renaissance in Italy*, vol. 2 (New York, 1975), pp. 413–25. Regarding other possible motives behind the objections to the wearing of the *cappa*, see R. Bonfil, *Jewish Life in Renaissance Italy* (Berkeley, 1994), p. 103.

16. E.g., Yoma 67b. See I. Heinemann, *Ta’ame ha-mišvot be-sifrut Yisrael* (Jerusalem, 1993), pp. 1–35, 79–96; I. Twersky, *Introduction to the Code of Maimonides* (New Haven, 1980), pp. 374 ff. See also the bibliographical survey by I. Dienstag, “Ta’ame ha-mišvot be-mišnat ha-Rambam: Bibliografyah,” *Da’at* 41 (1998): 101–115.

17. These were the focal points of contemporary Bible study in the Italo-German orbit. See Shifra Baruchson, *Sefarim ve-qor’im: tarbut ha-geri’ah shel Yehude ‘Italyah be-shilhe ha-Renesans* (Ramat-Gan, 1993), pp. 125–29.

18. While Rashi and Naḥmanides differ on the exact nature of *huqqim*, for Colon’s purpose the difference is unimportant. Rashi was of the opinion that *huqqim* have no reason other than their being Divine commands (see his comments on Lev. 19:19 [cited here by Colon], Lev. 18:6, and *Berakhot* 33b, s.v. *middotav*). Naḥmanides, on the other hand, was of the opinion that each *hoq* has a deeper rationale that is difficult to elicit (see his comments, e.g., on Lev. 18:6 and 19:19).

major function, as a result, is to serve as a sign of man's submission to God.<sup>19</sup> Observance of *huqqim*, then, is a mark of adherence and loyalty to God and Judaism.<sup>20</sup> Conversely, argues Colon, *huqqim* of the Gentiles must perforce be nonrational practices that are emblematic of religious, and in the original case idolatrous, beliefs and are observed as demonstrations of religious devotion. Hence, he continues, Jews were abjured from such practices, since "he [the Jew] is practicing an act which lacks any clear rationale, other than the fact that they [the Gentiles] practice it, it is therefore obvious that he is attracted to them and agrees with them [i.e., their religion], for otherwise why would he do such things?"<sup>21</sup>

Colon defines the second category of prohibited *huqqim* as comprehending any form of behavior that violates traditional Jewish standards of modesty and humility. He bases this contention upon a passage from the *Sifre*.<sup>22</sup>

Then take heed to thyself that thou not be snared by following them [the Gentiles] (Deut. 12:20). Lest you say, since they go outside wearing crowns, so shall I wear a crown; since they wear purple, so shall I wear purple; since they go about accompanied by retinue<sup>23</sup> so shall I.

Colon notes that all of these actions (crowns, purple clothing, and a retinue) are public expressions of personal status and power.<sup>24</sup> They are, he asserts, vain,

19. As Rashi (Berakhot 33b, s.v. *middotav*) states, "these are merely Divine decrees (*gezerot*)."

20. The same point is made emphatically by Maimonides in *Mishneh Torah*, *Hilkhot Me'ilah* 8:8 (end).

21. *Shores* 88. Colon clinches this point by citing the various and sundry actions interdicted by the rabbis as belonging to the idolatrous "ways of the Amorites" (*darkhe ha-'emori*), which were often seen as a subset of *huqqot ha-'akkum*, and demonstrating that all of them are bizarre and irrational. See *Massekhet Shabbat, Tosefta Mo'ed*, ed. S. Lieberman (New York, 1962), chaps. 6–8 and *Ensiqlopedyah Talmudit*, vol. 7 (Jerusalem, 1977), pp. 706 ff., s.v. *darkhe ha-'emori*.

22. *Sifre 'al Sefer Devarim*, ed. L. Finkelstein (Berlin, 1940), 80 (146–47), with variants.

23. The word used in Colon's version is *qilusim* ("praise"), indicating travel with a retinue or public procession. See S. Lieberman, "Q'L'S' *Qilusim*," in *'Ale 'Ayin*, (S. Schocken Jubilee Volume) (Jerusalem, 1948–52), pp. 75–81.

24. While Colon's text evidently read "*qilusim*," one wonders whether one may discern here a veiled criticism against extravagant wedding or funeral processions, which were evidently not uncommon among Jews. For example, the ordinances adopted in Forli (1418) restricted the number of retainers accompanying a bride. See L. Finkelstein, *Jewish Self-Government in the Middle Ages* (New York, 1964), pp. 286, 294. Another example is provided by the funeral of R. Judah Mintz, which raised more than one eyebrow. See M. A. Shulvass, *The Jews in the World of the Renaissance* (Leiden, 1973), pp. 336–37.

and can lead to arrogance. Conduct of this kind has no place in the modest deportment of the Jew, and hence is, *ipso facto*, “Ways of the Gentile.”<sup>25</sup>

Having laid out his basic frame of reference, Mahariq notes that the *Sifre* passage intimates another, more basic, factor determining whether something is or is not *huqqot ha-'akkum*. He highlights the fact that the passage is informed by an express desire to actively imitate the Gentiles (“since they . . . so shall I”). Colon concludes that it is not the wearing of the color purple *per se* that is objectionable, but rather the active, assimilationist intent that lies behind it.<sup>26</sup> Thus, both of his stated criteria for *huqqot ha-'akkum* actually amount to two versions of the same thing, an active desire to imitate the Gentiles and assimilate among them.<sup>27</sup>

Based upon this conceptual framework, Colon rules that there is no reason to prohibit the wearing of the *cappa*, as it does not fall into either category.<sup>28</sup>

. . . the reason for wearing the *cappa* is well known, in that it is a mark of distinction of an individual's achievements in a specific [area of] wisdom. As a result, one should not see its wearing as motivated by anything other than its obvious benefits, either for dignity or profit since he [the wearer] will become well known as being accomplished in this field of wisdom, and therefore people will go to him [for treatment].<sup>29</sup> In such a case it is not proper to forbid [the *cappa*] as it is clear that the wearer does not intend to be like them, and that [the Gentiles] themselves only wear it for its honor and utility.

In a word, wearing a *cappa* is rationally justified because of its utility. As such, it may not be forbidden as being *huqqot ha-'akkum*, despite its obviously Gentile origins.

25. Or, as Bonfil puts it: “In other words, the rule was that whatever was considered an exclusive characteristic of the Other (i.e. the Christian) became *ipso facto* negative with respect to the definition of the (Jewish) self.” See Bonfil, *Jewish Life in Renaissance Italy*, p. 103. Concerning the original import of this passage, see the important discussion in G. Blidstein, “Rabbinic Judaism and General Culture: Normative Discussion and Attitudes,” in *Judaism's Encounter with Other Cultures: Rejection or Integration*, ed. J. J. Schacter (Northvale, 1997), pp. 47–53.

26. This reading is confirmed by the full text of the *Sifre*, which is based on Deut. 12:30.

27. There is, nevertheless, a significant difference between them. The adoption of irrational or cultic behavior from the non-Jewish world is inevitably an expression of an intent to adopt the lifestyle and mores of the Gentiles (“otherwise why would he do such things?”). On the other hand, whether the active imitation of non-cultic Gentile fashion constitutes a violation of *huqqot ha-'akkum* ultimately depends on the stated or tacit motivation of the individual.

28. *Shores* 88.

29. The context is still Messer Leon's question regarding physicians wearing the *cappa*.

With this, Colon concludes the first portion of his presentation.<sup>30</sup> He now analyzes a series of passages from various earlier legal authorities that might be offered in refutation of his views on the nature of *huqqot ha-'akkum*. He cites them *in extenso*, offers the possible objections that might be posed therefrom, and proposes his own solution. After a long and exhausting legal argument,<sup>31</sup> Colon concludes his analysis with a passage from Maimonides' *Mishneh Torah* that was evidently a basis for the original objection to Messer Leon concerning the *cappa*.<sup>32</sup>

Rambam had written that a person ought not to wear clothing that is "uniquely" non-Jewish.<sup>33</sup> Those objecting to the *cappa* apparently interpreted Maimonides as meaning that any garment that was clearly Gentile in origin was prohibited as being *huqqot ha-'akkum*. Colon, however, avers that there is no reason to adopt so narrow an interpretation. The word "unique" could equally (and perhaps more naturally) refer to clothes and fashions that were quintessentially Gentile and therefore inimical to Jewish values. Thus, this text does not constitute a necessary contradiction to Colon's argument.<sup>34</sup>

30. It is worth noting in that Colon develops his basic criterion for *huqqot ha-'akkum* directly from the Bible and the tradition of medieval Bible commentary, and not first and foremost from rabbinic legal sources. Such resort to the biblical text for legal rulings could be seen as constituting something of a departure for Colon, who at least on one occasion voiced his objection to independent derivation of law from the Bible (*shoresh* 139). However, as will be demonstrated below, Colon was here following Maimonides' exegetical lead, lending credence to the enterprise. Concerning the issue of use of biblical exegesis and commentary by post-talmudic halakhists, see Y. Gilat, "Midrash ha-ketuvim ba-teqifah ha-batar-talmudit," in *Mikhtam le-David: R. David Ochs Memorial Volume*, ed. Y. Gilat et al. (Ramat-Gan, 1978), pp. 210–31 [=Idem, *Peraqim behishtalshelut ha-halakhah* (Ramat-Gan, 1990), pp. 374–94]; M. Elon, *ha-Mishpat ha-'Ivri*, 3rd ed. (Jerusalem, 1988), pp. 326–33.

31. The details of this analysis are more relevant for the study of Colon's legal method than for the topic under consideration. A full discussion is found in Woolf, "Life and Responsa of Rabbi Joseph Colon," pp. 198–207.

32. Hil. 'Avodah Zarah 11:1. One noteworthy point that arises in this section of the text is Colon's declaration that red clothing *ipso facto* constitutes a *hoq*. He concludes by declaring that "to this day we have it by tradition for our nation not to wear red." Ironically, however, as already noted (above, n. 12) contemporary Italian manuscript illuminations show that the robes of Jewish doctors, like those of their Christian counterparts, were flaming red in color. I have not to date been able to account for this discrepancy.

33. "Lo yilbash be-malbush ha-meyuḥad lahem."

34. It should be kept in mind that halakhic argumentation, as was first pointed out by Nahmanides (introduction to *Milhamot ha-Shem*), is an inexact science. Hence, what is called for in rebutting an opposing argument is interpretive plausibility and logical integrity. The point was, perhaps, best put by the late Professor Isadore Twersky, as follows: "The admissibility of two or



Having proven this legal point to his own satisfaction, Colon emphasizes that there is another reason to accept it. In contemporary Italy, Jews dressed no differently than their neighbors. As a result,

If a Jew were obliged to alter his clothes from those of the Gentiles totally, then there would be no righteous in the land, and this would be a generation of sinners, for there is no one in this generation who does not dress in attire similar to that of their [the non-Jewish] adults or youth, and how could anyone dare to prohibit that which all of Israel does publicly?

Colon's central argument here is based upon the authority of accepted custom (*minhag*), which was a critical factor in Ashkenazic legal tradition, and played an especially important role in his own legal writings.<sup>35</sup> Colon's reasoning runs as follows. Assuming the essential piety of Italian Jewry, and the fact that Italian Jews did not dress differently from their neighbors, Colon argues that this practice could not be wrong and must be based on the permissive ruling of an earlier generation. He clinches the point by citing several talmudic passages which demonstrate that then, as in the fifteenth century, Jews and Gentiles were practically indistinguishable in their mode of dress. Thus, in answer to Messer Leon's inquiry, there was no reason whatsoever to object to the *cappa*'s being worn.<sup>36</sup>

more equally tenable interpretations of a uniform text was a widespread principle—almost a rule of thumb—in medieval halakhic study and accounts for a good deal of its polemicism. . . . Just as Nahmanides could weaken a view of Razah and thereby rehabilitate a view of Alfasi merely by suggesting *possible* interpretations and conjectural constructions." I. Twersky, "The Beginnings of Mishneh Torah Criticism," in *Biblical and Other Studies*, ed. A. Altmann (Cambridge, Mass., 1963), pp. 165–66.

35. See Jeffrey R. Woolf, "The Authority of Custom in the Responsa of R. Joseph Colon (Mahariq)," *Dine Israel* 19 (1997–98): 43–74 and the discussion below.

36. In the early 1490s, R. David Messer Leon, the son of R. Judah Messer Leon, was consulted as to the propriety of an edict of R. Moses Capsali prohibiting scholars newly exiled from Spain to Constantinople from wearing a certain type of shawl that Capsali felt was in violation of the law of *huqqot ha-'akkum*. Messer Leon supported Capsali, but solely on the grounds that as chief rabbi he had the right to issue whatever edicts he felt were warranted, and that wearing such a shawl was against the common custom and might possibly constitute a violation of the Sabbath if worn then. Messer Leon avoided the issue of *huqqot ha-'akkum* entirely. The responsum was published in Y. Hacker, "ha-Hevrah ha-Yehudit be-Saloniqah ve-'agafeha ba-me'ah ha-15 ve-ha-16" (Ph.D. diss., Hebrew University, 1979), appendix IV, and discussed by M. Benayahu, *Rabi Eliyahu Qapsali, 'ish Qandia* (Tel Aviv, 1983), pp. 46–54.

## III

A survey of the classic halakhic discussions of *huqqot ha-'akkum* is revealing. One's first discovery is that the Talmud itself twice expatiates on the topic, although one would never know this from Colon's discussion. The relevant texts are in Sanhedrin<sup>37</sup> and 'Avodah Zarah.<sup>38</sup> Both deal with the propriety of burning the possessions of a Jewish king as part of his funeral, a practice followed by Jews despite the fact that Gentiles behaved in a similar fashion. The Talmud assumed that a practice rooted in Jewish mores and attested to in the Tosefta<sup>39</sup> must have some legitimate reason behind its acceptance and hence investigates carefully why, in fact, it is not classified as a "Way of the Gentiles." The two passages, however, diverge in their conclusions.

According to the passage in 'Avodah Zarah, the practice of burning a king's possession at death is not actually a *hoq*, and hence is permitted to Jews despite the fact that non-Jews do likewise.<sup>40</sup> The implication, therefore, is that there are actions that Gentiles do which are not *huqqim* and hence may be followed or adopted by Jews.<sup>41</sup> The parallel passage in Sanhedrin adopts a different tack. It asserts that the practice of burning the king's goods is indeed a *hoq* of the Gentiles, and ought not to have been permitted to Jews, owing to its Gentile origins. An exception is made in this case, the Talmud declares, because the prophet Jeremiah explicitly allows for it, indicating that the Jewish practice is indigenous and hence licit. The passage implies that no practice may be imitated from the Gentiles, since this, by itself, violates the prohibition of *huqqot ha-'akkum*.

The Tosafot on these passages take note of the inherent contradiction between the two discussions.<sup>42</sup> In typical fashion, they conclude that the two passages actually refer to two different facets of *huqqot ha-'akkum*, each of

37. Fol. 52b.

38. Fol. 11a.

39. Tosefta, Shabbat 8:9.

40. The commentaries on these passages are conveniently available in the following volumes: *Sanhedre gedolah le-massekhet Sanhedrin*, 5 vols. (Jerusalem, 1967-); *Shitat ha-qadmonim 'al massekhet 'Avodah Zarah*, ed. M. Y. Blau (New York, 1969); R. Isaiah di Trani, *Tosefot Rid 'al massekhet 'Avodah Zarah*, ed. N. Sachs (Jerusalem, 1959); R. Abraham b. David of Posquieres, *Perush ha-Rabad 'al massekhet 'Avodah Zarah*, ed. A. Sofer (New York, 1961).

41. See *Tosefot Rid*, ad loc.

42. Sanhedrin, loc. cit., s.v. 'ela and 'Avodah Zarah, loc cit., s.v. *u-le-huqqah*. The Tosafot on 'Avodah Zarah were edited in the late thirteenth century by R. Pereş of Corbeil, but they ultimately derive from R. Isaac of Dampierre (12th cent.). See E. E. Urbach, *Ba'ale ha-tosafot*, 5th ed. (Jerusalem, 1985), pp. 253-66, 654-58.

which has its own criteria. The first, reflected in the passage in 'Avodah Zarah, teaches that anything the Gentiles do that is blatantly idolatrous is forbidden to Jews. The Sanhedrin text, on the other hand, addresses the question of Gentile practices that are not inherently idolatrous in nature but, nevertheless, are reflective of their cultural *milieu* and orientation. It is on these grounds that the Talmud would have prohibited the destruction of royal property, were it not for the consideration that such a practice had developed indigenously among the Jews (or could have) as attested to by Scripture.<sup>43</sup> Based upon this analysis, the *cappa* would have been forbidden under the second category advanced by the tosafists and accepted by subsequent authorities.<sup>44</sup> Thus there was a solid talmudic basis for opposition to Colon's excursus.

One could respond by arguing that all of the foregoing reflects legal thinking that predated Colon by over two centuries, and that in the interim the halakhic climate of opinion might have changed. This, however, does not appear to have been the case.<sup>45</sup> Fifteenth-century German contemporaries of Colon express significant sentiment against any imitation of Gentile fashions of dress.<sup>46</sup> This is so despite the fact that German Jews in the fifteenth century generally dressed indistinguishably from their Christian neighbors.<sup>47</sup>

The eminent Austrian halakhist R. Israel Isserlein (d.1460) expressed his strong opposition to Jews dressing in the same manner as Christians. His only concession was in the interest of saving one's life.<sup>48</sup> Isserlein's student, R. Israel

43. For other resolutions of the problem, see the works cited above, n. 40.

44. This is the position adopted by the Vilna Gaon and others. Cf. *Be'ure ha-Gra* ad Yoreh De'ah 178:1. (The GRA notes that the RaN had an approach similar to Colon's. Given Colon's extremely limited familiarity with the RaN's writings, it is doubtful that he was influenced thereby. See Woolf, "Life and Responsa of Rabbi Joseph Colon," pp. 112–15.)

45. It should be noted, that the topic of *huqqot ha-'akkum* is not, to the best of my knowledge, discussed in the surviving halakhic literature of the fourteenth century (e.g., *Sefer ha-'Agudah*, costumals).

46. This was based, in large part, upon the passage of '*arqeta di-mes'ana* (Sanhedrin 74b), which was also addressed by Colon in *shoresh* 88. See the comments of R. Solomon Luria in his commentary on the *Sefer Mišvot Gadol*, Neg. 50. Cf. *Yam shel Shelomo*, II, Baba Qamma (Stettin, n.d.), fol. 107a–b.

47. See A. Fuchs, "ha-Ḥomer ha-histori bi-she'elot u-teshuvot R. Yisrael Bruna" (Ph.D. diss., Yeshiva University, 1974), pp. 209–13; E. Zimmer, "Men's Headcovering: The Metamorphosis of This Practice," in *Reverence, Righteousness, and Rahamamut*, ed. J. J. Schacter (Northvale, 1992), p. 334. Zimmer's article has recently been reprinted in expanded form as "Kisui rosh le-gevarim," '*Olam ke-minhago noheg* 17–42. The specific reference is to 23–26.

48. *Terumat ha-deshen*, no. 197. See the comments of Shakh, Yoreh De'ah 157: 16; Zimmer, "Men's Headcovering." Ironically, Colon rejects this specific line of analysis in his responsum.

of Bruna, reiterated his master's sentiments when he declared that "we dwell among the nations who go about bareheaded, and therefore [a Jew going about bareheaded] is considered *ḥuqqot ha-'akkum*<sup>49</sup> for he [the Jew] is only recognized by his headdress . . . as we have found Jewish distinctions in changes of clothing even in the shoes and sandals . . . and in times of persecution in shoelaces."<sup>50</sup> Thus, it is fairly clear that the question posed to Messer Leon and Samuel da Modena about the propriety of wearing the *cappa* reflected thinking current among some contemporary German halakhists.

This, though, raises two new questions: (1) How does one account for the absence of the basic talmudic sources of the issue of *ḥuqqot ha-'akkum* from Colon's responsum? (2) Is there any ascertainable source for Colon's interpretation of the laws of the Ways of the Gentile?

Colon's silence regarding the talmudic evidence is quite startling. The sources were well known, and he definitely had access to them.<sup>51</sup> What is more, Colon's legal method included his ranging far and wide over the entire field of rabbinic literature when discussing any given issue. Completeness was his hallmark. Finally, Colon was a representative of the French legal tradition, whose fount was the writings of the tosafists. They provide the warp and woof of his writings.<sup>52</sup> Thus, his avoidance of basic talmudic passages, and *a fortiori* the comments of the tosafists, demands an explanation.<sup>53</sup> Accounting for this situation, however, first requires that we ascertain the source of Colon's

49. It might be objected that Bruna's invocation of *ḥuqqot ha-'akkum* constitutes more of a rhetorical flourish than the invocation of a halakhic category (especially since he does not invoke any legal source for his assertion). Personally, I agree with Zimmer ("Men's Headcovering," p. 134) that Bruna really is referring to *ḥuqqot ha-'akkum* in the strictly legal sense. However, for our purposes this is not really relevant. The important point is that Bruna here expresses strong opposition to Jews dressing the same as Christians.

50. Responsa, no. 34.

51. He cites both tractates, 'Avodah Zarah and Sanhedrin, many times.

52. This becomes immediately apparent from an even cursory examination of his responsa.

53. This is in addition to the fact that it left his responsum extremely vulnerable to what would be justifiable criticism of his position. Still, caution must be exercised in evaluating this omission on Colon's part. It is possible that Messer Leon or Samuel da Modena may have addressed the issues raised by the tosafists and interpreted them in such a way as to allow the *cappa*, thus obviating any need for analysis by Colon. As Colon himself writes at the start of the responsum, "I have seen your words and will reply to them briefly . . . because you have already written more than is required" (*shoresh* 88, beginning).

definition and categories of *huqqot ha-'akkum*. These, I believe, Colon derived from Maimonides' *Mishneh Torah*.<sup>54</sup>

In the ninth chapter of the laws concerning idolatry, Rambam writes as follows:<sup>55</sup>

We should not follow the customs of the Gentiles, nor imitate them in dress or in their way of trimming their hair, as it is said, "And ye shall not walk in the customs of the nation,"<sup>56</sup> "neither shall ye walk in their statutes,"<sup>57</sup> "Take heed to thyself that thou not be ensnared to follow them."<sup>58</sup> These texts all refer to one theme and warn against imitating them. The Israelite shall, on the contrary, be distinguished from them and recognizable by the way he dresses and in his other activities, just as he is distinguished from them by his knowledge and his principles.

Note how Maimonides carefully conflates the verses explicitly dealing with the Ways of the Gentiles with the verse in Deuteronomy warning against "following them," thereby stressing their identity of meaning. The same two-verse scheme, which is unique to Maimonides, underlies Colon's responsum.<sup>59</sup> Colon first defines *huqqot ha-'akkum* based on the meaning of *hoq* in Leviticus and then produces his criterion based on humility, which is derived from the *Sifre's* comment on the verse from Deuteronomy that Rambam goes out of his way to state is part-and-parcel of *huqqot ha-'akkum*. The conclusion which suggests itself is that Colon, in seeking a general definition of this legal concept, noticed the Maimonidean hint, expanded it, and came up with his operative legal framework.<sup>60</sup>

54. It is probable that the *Sefer Mišvot Gadol* (Neg. 50) also served as one of Colon's sources, since it reproduces Maimonides' formulation, and includes a discussion of *Darkhe ha-'Emori* as well.

55. Hil. 'Akkum 11:1. The translation is from Maimonides, *The Book of Knowledge*, trans. M. Hyamson (Jerusalem, 1962), 78b. R. Joseph Karo (*Kesef Mishneh*, ad loc.) cites Colon's interpretation of the parameters of *huqqot ha-'akkum* as the definitive interpretation of this passage in Maimonides. See, however, the demurrals of R. Joshua Falk, in *Perishah, Tur*, Yoreh De'ah 178:2.

56. Lev. 20:23.

57. Ibid., 18:33.

58. Deut. 12:20.

59. This conclusion is based upon extensive study of the topic, aided by the Bar-Ilan University Responsa Project CD-ROM.

60. Rambam also discusses the issue of *huqqot ha-'akkum* in his *Sefer ha-Mišvot* (Neg. 30): "By this prohibition we are forbidden to follow in the ways of the unbelievers and adopt their customs, even in their dress and their social gatherings. This prohibition is contained in His words (exalted be He), 'Ye shall not walk in the customs of the nation, which I am casting out before you' (Lev.

If Colon indeed adopted the position of Maimonides, apparently over that of the tosafists,<sup>61</sup> his action would be consistent with the exceedingly prominent place occupied by the *Mishneh Torah* in his writings.<sup>62</sup> He refers to it constantly, whether to confirm the import of a talmudic passage,<sup>63</sup> bolster a controversial ruling,<sup>64</sup> or merely explicate its words for their own sake.<sup>65</sup>

20:23), and is repeated in His words, 'Neither shall ye walk in their statutes' (Deut. 12:30). . . . The prohibition on this matter is repeated in another form, in His words, 'Take heed to thyself lest thou be ensnared to follow them' (Deut. 12:30) . . . 'be ensnared to follow them'—lest thou liken thyself to them, and follow their customs, and they become a snare unto thee. You are not to say: Since [the Idolaters] go out dressed in purple, I will go out dressed in purple; since they go out dressed in *telusin*—a kind of ornament worn by soldiers—even so will I go out dressed in *telusin*.'" And you know the words of the prophet, '[I will punish . . .] all such as are clothed with foreign apparel' (Zeph. 1: 8). The purpose of all this is that we should avoid the heathen and despise all his customs, even his dress." Maimonides, *The Commandments*, vol. 2, trans. Ch. Chavel (London, 1967), pp. 28–29. It does not take much to realize that this passage recommends itself strongly as Colon's source. It contains almost all of the basic elements in the first quarter of his responsum, down to the citations from the Tosefta and Sifre. The problem is, however, that the *Sefer ha-Miṣvot* did not have much currency in the Middle Ages, and hence may not have been available for Colon's use, a possibility reinforced by the fact that he never refers to it anywhere else in his responsa. Hence, it is more likely that Colon himself fleshed out the implications of the conflation of the two verses as he found them in the *Mishneh Torah*, and arrived at his own conclusions therefrom. On the distribution of the *Sefer ha-Miṣvot*, see H. Heller, introduction to *Sefer ha-Miṣvot* (Jerusalem, 1987), pp. 1–4.

61. 'Apparently' because Colon's twofold categorization of *huqqot ha-'akkum* can readily be squared with that of the tosafists. It will be recalled that the latter concluded that there were two types of forbidden Ways of the Gentiles. One was a purely idolatrous practice corresponding to Colon's first type of *hoq*. The second is described in standard versions of the comments on Sanhedrin and 'Avodah Zarah as "their foolish and empty teaching" (*torat hevel u-shetut shelahem*). (The Tosafot of R. Elhanan reads, "The teaching of idolaters and the practice of their false teaching" [*dat ha-'ovede kokhavam u-minhag torat sheqer shelahem*].) These could be interpreted as relating to the nonidolatrous Gentile fashions and behavior that Colon included in his second category. Thus, there need not have been any contradiction between Colon and the tosafists. For such an interpretation, see, *Ensiqlopedyah Talmudit*, vol. 7, 706, s.v. *darke ha-'emori*.

62. In this regard, Colon was unique among fourteenth- and fifteenth-century Ashkenazic halakhists. See Y. Dinari, *Hakhme 'Ashkenaz be-shilhe yeme ha-benayyim* (Jerusalem, 1984), pp. 155–57. I address this point in a forthcoming article on the place of Maimonides in late medieval Ashkenazic rabbinic culture.

63. See, e.g., *shorashim* 96, 118, 141.

64. See especially *shorashim* 170 and 171 on the question of engagement gifts (*sivlonot*).

65. See, among others, *shorashim* 32, 52, 76, 117, and 152. The quality of Colon's interpretations of the *Mishneh Torah* is attested to by the extensive citations in the *Kesef Mishneh* of R. Joseph Caro, the *Lehem Mishneh* of R. Abraham di Boton (cf. Hil. 'Akkum 2:10), and the *Mishneh la-Melekh* of R. Judah Rosanes (cf. Hil. 'Ishut 9:28). Note too that Colon evidently placed special emphasis on the study of the *Mishneh Torah* in his academy. See *Hiddushe u-ferushe Mahariq*, ed. E. D. Pines, 2nd ed. (Jerusalem, 1984), pp. 19–48.

Moreover, Colon goes beyond other Ashkenazic halakhists in the reverence and awe in which he held the sage of Fostat and the authority he attributes to him. These find expression, *inter alia*, in his defense of the most controversial features of the *Mishneh Torah*, such as its lack of sources, its unilateral and apodictic style, and its resort to the Palestinian rather than the Babylonian Talmud.<sup>66</sup> To return to the case of *huggot ha-'akkum*, it is perfectly possible that Colon became convinced of the cogency of the model suggested by Maimonides' words,<sup>67</sup> and adopted it despite his allegiance to French halakhic tradition.<sup>68</sup>

It is instructive to note, in addition, that there was another legal option available to Colon in entertaining the question of the *cappa*, an option of which he was definitely aware. In the same chapter of the *Mishneh Torah*, Rambam writes: "A Jew who was close to the government, and must sit before their kings, since it would be humiliating for him to look different than they, is allowed to dress as they do."<sup>69</sup>

This exception to the rule of the Ways of the Gentiles, which is explicitly noted by the *Sefer Miṣvot Gadol* and the *Tur*, and is directly referred to by Messer Leon in his original letter,<sup>70</sup> would have provided Colon with a legitimate way to grant permission for the wearing of the *cappa manicata*.<sup>71</sup> For

66. On the question of the legal sources and apodictic style of the *Mishneh Torah*, see *shorashim* 129, 132, and 176. On the place of the Palestinian Talmud therein, see the programmatic statement in *shoresh* 100. Concerning the issue of Maimonidean criticism generally, see Twersky, "Mishneh Torah Criticism," pp. 161–82 and idem, *Introduction to the Code of Maimonides*, pp. 102–8.

67. In general, precedent has little or no binding effect in halakhah. See A. Kirschenbaum and N. Lamm, "Freedom and Constraint in the Jewish Judicial Process," *Cardozo Law Review* 1 (1979): 99–133; M. Elon, *ha-Mishpat ha-'Ivri*, 1062–63; and S. Morell, *Precedent and Judicial Discretion: The Case of Joseph ibn Lev* (Atlanta, 1991). See now the lucid presentation provided by A. Lichtenstein in "Legitimization of Modernity: Classical and Contemporary," in *Engaging Modernity: Rabbinic Leaders and the Challenge of the Twentieth Century*, ed. M. Sokol (Northvale, 1997), pp. 5–24.

68. The question must remain moot as to how Colon addressed the contradictory position presented by the tosafists. This is no small problem given the fact that Colon never decided between earlier authorities without demonstrating casuistically that in the case under consideration either both sides would agree or the opposing authority flew in the face of the opinion of the overwhelming majority of decisors. Concerning this phenomenon in the responsa of late medieval halakhists generally (and of Colon in particular), see Morell, *Precedent and Judicial Discretion*, and my study, "Samkhut u-kheffit ba-pesiqā ha-'Ashkenazit be-shilhe yeme ha-benayyim," in *Ben samkhut le-'otonomyah be-massoret Yisra'el*, ed. Z. Safrai and A. Saguy (Tel Aviv, 1997), pp. 295–96.

69. Hil. 'Akkum 11: 3.

70. See *Tur*, Yoreh De'ah 178 (end). See *Perishah*, ad loc., no. 8. Messer Leon is cited by Colon at the end of *shoresh* 88.

71. Neg. 50 (end).

Jewish doctors in Renaissance Italy passed easily into Christian society. They were much sought after by nobles, clerics, and other men of influence as personal physicians. They were, consequently, often men of considerable influence in their own right, as evidenced by their exemption from the Jew-Badge. Their status in the non-Jewish world was put at the disposal of their co-religionists in times of trial. In a word, if there was any group in contemporary Italy that could be classified as "close to the government," and therefore permitted to dress like Christians, it was Jewish physicians.<sup>72</sup>

Yet Colon did not avail himself of this unproblematic, though narrow license, preferring instead one both wider and more radical. The choice appears to have been quite calculated. Indeed, one can almost hear the depth of his conviction in his emphatic refrain that "the Jew is not required to differ from the Gentile."

In light of the emphatic nature of this declaration, it is also probable that Colon ruled as he did as a direct result of his attitude toward the authority of established custom (*minhag*). As noted above, Colon was clearly disturbed by the fact that the halakhic stance presented by the antagonists of Messer Leon would have effectively condemned the entire Italian Jewish community.<sup>73</sup> A review of his responsa on the authority of established custom demonstrates that he axiomatically assumed the essential piety of the contemporary Italian Jews community, and was convinced that established custom reflected legitimate halakhic positions.<sup>74</sup> Hence one may see in Colon's ruling a two-sided expression of this doctrine. On the one hand, he presents us with a full-blown defense of an established Italian mode of behavior, predicated upon the piety of those who so acted.<sup>75</sup> At the same time, he relates to this established

72. On Jewish physicians in fifteenth-century Italy, see M. Friedenwald, "Jewish Physicians in Italy," *The Jews and medicine*, (Baltimore, 1944), pp. 263ff.; C. Roth, *The Jews in the Renaissance* (New York, 1959), pp. 213–34.

73. Concerning Italo-Jewish dress in the period, see Roth, *Jews in the Renaissance*, chap. 2, and Metzger, *La vie juive au Moyen Age*, pp. 124–145. The artistic evidence confirms Colon's judgment that Jews did not dress differently from their fellows (with the exception of the Jew-Badge when enforced). See A. Toaff, "The Jewish Badge in Italy During the 15th Century," in *Die Juden in ihrer mittelalterlichen Umwelt* (Vienna, 1991), pp. 275–280.

74. See, e.g. *shoresh* 169. According to Colon, *minhagim* were either ordained or approved by earlier rabbinic authorities. The task of the contemporary halakhist was to attempt to "reconstruct" the original legal rationale behind the custom in question. The piety of those who practiced the custom under examination was seen by him as corroborating its legitimate origins. See Woolf, "Authority of Custom," pp. 59–66.

75. *Shoresh* 170. The fact that he was legitimizing a fully established phenomenon is probably a key reason for Colon's sweeping generalizations here. He was not, on the other hand, attempting to



*minhag* as living evidence of an authentic halakhic position that he endeavors to restore to its previous glory.<sup>76</sup>

#### IV

There is another factor which, while perhaps not totally responsible for Colon's decision, conditioned and found expression therein. I refer to Colon's perception and evaluation of the condition of Jewish-Christian relations in fifteenth-century northern Italy.

Jews constituted a prominent element in contemporary North Italian society, in a manner that would have been unusual in other countries. They were socially and culturally intimate with Christians at all levels of society. While Jewish settlement in some areas was restricted, and subject to the whims of the city, communal, or ducal government, it remains true that Italian Jewry was spared the kind of vicious general persecution that was frequently the lot of its German counterpart.<sup>77</sup>

Many scholars specializing in Renaissance Italian Jewish history have interpreted the unique Jewish experience in Italy in the light of features that historians have identified in the general Renaissance.<sup>78</sup> According to this line of interpretation, Jews were profoundly affected by the spirit of the age. Deeply attracted by Renaissance culture, they asserted their individuality via involvement in general culture, by skepticism, and by a religious apathy that not

adjust Jewish law to "fit" the spirit of the Renaissance. Colon's legal method involved the evaluation of reality in light of law, not the arbitrary bending of law to reality.

76. As such, this responsum provides the student with a striking example of that "creative traditionalism" that is the overarching trait of Colon's legal writings. On the one hand, he accepts established authority or custom against those who might question or dismiss it. On the other hand, he marshals his prodigious expertise and intellectual ingenuity to create and enunciate a framework within which to understand that authority or practice. In the course of developing the latter, he follows the sources to arrive at a crystallized doctrine of *huqqot ha-'akkum* that allows for greater flexibility of conduct than might otherwise have been deduced from the original practice.

77. Roth, *A History of the Jews in Italy*, (Philadelphia, 1946), pp. 153 ff. So rosy does the picture appear that Roth was moved to exclaim, "In no part of the world did such a feeling of friendliness prevail as in Italy between the people and the Jews" (p. 156).

78. See Burckhardt, *Civilization of the Renaissance*, pp. 453 ff.; Roth, *History*, pp. 153-257; Shulvass, "Hayye ha-dat shel ha-Yehudim be-'Italyah," *PAAJR* 17 (1947-48): 15-18; D. Hay, "The Nature of Renaissance Values in the Fifteenth Century," in *The Italian Renaissance in its Historical Background* (Cambridge, 1983), pp. 105-54; P. L. Ralph, *The Renaissance in Perspective* (New York, 1973); R. Bonfil, "The Historian's Perception of the Jews in the Italian Renaissance: Towards a Reappraisal," *Revue des études juives* 134 (1984): 59-65.

infrequently led to the imitation of Gentile mores, accompanied by serious lapses in observance.<sup>79</sup>

Colon's responsum on the *cappa*, however, does not appear to tally with these generalizations concerning the nature of the Jewish-Christian encounter. As Colon writes, the prohibition against imitating the Ways of the Gentiles serves an anti-assimilationist function. However, if the degree of conviviality between Jews and non-Jews was great enough to elicit condemnation from itinerant Franciscans like Bernardino da Feltre,<sup>80</sup> then similar reactions would certainly have been forthcoming from halakhists like Colon who were just as eager as their Catholic counterparts to prevent group defections.<sup>81</sup> Moreover, Colon was far from shy when it came to decrying breaches in proper religious deportment.<sup>82</sup> Thus it is difficult to understand how he could have taken so strong a stand on the question of *huqqot ha-'akkum*, holding that Jews and Gentiles need not be distinguishable in their dress, when distinction in dress is a potent safeguard of group identity, especially when strong centrifugal forces seemed to be pulling Jews away from acceptable modes of observance.<sup>83</sup>

79. Shulvass, "Hayye ha-dat," pp. 1–15. Indeed, so close and understanding did relations between Jews and Christians seem to be, that one historian has recently argued that intermarriage and apostasy were dealt with with equanimity (and sometimes cordiality) by Italian Jews, something that would have been unthinkable anywhere else in the world in that period. See the striking example presented by M. Luzzati, "Per la storia degli Ebrei italiani nel Rinascimento. Matrimoni e aspostasia di Clemenza di Vitale da Pisa," in *Studi sul Medioevo cristiano offerti a Raffaello Morghen*, vol. 1 (Rome, 1974), pp. 427–73 [= idem, *La casa dell'Ebreo: saggi sugli Ebrei a Pisa e in Toscana nel Medioevo e nel Rinascimento* (Pisa, 1985), pp. 59–106]. See also A. Toaff, *The Jews in Medieval Assisi: 1305–1487: A Social and Economic History of a Small Jewish Community In Italy* (Florence, 1979), p. 9, n. 25; idem, *Love, Work, and Death*, pp. 5–36, 143–65; D. O. Hughes, "Distinguishing Signs: Ear-Rings, Jews and Franciscan Rhetoric in the Italian Renaissance City," *Past and Present* 112 (1988): 13–17; and now C. Vivanti, "The History of the Jews in Italy and the History of Italy," *Journal of Modern History* 67 (1995): 329–33.

80. See Roth, *History*, pp. 159–76; A. Milano, *Storia degli ebrei in Italia* (Turin, 1992), pp. 197–209.

81. This would be especially true according to Roth who (following Graetz) viewed Colon as something of a reactionary. See Roth, *Jews in the Renaissance*, pp. 312–13 and H. Graetz, *Divre yeme Yisrael*, vol. 7, trans. S. P. Rabinowitz (Warsaw, 1890-98), pp. 280–82.

82. See, e.g., *shorashim* 37, 46, and 149.

83. Of course, the question then arises as to why German rabbis like Isserlein and Bruna, facing a similar sartorial reality, adopted so different a position. The answer, of course, depends upon a careful analysis of the social situation in Germany and Austria, an effort that far transcends the limits of the discussion here. However, it should be emphasized that their positions were noted here in order to present the alternative available in Ashkenazic halakhic tradition, which served as a counterpoint to the position adopted by Colon. It was certainly *not* the intention to imply that their

It seems, as a result, that Colon's responsum tallies better with a different interpretation of the Jewish involvement in Renaissance Christian society that has developed over the past decade and a half.<sup>84</sup> According to this line of interpretation, it is a mistake to assume a breakdown in the exclusivity of the Jewish and Christian communities, and in the sense of "otherness" that by the fifteenth century had kept the two groups separate and hostile for nigh on a millennium and a half.<sup>85</sup> Christian Italy did not recognize the Jew as an equal or as an adherent of a legitimate religion. On the contrary, missionizing activity was continuous in Italy throughout the period, and was supported by many of the same individuals who were noted for their close relations with Jews.<sup>86</sup> If Jews did gain entree into some of the most powerful circles in Italy, it was primarily because they could supply Christian society with a desired commodity, whether money, medical care, expertise in music, or instruction in Jewish tradition (*hebraica veritas*), and not because the two groups were in the process of a fundamental *rapprochement*.<sup>87</sup> The picture that emerges from this

stance, from the point of view of social history, was necessarily predicated upon the obverse of the circumstances which obtained in contemporary northern Italy. For one explanation of the circumstances in Germany at the time, see Zimmer, "Kisui Rosh," p. 25. On the issue generally, see J. Katz, *Exclusiveness and Tolerance* (New York, 1959), pp. 81–92.

84. Major statements of this view of Jewish-Christian relations in Italy are found in R. Bonfil, "Historian's Perception of the Jews," pp. 59–82, and more extensively in idem, *Jewish Life in Renaissance Italy*. See also D. Ruderman, "The Italian Renaissance and Jewish Thought," *Renaissance Humanism: Foundations, Forms and Legacy*, ed. A. Rabil, Jr., vol. 1 (Philadelphia, 1988), pp. 382–433, and H. Tirosh-Rothschild, "Jewish Culture in Renaissance Italy: A Methodological Survey," *Italia* 9 (1990): 63–96.

85. See R. Bonfil, "Società cristiana e società ebraica nell'Italia medievale e rinascimentale: riflessioni sul significato e sui limiti di una convergenza," in *Ebrei e Cristiani nell'Italia medievale e moderna: conversioni, scambi, contrasti: atti del VI Congresso internazionale dell'AIISG*, ed. M. Luzzati (Rome, 1988), pp. 231–60. (My thanks to Professor Bonfil for making a copy of this study available to me.)

86. Roth, *History*, pp. 153–76; Hughes, "Distinguishing Signs," pp. 18–24. See also R. Bonfil, "Some Reflections on the Place of Azariah de Rossi's *Me'or 'Eynayim* in the Cultural Milieu of Italian Renaissance Jewry," in *Jewish Thought in the Sixteenth Century* (Cambridge, 1982), pp. 31–37. Of particular relevance here are the doctoral degrees awarded Jews, which begin with the explicit hope that the Jewish awardee would soon leave the darkness of Judaism for the light of Christianity (*ex tenebris ad lumen*). See Bonfil, *ha-Rabbanut be-'Italyah be-tequfat ha-Renesans* (Jerusalem, 1979), pp. 226–27; V. Colomi, "Spigolature su Obadia Sforzo," in *Judaica minora* (Milan, 1983), p. 470; idem, "Sull'ammissibilità degli Ebrei alla laurea anteriormente al secolo XIX," *ibid.*, pp. 473–90.

87. Cf. Roth, *Jews in the Renaissance*, chaps. 5–6; Y. H. Yerushalmi, introduction to *Bibliographical Essays in Medieval Jewish Studies*, ed. L. Berman et al. (New York, 1976), pp. 3–5. True, conclude the proponents of this line of argument, intergroup socializing did occur, as did

approach is of two self-contained communities dealing with each other from different positions of strength, the Christians due to their numerical, political, and cultural posture as the majority, and the Jews from their cultural *élan* and vitality, along with the security derived from the knowledge that they provided necessary services to Italian society.<sup>88</sup>

I would suggest that Colon's broad allowance for Jewish imitation of Christian fashion required just the sort of tangible psycho-cultural distance between the groups that is posited above. In other words, Colon's determination of the theoretical principles guiding the question of *huqqot ha-'akkum* may have been based in large part upon purely internal, halakhic considerations.<sup>89</sup> However, his evaluation of the state of Jewish-Christian relations in the responsum testifies to his being secure in the knowledge that dressing like Gentiles would probably not lead to assimilation and apostasy. The dispassionate way in which he argues this point reveals no sense of danger or scandal. Indeed, the very fact that a clearly assimilationist intent, according to Colon, *does* violate the interdict on Ways of the Gentiles serves to drive this point home.<sup>90</sup>

instances of apostasy. These do not, however, contradict the basic reality of Jewish life in Italy, and that reality was one of separation and self-containment. See the next note.

88. This is not to suggest that defection to Gentile society did not take a toll on many Jews. The pressures of being part of a small minority, the glittering attractions of the Renaissance, considerations of *affaires de coeur*, added to the extreme isolation that was often the lot of the Jews in Italy, along with persistent conversionist pressures on the part of the Franciscans led quite a number of Jews to the baptismal font. Defections of this kind, as well as outside influences upon Jewish thinking and practice, are natural outcomes of minority life and do not necessarily belie the circumstances described here. On the isolation of Italian Jews, see R. Bonfil, "Hityashevutam shel Yehudim nodedim be-'Itayah be-shilhe yeme ha-benayyim," in *Hagirah ve-hityashevut be-Yisrael u-va-'Amim*, ed. A. Shinan (Jerusalem, 1982), pp. 150–152; Toaff, *Love, Work, and Death*, 5–7; and idem, "Gli insediamenti askenaziti nell'Italia settentrionale," *Storia d'Italia*, vol. 11 (Turin, 1996), pp. 153–71. Two expressions of this are found in *shorashim* 113 and 160. On apostasy in contemporary Italy, see M. Luzzati (ed.), *Ebrei e Cristiani nell'Italia medievale e moderna*; idem, "Per la storia dei rapporti fra ebrei e cristiani in Italia; demografia e insediamenti ebraici nel Rinascimento," in *Ebraismo e antebraismo: immagine e pregiudizio*, ed. Cesare Luporini (Florence, 1989), pp. 185–91; and Toaff, *Love, Work, and Death*, pp. 143–165.

89. In this case, *minhag* may be considered a partially internal, legal consideration.

90. One issue that Colon does not mention, and which ought to have played a role in his analysis, is the effect of the Jew-Badge on the question of the indistinguishability of Jews and Christians. As Owen Hughes ("Distinguishing Signs," pp. 18 ff.) has pointed out, many cities adopted the Jew-Badge during the course of the fifteenth century. The absence of such a consideration in Colon's responsum seems to support Bonfil's contention that while the Franciscans may have gotten the Badge enacted, Jews usually managed to avoid wearing it. See R. Bonfil, "ha-

This conclusion is corroborated in the admittedly few responsa in which Colon addresses aspects of the Jewish-Christian encounter.<sup>91</sup> To begin with, for Colon, Christianity was clearly a form of idolatry.<sup>92</sup> This becomes apparent in a responsum wherein he replies to a request for guidance regarding a situation in which a Christian religious image or statue (*pesel*) had been damaged in a Jewish home.<sup>93</sup> The questioners wanted to know whether the act of fixing the statue constituted a subsidiary violation of the prohibitions against idolatry, and even if so, whether it might be allowed under the circumstances, as the people in whose home the statue had been damaged feared for their lives. Colon replied that repairing the statue did not constitute a direct act of idolatry, and hence might be permitted in view of the danger to life. On the other hand, he explicitly rejects the addressee's suggestion that there might be a difference between different types of religious statuary, saying that "in a situation where it [the statue] is definitely worshipped, in any case it is prohibited, and becomes classified as idolatrous, in my opinion."<sup>94</sup> *In breve*, Colon's liberalism in the case of the *cappa* was not motivated by an incipient form of tolerance.

Another responsum, more closely related to the question under consideration, strengthens the aforementioned impression regarding the decline of Jewish-Christian tension in the period. The text in question discusses the Franco-Jewish practice of allowing Gentile treading of grapes to be used in making wine for Jewish consumption. Although a Gentile's touch rendered wine ritually unfit for drinking by Jews, French legal tradition did not deem vats of Gentile-trod, unseparated grape juice to be "wine of the gentiles" (*setam*

Yehudim be-'ezor Romanyah bi-yeme R. 'Ovadyah mi-Bartinura: qavim li-demutam ha-hevratit ve-ha-tarbutit," *Pe'amim* 37 (1988): 47.

91. At the same time, I would hesitate to suggest that this absence itself constitutes a credible *argumentum e silentio* for this line of argument. Even in the fifteenth century, early in the era of the printing press, the vagaries of the survival of texts in manuscript make such suggestions perilous.

92. At least as far as Jews were concerned. See J. Katz, *Exclusiveness and Tolerance*, pp. 143–68, and idem, "Sheloshah mishpatim 'apologetiyim be-gilgulehem," *Shiyon* 23 (1958): 174–93 [= *Halakhah ve-qabbalah*, pp. 270–90].

93. *Hadashim*, no. 34. One assumes that the statuary had been deposited in pawn. The circumstances may be similar to those described by M. Luzzati, "Ebrei, chiesa locale, 'principe' e popolo: due episodi di distruzione di immagini sacre alla fine del Quattrocento," *Quaderni storici* 54 (1983): 847–77 [= idem, *La casa dell'Ebreo*, pp. 203–34].

94. *Hadashim*, no. 159.

*yenam*).<sup>95</sup> Colon stoutly defends the French practice.<sup>96</sup> This was quite predictable, given Colon's devotion to established custom, not to mention his native French tradition.<sup>97</sup> What is of interest, however, is the nonchalant way in which he treats the questioner's criticism of the French tradition, a criticism echoed by many outstanding halakhists.<sup>98</sup> He feels no need to justify the French practice, adding that in any case, the issue of Gentile wine is of relatively low severity (*'issur qal*). The last comment is remarkable, because despite the fact that the allowance of Gentile treading had developed in France two centuries earlier, *setam yenam* was not viewed in Ashkenazic circles as a "lightweight" prohibition.<sup>99</sup> This was the case in Italy, however, as Cohen demonstrated at length.<sup>100</sup> Such a change in attitude, as reflected in Colon's responsum here, can be partially understood as the result of the diminishing tensions between Jews and non-Jews in contemporary Italy,<sup>101</sup> which rendered the prohibition against wine of the gentiles more a ritual issue than an ideological one.<sup>102</sup>

95. See H. Soloveitchik, "Halakhic Texts," pp. 153–96; idem, "Religious Law and Change," pp. 217 ff. For discussion of a later controversy on the same topic in sixteenth-century Italy, see G. Cohen, "le-Toledot ha-polmos 'al setam yenam be-'Italyah u-meqorotav," *Sinai* 77 (1975): 62–90.

96. See Soloveitchik, "Halakhic Texts," pp. 177 ff. As Soloveitchik points out, the practice was objected to by the great twelfth-century tosafist, R. Jacob Tam.

97. See above, n. 7.

98. Soloveitchik, "Halakhic Texts," p. 196.

99. See Soloveitchik, *ibid.*, p. 78, as well as Katz, *Exclusiveness and Tolerance*, pp. 40–41. See Soloveitchik, "Religious Law," pp. 217–18, for areas where *setam yenam* was not viewed as severely as in Ashkenaz.

100. Cohen, "ha-Maḥloqet," pp. 62–64. Nevertheless, it is clear that in Colon's lifetime, Gentile wine was not generally drunk (*ibid.*, p. 65). Cf. R. Meir of Padua, *Responsa*, no. 76, and R. Elijah Mizrahi, *Responsa*, no. 54. The same is true of southern Italy, at least up to the turn of the sixteenth century, as already indicated by R. Obadiah of Bertinoro in his description of Jewish life in contemporary Sicily. See M. Artom and A. David (eds.), "R. 'Ovadyah Yare mi-Bartenurah ve-'iggerotav me-'Eretz Yisra'el," in *Yehudim be-'Italyah*, ed. H. Beinart (Jerusalem, 1988), p. 55 [= idem, *Me-'Italyah li-Yerushalayim: 'iggerotav shel R. 'Ovadyah mi-Bartenura me-'Eretz Yisrael'* (Ramat-Gan, 1997), p. 38]. See R. Bonfil, "Teyutat ḥaṣa'ah le-yissud yeshivah bi-derom 'Italyah be-shilhe ha-me'ah ha-15," in *Sefer zikaron le-ha-Rav Yiṣḥaq Nissim*, vol. 4, ed. M. Benayahu (Jerusalem, 1985), pp. 196–97.

101. I say "partially" because halakhic positions should generally not be interpreted as linear consequences of contextual constraints, but primarily as the imminent consequence of textual and legal considerations. In this particular instance, as noted in the text, considerations of custom and of Colon's reverence for received French halakhic tradition were clearly major factors in his decision. (My thanks to Prof. Bonfil for a part of this formulation.)

102. Cf. Katz, *Tradition and Crisis*, chap. 3, and idem, *Exclusiveness and Tolerance*, pp. 131–42. This is not to suggest that Colon would ever have allowed the consumption of non-kosher wine.

Yet another responsum of Colon's also seems to reflect a diminished sense of tension vis-à-vis the Christian world.<sup>103</sup> The question came to Colon from Pavia, probably in mid-1470.<sup>104</sup> The questioner was a not too successful innkeeper named Ḥakim/Falcone b. Yeḥiel Cohen, who lived in Pavia with his wife and two daughters.<sup>105</sup> Life was very difficult for the family and Cohen's wife constantly begged him to move to another city.<sup>106</sup> He refused, and finally, in an act of desperation, she ran away, hiding in the home of her Christian washerwoman. Once there she announced her intention to abandon her family and convert to Christianity, and toward that end she met with the vice-bishop of Pavia, a priest, two local burghers, and two nuns. Cohen tried to persuade her to return, promising that he would leave Pavia, but was unsuccessful. She handed their youngest daughter over to him, and again stated her intention to convert.

At this point, Cohen records, the vice-bishop declared that the woman would not be coerced and should only convert after serious reflection. He told Cohen that she would be taken to a local convent where no man would have access to her (save an occasional priest or physician), and that after forty days of meditation she could decide whether she truly wished to convert or not. After a night in the convent the wife decided to return to her family, fearing that if she waited any longer she might not be able to resume married life with her husband, since a woman concerning whom there is suspicion of having committed adultery or of having had relations with a non-Jew, may not marry, or remain married to, a kohen.<sup>107</sup> After some negotiations, Cohen's wife was allowed to leave. Before she left, however, the vice-bishop warned Cohen to be nice to her, and not to mistreat her for having acted as she did. After all, he said, in the end what harm was done, since his wife was returning to him? Yet potentially there *was* harm in that Cohen's wife had spent an extended period of time alone with non-Jewish men, specifically the vice-bishop, a priest, and the two burghers. As a result, there was a

Rather, the way in which he deals with a question that at other times was packed with significance and religio-emotional voltage appears to indicate that for him the voltage was missing.

103. *Shoresh* 160. The text of the question alone was translated and annotated in J. R. Marcus, *The Jew in the Medieval World* (New York, 1972), pp. 389–93.

104. The events described took place in the spring of 1470 (Adar, 5230).

105. The case is summarized in S. Simonsohn, *The Jews in the Duchy of Milan*, vol. 1 (Tel Aviv, 1982), no. 1200 (pp. 506–7).

106. While Cohen clearly resented his wife's importunings (“*va-taqom le-satan li*”), he admits that her request was reasonable (“*devarim shel ta'am*”).

107. See Yevamot 44a ff.; Hil. 'Issure Bi'ah 18:17–30; *Tur*, Even ha-'Ezer 7.

serious question as to her being able to return to live with her husband. This concern prompted Cohen to write to Colon for a ruling.

Colon's reply is quite lengthy, and in typical fashion analyzes the question at hand from a number of perspectives. He finds that Cohen's wife may remain with him, and this is consistent with the general trend in Colon's writings, indeed in the responsa literature generally, to go to great lengths in order to save marriages or release women whose husbands had disappeared without their having been religiously divorced.<sup>108</sup> In any case, what is significant for our purposes here is one of the first points Colon makes.<sup>109</sup> Arguing that there ought to be no grounds for suspicion that anything untoward occurred during her time in the washerwoman's house or in the cloister, Colon writes:

. . . it goes without saying that there is no reason to suspect the priest and the vice-bishop, for it is well known, on the contrary, that most Gentiles of the like of the bishop and the priest abstain from this,<sup>110</sup> especially in a public setting and in their house of worship, and *a fortiori* [they avoid] relations with Jewish women, which would be scandalous for them, and what is more would be punishable by death at the stake according to their laws.<sup>111</sup>

At first blush, Colon's comments appear to be not very complimentary, but that is not totally accurate. Implicit in his first premise is a basic respect for the religious integrity of the priest and bishop, as well as for the status of their churches.<sup>112</sup> This was by no means a typical attitude, and views of the Christian clergy in Jewish circles could be highly negative.<sup>113</sup> Nor should one be quick to

108. Cf. *shorashim* 29, 32, 71, 86, 129, 101, 170, 171, 184, and *Hadashim*, nos. 21, 25, 29, and 30. In the end, Ḥakim/Falcone had his way, and stayed with his family in Pavia. From there, in August 1479, he applied to Duke Giangaleazzo II Sforza of Milan for permission for Jews to gamble in his inn. See Simonsohn, *Jews in the Duchy of Milan*, vol. 2, no. 1917 (pp. 798–99).

109. Gerald Blidstein notes that while the general trend in Ashkenaz was to be lenient in cases of "captive women," nevertheless, this passage of Colon's responsum stands out as unique. G. Blidstein, "Ma'amadan shel nashim meshummadot u-shevuyot ba-halakhah shel yeme ha-benayyim," *Shenaton ha-mishpat ha- 'Ivri* 3–4 (1976–77): 80, n. 163.

110. I.e., sexual relations.

111. *Shoresh* 160.

112. Shulvass ("Ḥayye ha-dat," p. 17) agrees with this evaluation of Colon's attitude, though he derives the opposite conclusion therefrom.

113. Cf. D. Berger, *The Jewish-Christian Debate in the High Middle Ages* (Philadelphia, 1979), p. 27, n.71 and now, idem, ' 'Al tadmitam ve-goralam shel ha-goyyim be-sifrut ha-polmos ha-



dismiss Colon's statement as intended simply to preserve Cohen's marriage, if possible. If that were his only consideration, he would not have had to say what he does, as this point is not his major argument here, nor is it crucial for his overall decision. Thus, the fact that he does include it makes it all the more noteworthy, for reasons we have stated.<sup>114</sup>

As Jacob Katz long ago observed, the decline of open, aggressive hostility between Judaism and Christianity, even if unaccompanied by any real *rapprochement*, can find expression specifically in the halakhic areas that regulate the relations between the two groups.<sup>115</sup> I suggest that Colon's decisions and comments here reflect such a development and attitude on his part.<sup>116</sup> His rulings on issues relating to and dependent upon the interactions between Jews and Christians presume the type of psychological distance noted by Katz, in marked contrast to the school of thought that views Renaissance Italy as a time of positive *convivenza*.<sup>117</sup> Ironically, it was this state of mind that led to the development of a basic sense of respect, on the part of this Ashkenazic halakhist, for the representatives of his people's erstwhile enemies. Furthermore, if Colon is taken as typical (as I believe he should be), then the "alienation" of the Jew from Christian society in Renaissance Italy may well have facilitated that increased capacity for social and cultural intimacy and exchange which has so fascinated historians.

'Ashkenazit,' *Yehudim mul ha-selav: gezerot 856 ba-historiya u-va-historyografyah*, ed. Yom Tov Assis et al., (Jerusalem, 2000), pp. 78-79.

114. See Bonfil, "Società cristiana e società ebraica," pp. 149-51. Bonfil's presentation and analysis of this responsum fundamentally accord with that presented here.

115. *Exclusiveness and Tolerance*, pp. 162 ff. Katz is referring to Eastern Europe from the sixteenth century onward. See Katz, *Tradition and Crisis*, pt. I, as well as H. H. Ben-Sasson, *Hagut ve-hanhagah* (Jerusalem, 1959) and Bonfil, "Azariah de Rossi," pp. 34-35.

116. In this connection it should be emphasized that it was decidedly *not* my intention to imply that the more severe tosfist/German position on *huqqot ha-'akkum* constitutes testimony that assimilation was a problem in medieval Franco-Germany, and *a fortiori* not in late-medieval Germany. The classic tosfist position was clearly based solely upon objective considerations of text interpretation (i.e. the contradiction between the passages in Sanhedrin and 'Avodah Zarah). It was Colon who changed the fundamental parameters of the discussion with the results portrayed herein.

117. *Per contra*, the intensification of a sense of being "threatened" by the outside world *could* lead to the opposite development. See, e.g., M. Samet, "Halakhah u-reformah" (Ph.D. diss., Hebrew University, 1967), pt. III, and the studies collected in J. Katz, *ha-Halakhah ba-mešar: miksholim 'al derekh ha-'ortodoksiah be-hithavutah* (Jerusalem, 1992). However, any and all conclusions in this matter must be contingent upon careful, localized case studies.

## V

The responsa examined in this paper add a critical element of balance and perspective to the ongoing study and evaluation of northern Italian Jewry in a fascinating era, a balance that has been woefully absent in the historiography of the period.<sup>118</sup> In particular, given the halakho-centric nature of premodern Judaism,<sup>119</sup> this examination highlights the critical need for a two-tiered undertaking in Italo-Jewish historiography.

First, a concerted effort must be devoted to the redemption and publication of the large quantity of contemporary halakhic material that remains in manuscript. Second, this material must be evaluated on its own terms and used for case studies like the one offered here.<sup>120</sup> Adding these to the historiographical agenda of the intellectual, spiritual, and cultural study of medieval and Renaissance Italian Jewry promises to open vistas hitherto unimagined, reopen academic shibboleths, and inject energy and balance into the study of a fascinating community.<sup>121</sup>

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118. One must especially single out the researches of Professor Reuven Bonfil of the Hebrew University and Dr. Elliott Horowitz of Bar-Ilan University as exceptional in this regard.

119. See I. Twersky, *Rabad of Posquières: A Medieval Talmudist*, 2nd ed. (Philadelphia, 1980), p. 1.

120. This is opposed to the use of halakhic material as a source for historical facts and realia. See Soloveitchik, "Halakhic Texts," pp. 153–54, and my article "Rešef ve-ḥiddush be-sh. u-t. ziqne Yehudah le-Rabi Yehudah Aryeh Modena," in *Magen va-herav: 'iyyunim be-ḥayyav u-ve-mishnato shel rabi Yehudah Aryeh Modena*, ed. David Malkiel (Jerusalem: Yad Ben Zvi, [Forthcoming]).

121. See Soloveitchik, "Religious Law and Change," pp. 211–13.