Beyond the Persecuting Society

Religious Toleration Before the Enlightenment

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25. In addition to articles cited in notes 9 and 11 above, see Cary J. Nederman, "Knowledge, Virtue and the Path to Wisdom: The Unexamined Aristotelianism of John of Salisbury's *Metalogicon*," *Mediaeval Studies* 51 (1989): 268–86.

26. John of Salisbury, *Metalogicon*, ed., J. B. Hall and K. S. B. Keats-Rohan (Turnhout: Brepols, 1991), Prologus; see also 2.20, 4.7.

27. *Policraticus*, Prologus (7); see also 2.22, 7.Prologus (148), and 7.2 (152).

28. For a shorter list in the same vein, see Prologus (7).

29. St. Augustine, *Contra Academicos*, III.4.30.

30. For a sample of the debate, see Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979) and Brian Tierney, "Origins of Natural Rights Language: Texts and Contexts, 1150–1250," *History of Political Thought* 10 (1989): 615–46.

31. Interestingly, immediately following this statement, John refers to "Paripateticus Palatinus," that is, Peter Abelard, for an example of how logical probability poses important issues of individual judgment. John, who studied with Abelard at Paris, may well have taken his thought as a model for his own belief in intellectual freedom and forbearance. See the paper by Constant Mews in the present volume for an examination of Abelard's ideas about toleration and free intellectual inquiry.

32. John Stuart Mill, *On Liberty*, ed. E. Rapaport (Indianapolis: Hackett, 1978), 18.

33. John would seem susceptible to Mill's somewhat scathing dismissal: "Strange it is that men should admit the validity of the arguments for free discussion, but object to their being 'pushed to the extreme'. . . . Strange that they should imagine that they are not assuming infallibility when they acknowledge that there should be free discussion of all subjects which can possibly be *doubtful*, but think that some particular principle or doctrine should be forbidden to be questioned because it is so *certain*, that is, because *they are certain* that it is certain" (*On Liberty*, 20).

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Ha-Me'iri's Theory of Religious Toleration

Gary Remer

GENERAL STUDIES OF THE HISTORY of religious toleration, like William K. Jordan's *The Development of Religious Toleration in England*, Joseph Lecler's *Toleration and the Reformation*, and Henry Kamen's *The Rise of Toleration*, have almost uniformly examined only the ideas of Christian advocates of toleration.[1] Consequently, factors that have been specifically significant to the development of Christian theories of toleration, such as "the division between church and state" or "liberty of conscience," have been widely accepted as if naturally linked to generic "toleration."[2] Although the Christianization of "toleration" is understandable—as the historical development of religious toleration in the West was promoted, primarily, by and for Christians—the result is that non-Christian justifications of toleration have been overlooked. For example, the analysis of Jewish contributions to religious toleration have largely been limited to Baruch Spinoza's *Tractatus Theologico-Politicus* (1670) and Moses Mendelssohn's *Jerusalem* (1783), works whose ideas, arguably, derive less from Jewish sources than from the dominant philosophies of the period.[3] By contrast, the Halakhic (Jewish legal) defense of religious toleration contained in the writings of Menaḥem ben Solomon Ha-Me'iri (1249–1316), Provençal scholar and commentator of the Talmud, is virtually unknown among scholars interested in the general history of religious toleration.[4]

In this chapter, I examine Ha-Me'iri's theory of religious toleration. I demonstrate that a uniquely Jewish theory of religious toleration was developed during the Middle Ages. In addition, I also show what it means to speak of a Jewish, as opposed to a Christian, theory of religious toleration. In the section entitled "Toward a Conception of a Jewish Theory of Reli-

gious Toleration," I explore some of the elements that distinguish a Jewish theory of religious toleration from its Christian counterpart. I argue that "toleration" must be understood contextually, through the interplay of the religion's specific assumptions and historical environment. Then, in the section entitled "Ha-Me'iri: The Status of Contemporary Gentile Religions," I examine the substance that forms the basis of Ha-Me'iri's theory of toleration: his Halakhic analysis of the Talmudic regulations and prohibitions concerning idolaters. Here I explicate the Jewish legal concepts Ha-Me'iri used, adapted, and developed to distinguish between the gentiles of the past, to whom the Talmudic restrictions applied, and the present-day gentiles, whose Halakhic position was superior to that of the ancient gentiles. I also contrast Ha-Me'iri's view of the Halakhic status of gentiles with the views of his rabbinic contemporaries. Finally, in the conclusion, entitled "Ha-Me'iri's Halakhic Innovations as a Theory of Toleration," I suggest that, when taken together, Ha-Me'iri's Halakhic innovations constitute a theory of religious toleration. Although these innovations had immediate practical implications, which Ha-Me'iri acknowledged, their greater importance, for toleration, lies in the new attitude toward gentiles that they represent.

Toward a Conception of a Jewish Theory of Religious Toleration

What does it mean to speak of a Jewish theory of religious toleration? Because toleration is defined contextually, to understand the meaning of Jewish toleration would require an inquiry into the context of Jewish ideas and historical events. The contextual basis of toleration becomes clearer by first looking at the better-known Christian example, in which the meaning of toleration is shaped, partly, by Christianity's religious assumptions. For example, Christianity's emphasis on doctrine over practice is important for the development of its theory of religious toleration. The religious crime par excellence in Christianity is heresy, which is defined as doctrinal deviation.[5] Since they still claimed to be Christians, heretics were viewed as an insidious, corrupting force within the body of the faithful who should be exterminated.[6] In early Christianity, heretics differed from the orthodox, primarily, in their beliefs about the nature of the Trinity.[7] Likewise, it was doctrine again that, fundamentally, divided Roman Catholics from Protestants and Protestants from each other: Luther split with the Catholic Church over "free will" and the efficacy of good works, and Protestants

disagreed with Catholics and among themselves about the nature of the bread and wine in the Eucharist. As Christian religious intolerance focused on the persecution of the doctrinally deviant, Christian toleration emphasized the acceptance of heterodoxy. The influence of this conception of toleration can even be found in the U.S. Supreme Court's interpretation of the First Amendment's free exercise of religion clause. Rejecting the Mormon claim that polygamy was a religious duty, the Court declared in *Reynolds v. U.S.* that "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions. . . ."[8] The Court reflects here the Christian assumption that religious toleration means greater protection of religious beliefs than of religious practices.

Christian toleration is shaped by other characteristically Christian assumptions. For example, "*Nulla salus extra Ecclesiam*" ("there is no salvation outside the Church") is a principle that was accepted by the authorities of the ancient and medieval Roman Catholic Church and, during the Reformation, by Protestants and Catholics alike.[9] Because those outside the Church are damned, Christians have seen it as their responsibility to convert the whole world to Christianity. And what if non-Christians refuse to "see the light"? Although Christian orthodoxy directed the full force of persecution against Christian heretics or apostates, it did not abjure coercion against those who were never Christians. The consequence of believing a people to be damned, as Jean-Jacques Rousseau observed, is that "they must absolutely be either brought into the faith or tormented."[10] St. Thomas Aquinas, in refusing toleration to most non-Christians, partially confirms Rousseau's observation. According to Aquinas, "Unbelievers although they sin by their rites may be tolerated either because a greater good may come of it or some evil may be avoided." Such is the case, he explains, with the Jews, who display to Christians the "rites which once prefigured the true faith." In contrast, "the rites of other unbelievers that have no truth or usefulness in them are not to be tolerated unless to avoid some evil."[11] Moreover, the theoretical toleration of the Jews did not prevent Church leaders, like Pope Innocent III, from justifying discrimination against the Jews, "the sons of crucifiers, against whom His blood still cries out to the ears of the Father." Nor did the principle of toleration prevent some Christian jurists from defending the freedom of rulers to expel Jews at will: "While no private person is entitled to molest them, a prince is allowed to do so, because since the death of Christ they have become our slaves. . . . If he is entitled to sell them, how much more should he be able to expel them!"[12]

Another distinctly Christian concept is the division between church and state. Since Christ, two levels of authority were recognized on earth: a temporal authority, with its powers of compulsion against those who commit social wrongs; and a spiritual authority, which is provided with spiritual means only, to lead humankind to salvation. Each of these institutions receives its authority from God, and, therefore, Christians are obligated to obey both. In Christ's words, "Render therefore unto Caesar the things which are Caesar's; and unto God the things which are God's" (Matt. 22:21). The religious duty to obey magistrates applied even to pagan states, since all magistrates receive their authority from God (Romans 13:1).[13] After Christianity became the sole official religion of the Roman Empire and pagan worship was banned, the state and church were viewed as functional parts of a greater *Respublica christiana*. Nevertheless, the dualism of church and state still continued, and this dualism profoundly affected the evolution of Christian toleration. It is doubtful that Locke and Jefferson could have developed their arguments for religious liberty without the antecedent Christian assumptions about church and state. The liberal argument that membership in the state is distinct from membership in the church and, therefore, that the state should not persecute its citizens for their religious beliefs, has its roots in the Christian theological tradition.

The interplay of a religion's concepts and historical circumstances determines the character of that religion's toleration. Therefore the meaning of Christian toleration is determined not only by Christianity's religious assumptions, but also by its historical conditions. And because historical conditions have varied over time, the meaning of Christian toleration likewise has changed. For example, before Christians acquired the coercive apparatus of the Roman state, toleration would have referred to the willingness of Christian churches to accept dissenting persons or groups into their communities; excommunication was the full extent of intolerance available at that point. By contrast, after the Roman Empire became Christian, toleration would have concerned refraining from physical compulsion. The historical specificity of toleration can again be seen in the post-Reformation period. One kind of toleration can be found in the Peace of Augsburg (1555), which gave German princes the right to decide the religion of their territories—so long as it was either Lutheran or Catholic. Although there could only be one religion within each territory and dissenters would have to leave or conform, the Peace of Augsburg implicitly rejected the previous proposition, accepted by Catholics and Lutherans, that heretics could not be tolerated anywhere. Another type of toleration can be seen in the Renaissance humanists' call for a broader, more comprehensive church. Sixteenth- and seventeenth-century humanists argued that religious dissenters who disagree on nonessentials, but accept the fundamentals of faith, should be allowed to retain their differences and remain within the church. This strategy, they hoped, would reunite Christians divided by the Reformation.[14] In late seventeenth-century England, however, the humanists' proposal was termed "comprehension," because it sought to include or "comprehend" Nonconformists within the Established church. At that time, "toleration," as opposed to "comprehension," meant the state's toleration of Christian denominations outside the Established church.

As in the Christian case, the meaning of Jewish religious toleration depends on the relationship between religious assumptions and historical circumstances. The differences between Jewish and Christian religious assumptions point up the distinctness of their theories of toleration. For example, in contrast to Christianity, Judaism emphasizes practice over doctrine, or what is sometimes referred to as orthopraxy over orthodoxy.[15] The anonymous author of the *Sefer Ha-Hinukh* (composed c. 1307) voices this principle when he states that "the heart is drawn by actions" and not vice versa.[16] Rabbi Yehuda Ha-Levi likewise emphasizes actions in his *Sefer Ha-Kozari* (c. 1140). In this classic of medieval Jewish philosophy, the pagan king of the Khazars is impelled to search for the true religion because of a recurring dream in which he is told by an angel: "Your way of thinking [or 'intention'] is pleasing in God's eyes, but your way of acting is not."[17] Ha-Levi's point is that a proper philosophy or good intentions are insufficient. Therefore, the Khazar king engages an Aristotelian philosopher, a Christian, a Muslim, and a Jew in philosophical dialogue, to compare their religions. According to Ha-Levi, the king, convinced of Judaism's truth, ultimately converts to Judaism, along with many of his Khazar subjects.

This Jewish stress on action shapes the meaning of toleration within Judaism. For Judaism, toleration relates more to forbidden actions than to heretical ideas. Halakha rarely sanctions the use of force against persons or groups because of their beliefs per se, but because of their actions. Thus for Judaism idolatry, not heresy, is the exemplar of religious treason. The sin of the "idolater" is the *act* of worshiping false gods. The heretic, by contrast, *believes* deviant doctrines. And while Halakha does not ignore the gravity of the heretic's sin, the continual lack of consensus about defining the Jewish articles of faith ensured that "heresy" would remain more a theoretical category than an actually punishable offense.[18] Historically, Jews have

agreed about the performance of *mitzvot*, the divine commandments, but have disagreed about dogmas. Thus Jews have universally accepted their biblical credo, the Shema ("Hear, O Israel, the Lord our God, the Lord is One"[Deuteronomy 6:4]), as a rejection of idolatry, yet they have clashed on the theological meaning of the verse: the "One" of the medieval rationalist Maimonides (1135–1204) and the "One" of the sixteenth-century Kabbalist Isaac Luria (1534–1572) are incompatible.[19] Similarly, although Maimonides maintains that monotheism without a belief in divine incorporeality is heresy, his contemporary, Ra'avad of Posquieres (1125–1198), dissents: "Why does [Maimonides] call such a person a heretic, when there have been greater and better men than he who followed this opinion because of what they saw in Scripture?"[20]

Unlike Christianity, Jewish law does not deny salvation to those outside its religion and does not aspire to the conversion of all persons. Thus Maimonides writes: "Anyone who accepts the seven precepts [of the Noahide laws, to which gentiles are expected to adhere[21]] and is careful to follow them—this person is a righteous gentile and has a portion in the world-to-come."[22] Halakha does not demand, or permit, the persecution of gentiles for the "sin" of not being Jewish. The meaning of Jewish "toleration" vis-à-vis gentiles, therefore, is more expansive than that of Christian toleration in relation to non-Christians.

Judaism also differs from Christianity in its unity of religious and secular realms. Throughout the Middle Ages and beyond, however, this difference had little impact on the development of toleration in the two religions. Although the Christian division between church and state would eventually develop into a genuine separation of realms that would allow for religious toleration, before the seventeenth century it was a distinction without real meaning for toleration, since church and state worked together to punish religious dissenters.[23] In contrast, Judaism, despite its unity of realms, was not as actively intolerant as Christianity. It *could not* be, because Jews, since the destruction of the Second Commonwealth in 70 C.E., lacked the coercive apparatus of the state that Christianity had.[24] This irony raises the question of historical conditions. The meaning of toleration in Judaism depends on the institutional means available to the community. The most extreme tool of coercion against religious dissenters that was available to medieval Jewry was communal excommunication,[25] and the Jewish community had no legitimate means of coercion to punish gentiles for religious crimes.[26] Nevertheless, Jewish intolerance of idolatrous gentiles could exist. In the next section, I discuss the forms this intolerance could take and Ha-Me'iri's approach to dealing with these forms of intolerance.

Ha-Me'iri: The Status of Contemporary Gentile Religions

Rabbi Menaḥem Ha-Me'iri's reputation as one of the greatest Jewish scholars of his period finds support in the comprehensive scope of his works on Halakha and the Talmud, biblical interpretation, customs, ethics, and philosophy. In *Bet Ha-Beḥirah* (written between 1287 and 1300), his monumental exposition of the Talmud, Ha-Me'iri combines a broad review of German, French, Provençal, Catalonian, and Spanish rabbinic opinions with his own Halakhic determinations. In addition, Ha-Me'iri displays, in *Bet Ha-Beḥirah* and other works, a profound knowledge of philosophy, both Jewish and Aristotelian, that is reminiscent of Maimonides. Ha-Me'iri's similarity to Maimonides is more than coincidental. Ha-Me'iri is viewed as a primary exponent of the Maimonidean tradition, and he adheres to Maimonides's philosophical rationalism in his views of man's purpose, God, the afterlife, prophecy, and the meaning of the divine commandments.[27]

Despite Ha-Me'iri's fidelity to the Maimonidean tradition, he broke with his intellectual progenitor on the status of non-Jewish religions. For Maimonides, non-Jewish faiths lacked legitimacy as bona fide religions. Christianity, according to Maimonides, was clearly idolatrous, and Islam, while not idolatrous, was, nevertheless, a false religion.[28] Maimonides believed that Judaism was the sole true religion because it alone was the product of divine revelation. Ha-Me'iri, by contrast, accorded gentile faiths religious legitimacy. Ha-Me'iri could maintain this position because he, unlike Maimonides, did not define the legitimacy of religions solely by their origins in revelation. As Judaism contains within it practical and doctrinal elements that could have developed without prophecy or revelation, other religions could have developed along these lines as well. Of course, Ha-Me'iri explains, Judaism stands above all other religions because "our perfect Torah has come to perfect us by all kinds of perfections."[29]

This difference between Maimonides and Ha-Me'iri is not simply theoretical; it has practical implications, particularly in the case of Christianity. If a religion is considered idolatrous, then the Talmudic-based, discriminatory rules governing commercial relations with, and the legal status of, idolaters take effect. The classic example of these rules is the prohibi-

tion on conducting business with idolaters on their holidays. The prohibition's rationale is that gentiles will be more likely to thank their gods on festivals for any profits earned, and Jews will be indirectly responsible for these acts of idolatry.[30] Maimonides believes that Christianity, as an idolatrous religion, is subject to these regulations and that Jews are, therefore, forbidden to engage in business on Sundays, as well as on other Christian holidays.[31] Ha-Me'iri, however, denies that these regulations apply to Christians.

Ha-Me'iri, however, was not the only Halakhic scholar to deny the contemporary relevance of the Talmudic rules against idolaters. There existed a longstanding contradiction between the Halakhic requirements and the accepted practice of medieval Jewish communities.[32] As the extant rabbinic literature of the Middle Ages demonstrates, the Jews of Germany and France ignored the Talmudic prohibition and engaged in business as usual with gentiles on Christian holy days. Their reason for doing so was pragmatic: they needed to engage in commerce to earn a livelihood. Although it was painless enough for Maimonides, living in a predominately Islamic society, to accept these restrictions,[33] consenting to these restrictions in Christian countries would have been burdensome. Therefore the rabbis of predominately Christian countries felt obligated to justify popular practice and explain why the Talmudic law did not apply. In medieval Germany, Halakhic explanations varied. It was argued by some rabbis (Ra'avan, Rabbi Isaac Or-Zarua) that most contemporary gentiles practice their religion as a kind of prejudice accepted from their forefathers, without any genuine feeling or understanding.[34] Another rabbi (Rashi) argued that refusing to conduct business with Christians on their festivals may engender hostility against the Jews, poisoning the good social relations that Jewish communities needed for their survival. Finally, one rabbi (Rabbenu Tam) maintained that the original Talmudic regulation only pertained to commerce in animals and other foods that would themselves be offered in idolatrous services.[35]

Although Ha-Me'iri was only one of a number of medieval rabbis to justify the popular disregard for Halakhic prohibitions regarding gentiles, he was unique in presenting a principled argument for the legitimacy of contemporary gentile religions. As Jacob Katz argues, the other rabbinic explanations were of an ad hoc nature. They were intended to reconcile the contradiction between Halakhic theory and popular practice, but they were not concerned with removing the stigma of idolatry from Christianity. "The first and only one in the Middle Ages whose Halakhic distinction between idolatry and contemporary religions is based on a principled theological conception is Rabbi Menaḥem Ha-Me'iri."[36] Like his peers, Ha-Me'iri's justification of practice is based on the Halakhic tradition; yet he expands this tradition by creating new concepts to distinguish present-day religions from their idolatrous forerunners. This mixture of tradition and innovation can be seen in his explication of the Talmudic rules relating to idolaters.

For purposes of analyzing Ha-Me'iri's views, Moshe Halbertal divides the Halakha governing gentiles into three areas.[37] The first area comprises prohibitions against commerce with gentiles because such contacts may, indirectly, support idolatrous rituals or may enable Jews to benefit from idol worship. Ha-Me'iri contends that these rules no longer apply to today's gentiles; they only applied to the earlier, idolatrous nations. The Talmudic prohibitions in this first area are: the above-discussed ban on trading with idolaters on their holidays;[38] the prohibition against trading with gentiles when the profits are taxed to support idolatrous rituals;[39] the prohibition against selling to gentiles materials used in idolatrous rituals, like incense;[40] the ban on renting a house to gentiles, lest they bring idolatry into it;[41] the prohibition against benefiting from the wine of gentiles as a safeguard against benefiting from wine actually used in idolatry;[42] and the prohibition against oversociability with gentiles.[43]

The second area of laws governing gentiles concerns the gentile's Halakhic rights and obligations. According to the Talmud, the legal and personal status of gentiles is inferior to that of Jews.[44] For example, gentiles are obligated to compensate Jews fully for any damage their animals cause to Jewish property; Jews, however, are exempted from compensating gentiles for the same type of damages. In this case, and others in this second area of laws, Ha-Me'iri equates the Halakhic position of contemporary gentiles with Jews.[45] Other laws in which the Talmud vests Jews with superior legal status include the obligation to return lost property;[46] the obligation to save lives;[47] the prohibition against overcharging;[48] punishment for murder;[49] permission to break the Sabbath laws in cases where life is endangered;[50] permission to teach children and to lodge animals;[51] and permission to sell weapons.[52] Finally, according to the Talmud, it is forbidden to "show [idolaters] grace," which includes praising any of their qualities or giving them presents. As with the previous laws, Ha-Me'iri limits this prohibition to the ancient idolaters, excluding present-day gentiles.[53]

The third area of laws governing gentiles consists of laws intended to hinder intermarriage. These laws sometimes achieve their goal by indirectly restricting the social relations between Jews and gentiles by regulations on food and drink: forbidding Jews to eat food (made with kosher ingredients, but) baked by non-Jews; or prohibiting Jews to drink the wine of non-Jews. Here Ha-Me'iri leaves all the prohibitions intact and does not distinguish between ancient idolaters and the gentiles of his own day.[54] Because Ha-Me'iri's position in these laws is the same as that of his contemporaries, this third area of laws will not be discussed further.

In analyzing Ha-Me'iri's language in the first two areas of law, Halbertal finds that Ha-Me'iri uses different terms and concepts in each of the areas. In the first area, Ha-Me'iri relies on the traditional Halakhic distinction between idolatry and non-idolatry. In ancient times, gentile worship was idolatrous, and therefore the Talmud prohibited trade with gentiles that might indirectly support idolatry; in his own period, gentiles were no longer idolatrous, and, therefore, Ha-Me'iri maintained that those Talmudic regulations were no longer in effect.[55] Ha-Me'iri upheld this position, even though his own version of the Talmud stated that Christians were idolaters. He explained away this offending passage as referring not to Christians but to ancient Babylonian sun worshipers from the times of Nebuchadnezzar.[56]

In the second area of law, concerning the gentiles' Halakhic rights and duties, Ha-Me'iri coins a new set of terms: "*umot ha-gedurot be-dar'khey ha-datot*" (nations bound by the ways of religion) and "*umot she-enan gedurot be-dar'khey ha-datot*" (nations not restricted by the ways of religion); the former are not discriminated against by Halakha, while the latter are.[57] The closest traditional Halakhic analogue is the "*ger toshav*" (resident alien), a gentile who has accepted the seven Noahide laws.[58] Ha-Me'iri, however, would have had technical reasons to reject "*ger toshav*" for a new Halakhic concept. According to Maimonides, "a *ger toshav* is only accepted when the Jubilee [Leviticus 25:10] is in effect." But the Jubilee, a year occurring at the end of a fifty-year cycle, when slaves go free and the land is returned to its original owners, has long ceased to be practiced.[59] In addition, the law of *ger toshav*, even when in effect, requires the individual gentile to obligate himself to observe the Noahide laws.[60] Thus a gentile was not presumed to be a *ger toshav* unless there was specific knowledge of the gentile's acceptance of the Noahide Laws. Ha-Me'iri, however, wanted a Halakhic concept that referred not to the individual but to the community, and where

belonging to the community was prima facie evidence of its members' commitment to the Noahide laws.[61] Ha-Me'iri met these criteria with his neologism, "nations bound by the ways of religion."

Ha-Me'iri's distinction between the two areas of law is plausible. Because the first area deals with a Jew's indirect support for idolatry, the relevant question is whether the gentile merchant's religion is idolatrous or not. Therefore Ha-Me'iri speaks in terms of idolatry and non-idolatry and determines that Christianity is non-idolatrous. (A Halakhic consensus already existed about Islam, which Maimonides had previously declared to be non-idolatrous.) The second area, by contrast, concerns a non-Jew's Halakhic rights and obligations. Because this area of law treats such issues as whether a gentile can be sold weapons or whether he can be entrusted with a Jew's children, or even animals, the question for Ha-Me'iri is whether or not the gentile belongs to a moral, lawful religion (nation). In this Halakhic domain, Ha-Me'iri wishes to draw a line between "law-abiding nations and lawless nations—between barbarity and civilization."[62] Therefore Ha-Me'iri speaks here not of "non-idolatrous" and "idolatrous nations" per se, but of "nations bound" and "nations unrestricted by the ways of religion," and he finds that contemporary gentile peoples adhere to law and morality, or at least aspire to.

Notwithstanding his linguistic distinctions, Ha-Me'iri links the "nations bound by the ways of religion" to "non-idolatrous religions." For Ha-Me'iri, morality presupposes belief in God and its corollary, the renunciation of idolatry. Thus, he writes, all those "who possess no religion and do not yield to the fear of the divine, but offer incense to the heavenly hosts and worship idols, do not care about any sin."[63] Idolaters, to Ha-Me'iri's mind, lack any conception of divine reward and punishment; therefore they cannot be considered "bound by the ways of religion."[64] Ha-Me'iri's conviction that belief in God/rejection of idolatry is a prerequisite to being a "nation bound by the ways of religion" is less theological than practical. He is not overly discriminating about the religion's metaphysical beliefs. For example, he does not require that the religions of his day adhere to a strict unitary conception of God. If he had, Christianity would have failed. Instead, gentile religions had to recognize a transcendental, incorporeal deity, which holds humanity accountable for its actions. Without such a conception of God, people could not be trusted to act morally.[65] The result of this theological laxity is that Ha-Me'iri granted Christianity greater legitimacy than did any of his contemporaries. Nevertheless, in

subordinating theology to morality Ha-Me'iri does not depart from the Jewish norms; rather, he reflects the earlier-stated principle that Judaism emphasizes practice over doctrine.

Conclusion: Ha-Me'iri's Halakhic Innovations as a Theory of Toleration

It is almost impossible to speak of Jewish religious toleration of deviant Jews during the Middle Ages and the centuries following. Historically, Jewish law has shown little tolerance of Halakhic deviancy by Jews.[66] Idolatry by Jews, according to Halakha, is a capital offense, and heretics, when autonomous Jewish communities existed, could be banned by their communities. That these or other punishments were rarely carried out was due more to historical circumstances—the lack of Jewish sovereignty and power, divisions within the Jewish community, the need to protect the integrity of the community against a hostile environment, and so on—than to any commitment to toleration. By contrast, the question of tolerating gentiles was different; Halakha accepts that gentiles can attain salvation without converting to Judaism. Therefore, if gentiles satisfy the minimal Halakhic demands made on them—the Noahide laws—they are to be tolerated. Through the ages, however, most gentiles were not viewed as meeting Halakha's minimal requirements because their religions, including Christianity, were characterized as idolatrous. While they could not be persecuted so long as Jews lacked sovereignty in the Holy Land, there were Jewish laws that restricted commerce with them and accorded them an inferior Halakhic status because of their perceived idolatry-cum-barbarism. Although these laws did not involve violence, as did Christian laws against heretics, they were still intolerant. They denied non-Jews legitimacy as full, or at least trustworthy, persons, and they equated contemporary gentile religions with the ancient Near Eastern cults, which were to be shunned, if not extirpated. Most of these prohibitions and discriminatory rules were ignored in practice, and this practice was widely justified by different medieval rabbis. But Ha-Me'iri's justification differs from those of his contemporaries because it was principled.

Unlike other rabbinic justifications, Ha-Me'iri's was not stated narrowly, designed to concede the minimum. The other Halakhic authorities permitted commerce with Christians on their festivals because it was prudent or because of a technical argument about the specific items the Talmud included in its prohibition against trade. Some authorities even came

as close as suggesting that Christians were not idolaters because of their religious ignorance. But none of these arguments stated, as did Ha-Me'iri, that Christianity was not idolatry. By contrast, Ha-Me'iri's justification was stated as a broad principle: there is a line between the idolatry, lawlessness, and immorality of the ancient religions, and the belief in God, law-abidingness, and morality of contemporary religions.

Consistent with my claim that Jewish toleration relates to action, Ha-Me'iri's arguments had practical consequences. For example, Ha-Me'iri abandoned the accepted Talmudic law that Jews may rightfully possess property received through a gentile's loss or error—so long as this acquisition did not lead to a desecration of God's name. In these matters, Ha-Me'iri equates "the nations bound by the ways of religion" to Jews. Thus, he writes: "We do not favor ourselves in legal cases."[67] Another instance in which Ha-Me'iri broke with accepted practice is the Halakha of overcharging. Maimonides confirms the Halakhic status quo when he writes that the law of overcharging does not apply to gentiles because the Torah limits this law to "brothers" (Leviticus 25:14), and the gentile is not considered a brother to the Jew.[68] Ha-Me'iri, however, maintains that it is forbidden to overcharge "anyone who is bound by the religious ways" because this person, unlike the gentile idolater, is a brother to the Jew.[69] Finally, Ha-Me'iri's most radical departure from conventional Halakha is in the case of Jews who forsake their religion for another. According to the Talmud, Jewish apostates can be killed.[70] Ha-Me'iri, however, interprets "apostates" as meaning Jews who have abandoned all religion, not Jews who have formally converted to another religion. "An apostate to idolatry," Ha-Me'iri writes, "is in the category of heretics [who can be physically harmed]." But this can be said only of

> those for whom the name "Israel" can still be applied, because [such a person] who frees himself [of Judaism's laws] and desecrates the [Jewish] religion deserves the most serious punishment, for he becomes a heretic and like a person without religion. But anyone who has completely left the community and has become a member of another religion is considered by us as a member of the religion he has joined in all matters except the laws of divorce, marriage, and the like, . . . and thus my teachers ruled.[71]

Although Ha-Me'iri claims here that he was following his teachers' decisions, his ruling on Jewish apostates is sui generis in the extant Halakhic writings.[72]

The practical differences between Ha-Me'iri and his rabbinic con-

temporaries were relatively limited.[73] But these differences and the novel Halakhic concepts on which they were based reflected a changed attitude toward gentiles, one that emphasized the values Judaism shared with contemporary non-Jewish religions. This perception of fellowship is seen in Ha-Me'iri's language: Ha-Me'iri sometimes refers to the gentile from the "nations bound by the ways of religion" as a "brother," a term previously reserved for fellow Jews.[74] This sense of brotherhood is at the root of Ha-Me'iri's theory of religious toleration. Halbertal supports this view when he writes that "Ha-Me'iri's religious tolerance derives from the recognition of a religious domain common to Jews, Christians and Moslems."[75] Thus for Ha-Me'iri the Jew who converts to Christianity still remains within the broader communion of monotheistic faiths. Anyone who has rejected all religion, however, stands outside the pale of civilized society and can therefore be punished with the harshest penalties.

In grounding his theory of toleration on the brotherhood of the monotheistic religions, Ha-Me'iri appears to foreshadow Nicholas of Cusa (1401–1464), Marsilio Ficino (1433–1499), and Pico della Mirandola (1463–1494), who base their Christian theories of toleration on the harmony of Christianity, Judaism, and Islam.[76] The similarities between Ha-Me'iri and the Christian thinkers, however, are largely superficial. For Cusa, Ficino, and Mirandola, the harmony of faiths is found in the common metaphysical truths shared by the different religions. As Nicholas of Cusa writes: "'This Good, between ourselves, we call God, when we speak of it. As to the ways of approaching it, Moses described one. . . . This way Christ illuminated and perfected. . . . And it is this same way which Mohammed tried to make more accessible to all.'"[77] For Ha-Me'iri, in contrast, the fellowship of religions is not based on the truths shared by the three monotheistic faiths, but on the common functional role the monotheistic religions fulfill in creating peaceful and orderly societies. If Ha-Me'iri had tried to build a bridge between Judaism and the other religions based on their common truths, he would have undoubtedly failed.[78] Christianity, in particular, with its doctrines about the Incarnation and Trinity, would have remained an alien, "idolatrous" religion. Ha-Me'iri could find common ground with Christianity because he minimized the particulars of Christian theology, emphasizing instead its more practical side. Although the Christian conception of the divinity contains some errors, from the Jewish perspective, Christians, like Jews, saw God as omnipotent, omniscient, and punishing the bad and rewarding the good. These religious beliefs,

Ha-Me'iri thought, were sufficient to forge and sustain ethical societies and moral institutions.

I would like to thank Rabbi Binyamin Tabory and Professor Moshe Halbertal for their helpful comments.

Notes

1. William K. Jordan, *The Development of Religious Toleration in England*, 4 vols. (London: Allen and Unwin, 1932–1940; reprint Gloucester, Mass.: Peter Smith, 1965); Joseph Lecler, *Toleration and the Reformation*, trans. T. L. Westow, 2 vols. (New York: Association Press, 1960); Henry Kamen, *The Rise of Toleration* (London: World University Library, 1967). The same Christian focus is also found in edited collections of essays. For example, of the twenty-nine substantive chapters in *Persecution and Toleration*, ed. William Eugene Shiels (Oxford: Blackwell, 1984), only three focus on non-Christian cases of toleration and persecution: the classical pagans, the nineteenth-century Yoruba of western Africa, and the Soviet Union, 1945–1964.

2. See, for example, John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 221–26; David A. J. Richards, *Toleration and the Constitution* (New York: Oxford University Press, 1986), 67–68, 133–36.

3. Spinoza was excommunicated by the Jewish community of Amsterdam for his heterodoxy (1656). As for Mendelssohn, in the first part of *Jerusalem*, where he develops his general case for religious toleration, he "spoke as a philosopher of the Enlightenment, very much in the spirit of John Locke." Michael A. Meyer, *The Origins of the Modern Jew: Jewish Identity and European Culture in Germany, 1749–1824* (Detroit: Wayne State University Press, 1967), 50.

4. Discussions of Ha-Me'iri's religious toleration have mostly appeared in Hebrew-language essays, addressed to scholars of Jewish studies.

5. For a discussion of the meaning of heresy in Christianity, see Edward Peters, ed., *Heresy and Authority in Medieval Europe: Documents in Translation* (Philadelphia: University of Pennsylvania Press, 1980), chapter 1.

6. Comparing heresy to forgery, which was then a capital offense, St. Thomas Aquinas argued that the heretic's crime was worse than the forger's: "It is, indeed, far more serious to pervert the faith which ensures the life of the soul than to counterfeit money which is only necessary for our temporal needs." *Summa theologiae*, II-II, q. 11, a. 3.

7. For Docetism Christ's human body was merely an illusion and the passion and resurrection were also illusory; whereas for Sabellianism the Father and Son were so closely identified that it maintained that the Father suffered the passion with the Son; and associated with Sabellianism, Dynamic Monarchianism claimed that Jesus was a superior human being chosen by the preexistent Christ and imbued with divine powers. Peters, *Heresy and Authority in Medieval Europe*, 23.

8. *Reynolds v. United States*, 98 U.S. 145 (1878).

9. Desiderius Erasmus, *Inquisitio de Fide: A Colloquy by Desiderius Erasmus Roterodamus 1524*, ed. with an Introduction and Commentary by Craig R. Thompson (Hamden, Conn.: Archon Books, 1975), 101–2.

10. Jean-Jacques Rousseau, *The Collected Writings of Rousseau*, vol. 4: *Social Contract*, ed. Roger D. Masters and Christopher Kelly, trans. Judith R. Rush, Roger D. Masters, and Christopher Kelly (Hanover, N.H.: University Press of New England, 1994), 223.

11. St. Thomas Aquinas, *Summa theologiae*, II-II, q. 10, a. 11.

12. Salo Wittmayer Baron, *A Social and Religious History of the Jews* (New York: Columbia University Press, 1965), 9: 36–37, 8.

13. Lecler, *Toleration and the Reformation*, 1: 18–22. Pope Gelasius I recognized the division of spheres when he wrote, at the end of the fifth century: " 'There are two powers that rule *this* world, the sacred authority of the bishops and the royal power.' " Cited in ibid., p. 66.

14. On the humanist theory of religious toleration, see Gary Remer, *Humanism and the Rhetoric of Toleration* (University Park: Pennsylvania State University Press, 1996).

15. "Judaism as a historic entity was not constituted by its set of beliefs. . . . Judaism as a specifically defined entity existing continuously over a period of three thousand years was not realized in philosophy, literature, art, or anything other than halakhic living." Yeshayahu Leibowitz, *Judaism, Human Values, and the Jewish State*, ed. Eliezer Goldman, trans. Eliezer Goldman et al. (Cambridge, Mass.: Harvard University Press, 1992), 6–7.

16. *Sefer Ha-Ḥinukh*, ed. Haim Dov Chavel (Jerusalem: Mosad Ha-Rav Kook, 1973–74), 73.

17. Yehuda Ha-Levi, *The Kosari of R. Yehuda Halevi*, trans. Yehuda Even Shmuel (Tel-Aviv: Dvir, 1972), 1.

18. Halakhic literature distinguishes between several types of heretic: *min*, *apikoros*, *kofer*, and *mumar*. Maimonides writes, of heretics, that they are denied a portion in the world-to-come and should be killed. Nevertheless, heresy is not as emphasized in Halakhic sources as is idolatry, and the more typical Halakhic reaction to heretics is to forbid discourse with them, rather than to counsel killing them. Further, "Jews never organized a central agency to define heresy and establish procedures to judge and punish heresy." See Maimonides, *Mishneh Torah*, Sefer Ha-Mada, Hilkhot T'shuva, 3: 6–9; ibid., Sefer Ha-Mada, Hilkhot Avodat Kokhavim, 10: 1, 2: 5; ibid., Sefer Shoftim, Hilkhot Mamrim, 3: 3; *Encyclopaedia Judaica*, s.v., "heresy."

19. Leibowitz, *Judaism, Human Values, and the Jewish State*, 9.

20. See Maimonides, *Mishneh Torah*, Sefer Ha-Mada, Hilkhot T'shuva, 3: 7; and comments in Ra'avad, "Hassagot Ha-Ra'vad [Critical Comments of Ra'avad]."

21. The seven precepts of the Noahide law are (1) courts must be established; prohibitions against (2) blasphemy, (3) idolatry, (4) murder, (5) sexual immorality, (6) robbery, and (7) the eating of a torn limb of a living animal. On the Noahide laws, see *Babylonian Talmud*, Tractate Sanhedrin, 56a–b; David Novak, *The Image*

of the Non-Jew in Judaism: An Historical and Constructive Study of the Noahide Laws (New York and Toronto: Edwin Mellen Press, 1983).

22. Maimonides, *Mishneh Torah*, Sefer Shoftim, Hilkhot M'lakhim, 8: 11. See also ibid., Sefer Ha-Mada, Hilkhot T'shuva, 3: 5. Maimonides qualifies this statement, however, by limiting salvation only to those gentiles who adhere to the seven precepts "because the Holy One, blessed be He, commanded [the precepts] in the Torah and made them known to us by Moses." Maimonides, however, excludes from salvation gentiles who base their observance of the Noahide precepts on reason, not revelation. Elsewhere, however, Maimonides takes a more tolerant position, extending salvation to gentiles "who have achieved a proper knowledge of the Creator and have corrected their souls to act ethically." Here Maimonides does not cite his proviso that righteous gentiles must act out of a belief in the divine revelation to Moses.

The principle that righteous gentiles have a share in the world-to-come was widely accepted after Maimonides, not only in Maimonidean but even in Ashkenazic circles, usually without Maimonides' limiting condition. By the late eighteenth century, Moses Mendelssohn declared that belief in the salvation of righteous gentiles was a central tenet of Judaism—to be contrasted with the Christian doctrine that there is no salvation outside the church. On the development of the principle "righteous gentiles have a share in the world-to-come," see Jacob Katz, "*Sh'losha Mishpatim Apologeti'im Be-Gilgulehem* [Three Apologetic Sentences in Their Metamorphoses]," *Zion* 23–24 (1958–59): 174–81.

23. It was the Church's duty to excommunicate the heretic and to deliver him "to the secular tribunal to be exterminated thereby from the world by death." *Summa theologiae* II-II, q. 11, a. 3.

24. The establishment of the State of Israel raises questions of the relationship between the religious and secular spheres. From the perspective of some Orthodox Jews in and outside of Israel, Judaism's unity of religious and secular spheres should mean that the Jewish state should exercise coercive power over religious issues. Most Israeli as well as non-Israeli Jews, however, argue that Israel is not, and should not become, a theocracy. This issue, however, will not be addressed in this chapter.

25. See *Encyclopaedia Judaica*, s.v., "heresy."

26. Had there been a Halakhic Jewish state during the Middle Ages, some gentiles might have been subject to persecution. Maimonides writes that, when Jews have achieved political power in the Holy Land, "it is forbidden to tolerate idolaters in our midst." Maimonides, *Mishneh Torah*, Sefer Ha-Mada, Hilkhot Avodat Kokhavim, 10: 6.

27. Consistent with the Maimonidean school, Ha-Me'iri "held that the ultimate destiny of man was intellectual insight into the essence of God." Jacob Katz, *Exclusiveness and Tolerance: Studies in Jewish-Gentile Relations in Medieval and Modern Times* (Oxford: Oxford University Press, 1961; reprint ed., Westport, Conn.: Greenwood Press, 1980), 119. For a full account of Ha-Me'iri's debt to Maimonides, see Moshe Halbertal, "R. Menaḥem Ha-Me'iri: Ben Torah Le-Ḥokhma [Menaḥem Ha-Me'iri: Talmudist and Philosopher]," *Tarbiz* 63 (1993): 67–81.

28. See Maimonides, *Igeret Teman*, chapter 1; Maimonides, *Mishneh Torah*,

Sefer Ha-Mada, Hilkhot Avodat Kokhavim, 9: 4; Ibid., Sefer K'dushah, Hilkhot Ma'akhalot Asurot, 11: 7; Jacob Katz, "*Sovlanut Datit Be-Shitato Shel Rabbi Menaḥem Ha-Me'iri Be-Halakha U-Be-Philosophia* [Religious Toleration in the Method of Rabbi Menaḥem Ha-Me'iri in Halakha and Philosophy]," *Zion* 18 (1953): 24, n. 49.

29. Katz, *Exclusiveness and Tolerance*, 119–20; Katz, "*Sovlanut Datit*," 24. On Ha-Me'iri's legitimation of non-Jewish forms of worship, contra Maimonides, see Gerald Blidstein, "Maimonides and Me'iri on the Legitimacy of Non-Judaic Religion," in Leo Landman, ed., *Scholars and Scholarship: The Interaction Between Judaism and Other Cultures* (New York: Yeshiva University Press, 1990), 27–35.

30. *Babylonian Talmud*, Tractate Avodah Zarah, 2a; Maimonides, *Mishneh Torah*, Sefer Ha-Mada, Hilkhot Avodat Kokhavim, 9: 1. In the Land of Israel, there is an additional prohibition of doing business for three days before idolaters' holidays.

31. Maimonides, *Mishneh Torah*, Sefer Ha-Mada, Hilkhot Avodat Kokhavim, 9: 4. Not only Maimonides but the Talmud itself (in the original, uncensored version of Tractate Avodah Zarah) included Christians in the prohibition against dealing with idolaters on their festivals. See Katz, *Exclusiveness and Tolerance*, 25, n. 2.

32. Katz, "*Sovlanut Datit*," 16–17.

33. Maimonides lived in Moslem Spain, Morocco, and Egypt. On the acceptance of the Talmudic restrictions in Moslem countries, see Israel Ta-Shma, "*Y'mei-Edehem' Perek B'Hitpaṭḥut Ha-Halakha B'ymei Ha-Benai'im* ["Their Festivals' A Chapter in the Development of Halakha in the Middle Ages]," *Tarbiz* 47 (1977–78): 208.

34. Ibid., 202–3. A similar argument is made (Rashi)—concerning the Talmudic proscription against deriving monetary benefit from the wine of gentiles—"that gentiles today are not well-versed in the nature of idolatry." Katz, "*Sovlanut Datit*," 16, n. 4. See also David Novak, *Jewish-Christian Dialogue: A Jewish Justification* (New York: Oxford University Press, 1989), 44–53.

35. Ta-Shma, "*Y'mei Edehem*," 203–4. Although Ha-Me'iri resembled the German rabbis in trying to reconcile Halakha and practice, the situation in Provence differed from that of Germany. In Provence, Jews were able to use Muslims as intermediaries in their commerce with Christians before or on Christian festivals. The Jews of Provence, therefore, were generally unaware of the more lenient attitude of German rabbis toward such trade. In light of these conditions, Ta-Shma argues, Ha-Me'iri's position appears especially pathbreaking. Ibid., 206–9.

36. Katz, "*Sovlanut Datit*," 18. See also Katz, *Exclusiveness and Tolerance*, 118.

37. Halbertal, "Menaḥem Ha-Me'iri," 102–4.

38. Menaḥem Ha-Me'iri, *Bet Ha-Beḥirah* (hereafter cited as *BH*) on Tractate Avodah Zarah, ed. Abraham Sofer (Jerusalem: Kedem, 1970–71), 4, 9.

39. Ibid., 27–28.

40. Ibid., 32.

41. Ibid., 48.

42. Ibid., 214.

43. *BH* on Tractate Gitin, ed. Kalman Schlesinger (Jerusalem: Brodie, 1963–1964), 257–58.

44. Many of these laws could not be applied in the Middle Ages because they presuppose Jewish sovereignty.

45. *BH* on Tractate Bava Kama, ed. Kalman Schlesinger (Jerusalem: Brodie, 1963), 122.

46. *BH* on Tractate Bava Mezia, ed. Kalman Schlesinger (Jerusalem: Mekize Nirdamim, 1959), 100.

47. *BH* on Tractate Avodah Zarah, 59–60. The Talmud does not obligate the Jew to be a "good Samaritan" toward the gentile. Ha-Me'iri argues that, in contemporary religions, Jews are obligated to act as "good Samaritans" to both Jews and gentiles.

48. *BH* on Tractate Bava Mezia, 219.

49. *BH* on Tractate Sanhedrin, ed. Abraham Sofer (Jerusalem: Kedem, 1965), 226–27.

50. *BH* on Tractate Yoma, ed. Yosef Klein (Jerusalem: Makhon Ha-Talmud Ha-Yisraeli Ha-Shalem, 1974–75), 212. When a Jew's life is endangered, the Sabbath laws must be broken. However, when an idolater's life is in jeopardy, the Sabbath laws must not be broken.

51. Jews were not permitted to entrust idolaters with teaching Jewish children or lodging the animals of Jews because idolaters are suspected of sexual immorality. *BH* on Tractate Avodah Zarah, p. 39.

52. Ibid. The Talmud prohibits the selling of weapons to gentiles. The rationale behind this ban is that gentiles are suspected of murder (or homicidal tendencies). Ha-Me'iri argues that this rule applies only to the idolatrous nations of old.

53. *Babylonian Talmud*, Tractate Avodah Zarah, 20a. This Talmudic prohibition is based on Deuteronomy 7: 2, where the Israelites are commanded to "show no mercy" to the idolatrous nations of Canaan. The Talmudic prohibition is based on the similarity between the Hebrew word for showing mercy (*te-ḥa-nem*) and grace (*ḥen*). See *BH* on Tractate Avodah Zarah, p. 46.

54. *BH* on Tractate Avodah Zarah, 132, p. 59. See Katz, "*Sovlanut Datit*," 21, 27–28.

55. Halbertal, "Menaḥem Ha-Me'iri," 105–6.

56. Ha-Me'iri reinterprets the Hebrew/Aramaic term for Christian, "*nozri*." *BH* on Tractate Avodah Zarah, p. 4; Katz, *Exclusiveness and Tolerance*, 123.

57. Halbertal argues ("Menaḥem Ha-Me'iri," 106–7, 109) that Ha-Me'iri is strict in his linguistic usage, distinguishing between the terms used in the first and second areas of law. Closer analysis of the individual cases shows, however, that while Ha-Me'iri generally uses a distinct terminology for each area, he does not always do so. For example, when discussing the prohibition against oversociability with gentiles (first area), Ha-Me'iri writes that "the nations bound by the ways of religion [language of second area] and belief in the existence, unity, and power of God—despite their errors in a few matters, according to our faith—have no place in these matters [that is, the Talmudic prohibition does not apply to them]." *BH* on Tractate Gitin, 258.

58. Maimonides, *Mishneh Torah*, Sefer K'dushah, Hilkhot Isurei Bi'ah, 14: 7; ibid., Hilkhot Ma'akhalot Asurot, 11: 7.

59. Maimonides, *Mishneh Torah*, Sefer Ha-Mada, Hilkhot Avodat Kokhavim,

10: 6; ibid., Sefer K'dushah, Hilkhot Isurei Bi'ah, 14: 8. Maimonides bases himself on Rabbi Shimon ben Elazar's view, stated in the *Babylonian Talmud*, Tractate Arakhin, 29a. "The Jubilee was only in effect during the days of the First Temple when all twelve tribes of Israel enjoyed political sovereignty in the Land of Israel." Novak, *Images of the Non-Jew in Judaism*, 15.

60. Maimonides, *Mishneh Torah*, Sefer Ha-Mada, Hilkhot Avodat Kokhavim, 10: 6. Maimonides based himself on *Babylonian Talmud*, Tractate Avodah Zarah, 64b. See also Katz, "*Sovlanut Datit*," 25.

61. Ephraim E. Urbach, "*Shitat Ha-Sovlanut Shel R. Menahem Ha-Me'iri—M'korah U-Migb'loteha*" (The System of Toleration of Rabbi Menahem Ha-Me'iri: Its Origins and Limitations), in I. Etkes and Yosef Salmon, eds., *Perakim be-Toldot Ha-Hevra Ha-Yehudit B'ymei Ha-Beinai'im U-Be'et Ha-Hadasha Mukdashim Le'Y. Katz* [*Jacob Katz Jubilee Volume*] (Jerusalem: Hotsa'at seferim ash Y. L. Magres, ha-Universitah ha-'ivrit, 1980), 28; Jacob Blidstein, "*Y'haso shel R. Menahem Me'iri Le-Nokhri-Ben Apologetika Le-Hapnama* [Me'iri's Attitude to Gentiles—Between Apologetics and Internalization]," *Zion* 51 (1986): 157.

62. Halbertal, "Menahem Ha-Me'iri," 107.

63. *BH* on Tractate Avodah Zarah, 39.

64. Halbertal, "Menahem Ha-Me'iri," 109.

65. Ibid., 114, 116; Katz, *Exclusiveness and Tolerance*, 120–21; Novak, *Image of the Non-Jew in Judaism*, 352.

66. In more recent times, the concept of "*tinok she-nishba*," or "a captured infant," has been used to argue that Jews who were not raised Halakhically observant (that is, the vast majority of Jews today) are not responsible for their heretical ideas because they, like the kidnaped infant who was raised by gentiles, cannot be expected to know better. Maimonides uses this argument regarding the Karaites, medieval Jewish heretics who denied the authority of the Oral Law: "The children and future generations of those who have gone astray, who have been corrupted by their parents and who have been born among the Karaites and raised according to their ideas, are like an infant who has been imprisoned and raised among them; he does not quickly accept the ways of [God's] commandments because he is like a person who has been subjected to force. And even though he eventually hears that he is a Jew and sees Jews and their religion—he is like a person under compulsion, as he was raised according to their errors." Maimonides, *Mishneh Torah*, Sefer Shoftim, Hilkhot Mamrim, 3: 3. Moreover, Rabbi Avraham Yeshayahu Karelitz (1878–1953)—the "Hazon Ish"—has argued that the extirpation of heretics was permitted only in times when God's activities in the world were visible, but in a period, like today, where they are hidden, "it is incumbent on us to bring [the heretics] back with the bonds of love." See Abraham Isaiah Karelitz, *Hazon Ish*, Yoreh Deah, Hilkhot Sh'hitah, 2: 16.

67. Jacob Katz, "*Od Al 'Sovlanuto Ha-Datit Shel R. Menahem Ha-Me'iri'* [More on the 'Religious Toleration of R. Menahem Ha-Me'iri']," *Zion* 46 (1981): 245; *BH* on Tractate Bava Kama, 330, 122. Also see Blidstein, "*Y'haso*," 154–55.

68. Maimonides, *Mishneh Torah*, Sefer Kinyan, Hilkhot M'khirah, 13: 7.

69. *BH* on Bava Mezia, 219. See also Blidstein, "*Y'haso*," 155–57, where Blidstein raises the possibility of textual error in our version of Ha-Me'iri's statement.

70. *Babylonian Talmud*, Tractate Avodah Zarah, 26b.

71. *BH* on Tractate Horayot, ed. Abraham Sofer (Jerusalem, 1957), 275. See also *BH* on Tractate Avodah Zarah, p. 61; Katz, "*Sovlanut Datit*," 27.

72. Ibid.; *BH* on Tractate Horayot, 275, n. 8.

73. Katz argues that by adhering to established usage, Ha-Me'iri did not follow the implications of his position. For example, Ha-Me'iri could have, consistent with his stand, rejected Halakhic prohibitions relating to the articles of gentile worship and the segregative aspects of dietary laws, but he did not. Katz attributes this reticence to the likelihood that Ha-Me'iri never overcame his aversion to other religions and their symbols. Katz, *Exclusiveness and Tolerance*, 125–26, 127–28; *Sovlanut Datit*, 22–23, 28–29; *Od Al Sovlanuto*, 245.

74. Blidstein, "*Y'haso*," 155–57, 160–61.

75. Halbertal, "Menahem Ha-Me'iri," 113.

76. Lecler, *Tolerantion and the Reformation*, 1: 107–13.

77. Cited in ibid., 108.

78. Halbertal contrasts Ha-Me'iri's tolerance based on the common functional roles shared by the religions with Maimonides's intolerance based on testing the metaphysical truth of religions. Halbertal, "Menahem Ha-Me'iri," 113–14.