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Understanding the Uneven Reception of Rabbenu Tam's *Taqqanot*

In *Jewish Self-Government in the Middle Ages*, which first appeared nearly a century ago, Louis Finkelstein gathered a full range of super-communal *taqqanot* (ordinances) that were enacted in medieval Europe. The fourth chapter in the opening section analyzes the *taqqanot* produced by the rabbinic synods of northern France, with the bulk of this chapter focusing on those put forward by R. Jacob Tam (1100–1171) and his colleagues. In part 2 ("Texts and Translations"), Finkelstein devotes two full chapters to the *taqqanot* associated with Rabbenu Tam, and his substantive involvement in this area of legislation and the significance of his *taqqanot* have also been noted in contemporary scholarship.[1]

Although a number of Rabbenu Tam's *taqqanot* were publicly promulgated and widely ratified and accepted, there are others whose impact and standing are more difficult to gauge. This study will take a close look at several *taqqanot* from among the latter group, which include aspects of Jewish-Christian relations and reflect different exegetical approaches taken by the Tosafists in northern Europe. The reasons behind the lesser impacts are a little different in each instance, but when taken together, these developments suggest that a careful look at the totality of the *taqqanot* attributed to Rabbenu Tam can yield additional new perspectives.

Commerce with Christian Religious Objects

In discussing a series of Tosafist rulings that permitted Jews to receive Christian religious objects as pawns during the twelfth and thirteenth centuries, Joseph Shatzmiller notes an ordinance in the other direction attributed to Rabbenu Tam. This *taqqanah* forbids Jews from dealing in church vessels (including chalices and crosses), vestments, and prayer books and also from accepting

1 See Louis Finkelstein, *Jewish Self-Government in the Middle Ages* (New York: Feldheim, 1924); Ephraim E. Urbach, *Baʿalei ha-Tosafot* (Jerusalem: Mossad Bialik, 1984), 1:88–92; Simcha Goldin, *Ha-yiḥud we-ha-yaḥad* (Tel Aviv: Hakibbutz Hamuchad, 1997), 74–80, 193–95; Simon Schwarzfuchs, *Yehudei Ṣarefat bimei ha-benayim* (Tel Aviv: Hakibbutz Hamuchad, 2001), 141–48, 329–30; and cf. Israel Shepansky, *Ha-Taqqanot be-Yiśrȧel*, vol. 4 (Jerusalem: Mossad Ha-Rav Kook, 1993), 159–65. All references to *Jewish Self-Government* in this study will be to the (corrected and emended) second printing (New York: Feldheim, 1964).

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them as security for a debt, according to one version, "because of the danger (*mipnei ha-sakkanah*)."[2]

However, no Tosafist texts mention this ordinance or associate any of its aspects with Rabbenu Tam. Indeed, Tosafot passages identify Rabbenu Tam's leading student (and nephew) Isaac b. Samuel (Ri) of Dampierre (d. 1189) as allowing trade in Christian religious items including candles and wax used in church, loaves of bread (or cakes) that were brought as gifts for the priests (though not offered as part of the worship service), and ritual items such as chalices and priestly vestments. These are characterized as ornaments of the priests (*noy ha-komrim*), rather than as ornaments of idolatry itself (*noy ʿavodah zarah*).

Ri's justification of these transactions (which is partially attributed to Rashbam) begins with a talmudic postulate establishing that something is deemed an idolatrous offering (*tiqrovet*) from which a Jew cannot derive any benefit if an analogous item or process is part of the sacrificial service that takes place within the temple (*ʿavodat penim*). This is not the case for candles, since the candelabra (*menorah*) found in the temple was not organically linked to the sacrificial offerings. Moreover, since candles and wax were considered *mešammšei ʿavodah zarah* – items used to support Christian worship rather than items that were themselves offered or worshipped – the extinguishing of candles by a priest or layman so that they could be sold to a Jew or taken as collateral was considered a sufficient act of nullification (*biṭṭul*). According to talmudic law, an act of nullification makes it permissible for Jewish to use such objects, although items considered to be essential parts of the worship service are not permitted for use by a Jew even after nullification.

Since clerical garments were provided (or purchased) for the benefit and use of the clergy and were considered to be their personal property (as was the chalice), these items did not require nullification in order for Jews to be allowed to accept them as collateral. The loaves of bread given to priests by some worshipers (characterized, paraphrasing Gen 47:22, as *ḥoq la-komrim*, a stipend for the priests) were approved for Jewish commerce since they were not an essential part of the church service. In fact, the only item proscribed for economic benefit by these Tosafot passages is the incense pan or censer-bearer.[3] As noted by Joseph

2 See Joseph Shatzmiller, *Cultural Exchange: Jews, Christians and Art in the Medieval Marketplace* (Princeton, NJ: Princeton University Press, 2013), 26–27, 30–31, citing Finkelstein, *Jewish Self-Government*, 178, 188–89, 211. Shatzmiller points to a passage composed in Zurich in the late thirteenth century (found in MS Bern, Burgerbibliothek 200, fol. 258a–b), as "probably the only] independent] Hebrew report we have of Rabbenu Tam's synod's decree." Cf. n. 15 below.

3 See *Tosafot ʿAvodah Zarah* 50a–b, s.v. *be-ʿinan*; M. Blau, ed., *Šiṭat ha-Qadmonim ʿal Massekhet ʿAvodah Zarah*, vol. 2: *Tosafot R. Yehudah mi-Paris* (New York: Deutsch, 1969), 251–52; Blau,

Shatzmiller, the contemporary German Tosafists Eliezer b. Nathan of Mainz (Raban, d. c. 1160) and his grandson, Eliezer b. Joel ha-Levi (Rabiah, d. c. 1225) offered similar leniencies in these matters.[4]

To be sure, Ri's student Baruch b. Isaac (d. 1211), the author of the halakhic compendium *Sefer ha-Terumah*, proposes a more stringent approach, although Rabbenu Tam's name is not mentioned.[5] The talmudic basis for this ruling (*ʿAbod. Zar.* 14a–b) is that objects whose most common usage is for idolatrous purposes may not be sold to Gentiles, even if the buyer's intended usage is not made explicit to the Jewish seller. R. Baruch also includes a priest's chalice in this prohibition – even if it has been slightly damaged by a Christian as an act of nullification (*biṭṭul*) – since it can still be used by a priest, as well as books of Christian liturgy (missals) and Scripture (biblical codices), which are characterized as *sefarim pesulim*.[6]

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ed., *Šiṭat ha-Qadmonim ʿal Massekhet ʿAvodah Zarah*, vol. 3: *Tešuvot le-Ri ha-Zaqen* (New York: Deutsch, 1991), 245 (sec. 137) = Cambridge, University Library, MS Add. 667.1 (IMHM #31493), fol. 168v; Simha Ḥasida, ed., *Šibbolei ha-Leqeṭ – ha-ḥeleq ha-šeni* (Jerusalem: Makhon Yerušalayim, 1988), 41 (sec. 9); *Tešuvot R. Yiṣḥaq ben Šemuʾel mi-Dampierre*, ed. P. Roth and A. R. Reiner (Jerusalem, 2020), 92 (sec. 69); and see also *Sefer Semaq mi-Ṣurikh*, vol. 1, ed. Y. Har-Shoshanim (Jerusalem: Daf Chen, 1973), 138–39 (sec. 211); Jacob Katz, *Exclusiveness and Tolerance: Studies in Jewish-Gentile Relations in Medieval and Modern Times* (New York: Schocken, 1961), 44; and Shatzmiller, *Cultural Exchange*, 32–33. Ri nonetheless recommends stringency regarding the acceptance of priestly garments as collateral, albeit for a different reason. With the passage of time, the original role of these garments might well be forgotten, and if they were subsequently sold to a Christian clergyman, the Jewish seller would tacitly be facilitating the worship service. According to Oxford, Bodleian Library, MS Neubauer 844 [#21605], fol. 168c (sec. 161), Ri maintains that while bread given to the clergy is not considered to be an integral part of the service (and thus does not have the status of *tiqrovet*), it is nonetheless forbidden for a Jew to receive it without some form of nullification.

4 See Shatzmiller, *Cultural Exchange*, 31–32; *Sefer Raban le-R. Eliʿezer b. Natan*, ed. Daṿid Deblitzky (Bnei Brak, 2008), 2:184–86 (sec. 289); *Sefer Rabiah le-R. Eliʿezer b. Yoʾel ha-Levi*, ed. Daṿid Deblitzky (Bnei Brak, 2005), 3:15–16 (sec. 1051); and below, n. 6. Both Raban and Rabiah prohibited commerce with the crosses used by church officiants, although crosses worn by non-clerics seem to have been permitted. Rabiah further records a tradition (*qabbalah*) from his father, Joel b. Isaac *ha-Levi* (d. c. 1200), that while candles and wax could be sold to Christians and bought from them, these should not then be used in the performance of Jewish rituals that required the lighting of candles.

5 The standard Tosafot to *ʿAvodah Zarah* (14b, s.v. *hazav*) attribute this stringent ruling to R. Baruch b. R. (with Baruch's father unidentified). As Urbach noted in *Baʿalei ha-Tosafot*, 1:55 (citing London, British Museum, MS [Margoliouth] 518), this passage corresponds to a censored section from R. Baruch's *Sefer ha-Terumah*, found in the 1478 Venice edition (sec. 138).

6 For a lenient view regarding Christian liturgies, see *Sefer Rabiah*, 2:166–67 (*Megillah*, sec. 549) and 3:363 (sec. 1005).

The 1478 Venice edition of *Sefer ha-Terumah* attributes this stringent view to the Tosafot of Eliezer b. Samuel of Metz (d. 1198) on tractate *Nedarim* (62b), as do three early manuscripts of *Sefer ha-Terumah*.[7] These Tosafot are not extant, but there are three places in his *Sefer Yereʾim* in which R. Eliezer (who, like Ri of Dampierre, was a direct student of Rabbenu Tam) maintains that dealing in these clerical commodities (including chalices, censer-bearers, priestly coats and other garments, and decorated cloths and covers spread out to beautify the altar) is prohibited, whether accepting them as pawns, selling them, or benefiting from them in other ways.[8]

Indeed, while Eliezer of Metz seemed willing to be lenient with regard to candles because they are not considered to be part of the sacrificial service in the Temple,[9] his student Eleazar b. Judah of Worms (d. c. 1230) notes that at some point, R. Eliezer was also intent on prohibiting any dealing in candles. Their prominence at the front of the church service identifies them as a part of the idolatrous offering (*tiqrovet*) and not simply as *noy ʿavodah zarah*.[10] It was against this new claim from Eliezer of Metz that his colleague, Ri of Dampierre, maintains (as noted above) that candles should not be viewed in this way, but rather in the more ancillary way that Rashbam and others had initially suggested. [11]

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7 See Simcha Emanuel, *Šivrei Luḥot* (Jerusalem: Magnes Press, 2006), 295 (n. 337); Parma, Biblioteca Palatina, MS [de Rossi] 617 [#13790], fols. 190c–d; Paris, Bibliothèque nationale de France, cod. hébr. 359 [#30132], fol. 132r–v; New York, Jewish Theological Seminary, MS Rab. 1115 [#43223], fols. 153v–154r; and see also *Pisqei ha-Roš ʿal Massekhet ʿAvodah Zarah*, 1:15.

8 See Eliezer of Metz, *Sefer Yereʾim ha-Šalem*, ed. A. A. Schiff (Vilna, 1892–1902), vol. 1, fol. 37a–b (sec. 102); vol. 2, fol. 129a (sec. 270); fol. 197a (sec. 364); and see the next note. Although the word כפות (in sec. 102) refers to some kind of head-covering, the version of *Sefer Yereʾim* cited in *Sefer Mordekhai ʿal Massekhet ʿAvodah Zarah*, sec. 843, contains [שלובשים השמשים] וקאפ"ש, which connotes a cape-like garment. Cf. *Haggahot Maimuniyyot, hilekhot ʿavodah zarah*, 7:2.

9 See *Sefer Yereʾim ha-Šalem*, vol. 1, sec. 101 (end). See also Vercelli, Bishops' Seminary, MS C1 [#30923], fol. 117b; and *Šibbolei ha-Leqeṭ – ha-ḥeleq ha-šeni*, 40 (וכן כתב בעל היראים נרות המובאות שהדליקום לפני ע"ז. . לא הוו כעין פנים ושרו).

10 See R. Eleazar mi-Vermaiza, *Maʿaśeh Roqeaḥ ʿal pi Ketav Yad "Sefer Sinai" Berlin ha-Muzeʾon ha-Yehudi* (VII.262.5, formerly London, Beit ha-Din u-beit ha-Midrash 14, IMHM #4685), ed. Emese Kozma, (Jerusalem, 2010), 74 (sec. 600). In the previous section of *Maʿaśeh Roqeaḥ* (sec. 599, about eating milk and meat at the same table), Eliezer of Metz is cited by name, and earlier in sec. 600, Eleazar of Worms cites the lenient view of Rashbam (R. Šemuʾel *mi-Ṣarefat*) with regard to candles and wax.

11 See M. Blau, ed., *Tešuvot u-Pesaqim le-Ri ha-Zaqen*, 265 (sec. 161); Mantua, Jewish Community, MS ebr. 30 [#810], fol. 245v; Oxford, Bodleian Library, MS Neubauer 844, fol. 168c (sec. 161): ומהר"ר אליעזר ממיץ סובר כי אותם נרות שנותנים לכומרי' שאסורין בהנאה משום דהוי תקרובת ע"ז ותקרובת אינה בטילה. ולא נהירא דמשמע דדוקא תקרובת שהוא כעין פנים. . וכן מוכח בשמעתתא דהני נרות אינן כעין פנים. והני נרות איכא ביטול כשמכבין אותן ומשום הכי מותרות; and Isaac b. Moses of Vienna, *Sefer Or Zaruʿa* (Jerusalem: Makhon Yerušalayim, 2010), 3:636 (*pisqei ʿavodah zarah*, sec. 209).

The Tosafot comment by Eliezer of Metz on *Ned.* 62b can now also be reconstructed. The Talmud records a case in which Rav Ashi (head of the academy at Sura and one of the Amoraic redactors of the Babylonian Talmud) sold woodlands that he owned to a group of idolaters. Ravina queried Rav Ashi as to why he was unconcerned that these buyers might use the wood to fashion objects of idolatry, causing Rav Ashi to transgress the prohibition of *lifnei ʿiwwer* (placing a stumbling block before the blind) by providing the idolaters with these resources. Rav Ashi responds that "since most trees are used to provide heat," this is considered the purpose of the sale, and the prohibition of *lifnei ʿiwwer* is thereby neutralized. As recorded in *Šibbolei ha-Leqeṭ* (an Italian compendium composed during the mid-thirteenth century, which contains a good deal of Ashkenazic material), Eliezer of Metz derives from this talmudic discussion that it is prohibited to lend or sell religious objects to Christians that are typically used for worship – such as priests' chalices, censer-bearers, and church liturgies – or to lend money to Christians (even at interest) if the intent is to use the money to purchase these or related items. Eliezer of Metz concludes that anyone who is able to resist doing so – against the view of those French and German Tosafists who were prepared to allow much of this – "will merit success."[12]

But what of Rabbenu Tam's ordinance in this matter, which is not mentioned in this context even by his students? First, it is important to note that although some of Rabbenu Tam's ordinances, such as the one against informers and those who rely on non-Jewish courts and authorities, attracted additional rabbinic signatories from northern France and Germany,[13] even in this instance Rabbenu Tam initially promulgated the ordinance on his own authority as the

12 See *Šibbolei ha-Leqeṭ – ha-ḥeleq ha-šeni*, 41 (sec. 9, רב . . והר"ר אליעזר ממיץ פסק במסכת נדרים. . מכאן שאסור להלוות..וכש"כ למכור לה משמשין ודברי תיפלות כגון אשי היה ליה אבא זבניה לבי נורא. . .וגביעים ומחתות וספרים פסולים והמונע מצליח). This formulation is also found in *Tosafot ha-Roš ʿal Massekhet Nedarim*, ed. Bezalel Deblitzky (Jerusalem, 2001), 87; *Tosafot Rabbenu Pereṣ ha-Šalem ʿal Massekhet Nedarim*, ed. M. Y. Weiner (Jerusalem, 2006), 150; and the standard Tosafot to *Nedarim* 62, s.v. *ha-ʾikkah* (in a more truncated form), albeit without attribution to R. Eliezer; and cf. Urbach, *Baʿalei ha-Tosafot*, 1:162–63, 2:635. The discussion and analysis in this section are based largely on my "The Halakhic Status of Christian Clerical and Ritual Objects in the Writings of the Tosafists," in *Visual and Material in Pre-Modern Jewish Culture*, ed. Katrin Kogman-Appel (Turnhout: Brepols, in press).

13 See Finkelstein, *Jewish Self-Government*, 41–43, 150–60. Finkelstein published this ordinance from MS Munich 95 (#41375, Ashkenaz, 1342), fol. 576r (as supplemented by *Šeʾelot u-Tešuvot Mahram b. Barukh (defus Prague)*, ed. M. A. Bloch (Budapest, 1895), sec. 1022 (*taqqanot še-tiqqen Rabbenu Tam be-agudat Rabbanei Ṣarefat*), fol. 158c; and D. Avraham, ed., *Sefer Kol Bo* (Jerusalem: Feldheim, 2009), 7:247 (sec. 117). See also London, British Museum 1056 (Add. 11639 [#4948], Ashkenaz/northern France, c. 1280), fol. 256v; and MS Moscow-Guenzberg RNL 206 (#45723, Ashkenaz, fourteenth century), fol. 62r–v.

leading scholar of the day.[14] Just as his Tosafist students and successors debated and argued against his talmudic interpretations and the rulings that emerged as a regular feature of the Tosafist enterprise, the ordinances that Rabbenu Tam proposed were not necessarily adopted by his successors, especially if there were concerns about them, as we shall see further below. These ordinances constitute focused communal efforts on Rabbenu Tam's part that did not always attract additional rabbinic support.

Moreover, a version of Rabbenu Tam's *taqqanah* that proscribed benefit from church items specifies that this refers to the purchase of church items which have been stolen, and it is this version which connects the prohibition to the possible peril involved in dealing with these illegally obtained objects.[15] If this version of Rabbenu Tam's ordinance is correct, then his students could have expressed their views about the broader halakhic permissibility of dealing with these kinds of religious objects as they saw fit without running afoul of his ordinance that censured only the acquisition of stolen church objects.

Finally, there is the possibility that despite Louis Finkelstein's careful efforts to identify Rabbenu Tam's *taqqanot* in his *Jewish Self-Government in the Middle Ages*, this *taqqanah* was not actually promulgated by Rabbenu Tam, but rather became incorporated into the lists of his ordinances recorded in various texts that often blended them together with the *taqqanot* of other leading rabbinic scholars in medieval Ashkenaz.[16] Indeed, Rabbenu Tam's students wrestled

14 See Robert Chazan, "The Blois Incident of 1171: A Study in Jewish Intercommunal Organization," *Proceedings of the American Academy for Jewish Research* 36 (1968), 24–31; Avraham Rami Reiner, "Rabbenu Tam u-bnei doro: qešarim, hašpåot we-sarkhei limmudo ba-Talmud" (PhD diss., Hebrew University, 2002), 136–44; Reiner, "Regulation, Law, and What Is In Between: The Laws of Gittin of Rabbenu Tam as a Reflection of Society" [Hebrew], *Tarbiz* 82 (2014): 139–46.

15 Finkelstein, *Jewish Self-Government*, 170 (and above, n. 2) published this version from a collection of Rabbenu Tam's ordinances appended to *Sefer Maharil* (see New York, Jewish Theological Seminary, MS Rab. 532 [#6365], fols. 450–51; and Oxford, Bodleian Library, MS 970 [#21930], fol. 133v), and in *Tešuvot Maharam defus Prague*, fol. 160a. This version is also found in MS Verona 746 (85.1) (which contains a digest of late medieval Ashkenazic works, including *Sefer Maharil*), fol. 50v; and in an earlier Ashkenazic manuscript (dated 1338), Parma, Biblioteca Palatina, MS de Rossi 571 (#13801), fol. 241c.

16 For ordinances of Rabbenu Tam that became interspersed with those attributed to Rabbenu Gershom b. Judah of Mainz (d. 1028) and other ordinances from the twelfth century, see Finkelstein, *Jewish Self-Government*, 171–75, 204–5; Avraham Grossman, *The Early Sages of France* [Hebrew] (Jerusalem: Magnes Press, 1981), 132–49; Goldin, *Ha-Yiḥud w-eha-Yaḥad*, 74–80; Schwarzfuchs, *Yehudei Ṣarefat bimei ha-benayim*, 133–48; and Reiner Barzen, *Taqqanot Qehillot Šum. Die Rechtssatzungen der Jüdischen Gemeinden von Mainz, Worms und Speyer im hohen und späten Mittelalter* (Wiesbaden: Harassowitz, 2019). A number of the manuscripts cited in the present study can perhaps be helpful in clarifying some of these linkages.

with the halakhic issue of dealing in Christian religious objects in the course of their talmudic discussions (and legal conclusions) without giving any indication that their teacher imposed any restrictive ordinance on them.[17] It is possible that Rabbenu Tam was the one who initially raised this matter for discussion, even as the only Tosafist positions recorded in this matter are the differing views proposed by his students.

Fines for Striking a Fellow Jew

Another ordinance, which is more definitively attributed to Rabbenu Tam, deals with the situation of a Jew who has intentionally struck his fellow Jew. A substantial monetary fine was imposed, which was to be doubled if the violence occurred in the synagogue.[18] However, despite the solid evidence that it was issued by Rabbenu Tam, this ordinance is cited by no more than two subsequent Tosafists. In addition, the impact of Rabbenu Tam's approach appears to have been waning considerably during the thirteenth century.

The ability of rabbinic courts to impose and collect fines during the medieval period was severely limited according to talmudic law (*B. Qam.* 84a), which mandates that fines are the purview of only those rabbinic courts which possessed the original form of *semikhah* associated with the land of Israel (and the Sanhedrin; *ein danin dinei qenasot be-Bavel*). In light of this restriction, Rabbenu Tam sought to limit the seizure of property in cases involving fines and related payments, not because he held that the assessment could not be properly undertaken by a rabbinic court in his day (as Isaac al-Fasi and a number of geonic authorities did), but because the Talmud maintained that the payments which resulted could not be formally adjudicated by such a court in any case. When a rabbinic court assesses the value of seized property and thereby helps the victim and the aggressor to come to a monetary agreement, the court becomes involved in the adjudication of fines, which it cannot do. Indeed, Rabbenu Tam characterizes this kind of assessment as being akin to someone who grabs another person until he "agrees" to relinquish

17 Ri's lenient ruling with regard to priestly garments (see n. 3 above) includes the names of both Rashbam and R. Jacob (Tam). Cf. *Tešuvot R. Yiṣḥaq ben Šemuʾel mi-Dampierre*, 92, n. 2; and above, n. 10.

18 See Finkelstein, *Jewish Self-Government*, 177–78, 187–88, 194, 210–11, based on MS Munich 95; and New York, Jewish Theological Seminary, MS Rab. 532. See also MSS Moscow 979 [#47747], fol. 155r; Warsaw 122 [#12022], fol. 25; Paris, Alliance Israélite Universelle, MS H 21 A[#3034], fol. 138r; MS Verona 746, fol. 49v; and Paris, Bibliothèque nationale de France, 407 [#27901], fol. 236c (which states that the fine should be given either to the injured party or to the poor).

his cloak; in effect, the *beit din* is forcing a settlement in this instance.[19] A similar view is expressed by Rabbenu Tam's student, Ri of Dampierre.[20]

Moreover, according to Rabbenu Tam, compensation generated by a ban being placed against the aggressor is also considered tantamount to the adjudication of a fine. Rabbenu Tam did approve of a ban being placed upon a person who had harmed others in order to compel him to remove the animal or dangerous object which might cause additional damage if it were left in place, just as a victim was permitted to seize the source of the damage in order to neutralize it. However, a ban could not be imposed to force the aggressor to pay for an injury that he had caused – and the victim could not seize any of the aggressor's property as payment – since the handling and consequences of these activities are currently beyond the purview of the rabbinic court according to talmudic law.[21]

However, faced with the need to provide effective recourse for victims of personal violence, Rabbenu Tam (and his court) issued an ordinance promulgating a fine of 25 *dinarim* against a person who strikes his fellow, with the fine to be doubled to 50 *dinarim* if this behavior occurs in the synagogue.[22] The texts that report Rabbenu Tam's ordinance and fines also note that there had been an earlier ban (*ḥerem ha-qadmonim*), and the earlier policy is contrasted with the newer one. In the earlier period, a person who struck his friend could henceforth be counted as part of the quorum of ten men required for prayer (upon his release from the *ḥerem*) only if he immediately agreed to have the matter adjudicated by the *ṭuvei ha-ʿir* (the "good men of the city"). The fines enacted by Rabbenu Tam were ostensibly intended to achieve the aim of this earlier process – to curtail interpersonal violence – with greater effect. Indeed, Rabbenu Tam's ordinance

19 See *Haggahot Maimuniyyot, Hilekhot Sanhedrin*, 5:14 [6–7]. For the talmudic expression cited by Rabbenu Tam, see *B. Mezi'a* 101a and *Šebu.* 41a (לינקטיה לכובסיה ולשבקיה לגלימיה הוא). Cf. A. Radzyner, *Dinei Qenasot: meḥqar be-mišpaṭ ha-Talmud* (Jerusalem: Sachar Institute for Comparative Law, 2014), 445–47.

20 See *Haggahot Maimuniyyot, Hilekhot Ṭo'en we-Niṭ'an*, 3:10 [20]. See also Solomon Luria, *Yam šel Šelomoh ʿal Masskehet Bava Qamma* (New York, 1968), 3:36, fol. 25d.

21 See *Tosafot Bava Qamma* 15b, s. v. *we-'i tafas*; *Tosafot ha-Roš ʿal Massekhet Ketubot* 41b, ed. A. Lichtenstein (Jerusalem, 1999), 292–93; Abraham b. Ephraim, *Sefer Qiṣṣur Semag le-R. Avraham b. Ephraim*, ed. Yehoshua Horowitz (Jerusalem: Mekitze Nidarim, 2005), 95–96; *Tosafot Rabbenu Pereṣ ʿal Massekhet Bava Qamma* 84b (Jerusalem, 1975), 210, s. v. *ki ʿavdinan*; *Sefer Mordekhai ʿal Massekhet Bava Qamma*, ed. A. Halperin (Jerusalem, 1997), 26–27 (sec. 14); 51–52 (sec. 40). A comparison between the geonic approach (and that of al-Fasi) and the approach of Rabbenu Tam (and Ri) is presented in *Tosafot ha-Roš ʿal Massekhet Ketubot*, 294–96; *Tosafot Rabbenu Pereṣ*; and *Sefer Mordekhai ʿal Massekhet Bava Qamma*, 108–9 (sec. 199).

22 See Finkelstein, *Jewish Self-Government*, in n. 18 above. Among the different formulations of this passage, at least one (Finkelstein, *Jewish Self-Government*, 194) characterizes it as a *taqqanah* of Rabbenu Tam *u-beit dino.*

also includes the caveat that if the victim responds by striking his attacker back, he is no longer entitled to collect the prescribed fine.[23]

From the wording of his ordinance, however, it is also clear that Rabbenu Tam intended to take this process away from the local *ṭuvei ha-ʿir* (as well as from the regular rabbinic courts) and to place it under the direction of a leading rabbinic authority and court (like his own), which was able to enact special fines that could deviate from prescribed judicial practices according to the community's needs. Rabbenu Tam generally gave *ṭuvei ha-ʿir* the authority to apply fines and collect monies in their own locale in order to ensure that the day-to-day affairs of the community (and especially the collection of taxes and other necessary payments) ran smoothly and without interference, provided that these policies had been unanimously approved via communal consensus and were long-standing. Nonetheless, he held that the halakhic demands and nuances involved in dealing with personal injury and damages required that these situations be overseen by a leading rabbinic court, and only such a court could enact an overarching ordinance.

In much the same way, in Rabbenu Tam's view, only a court akin to that of (the leading Palestinian Amoraim) R. Ami and R. Asi (as per *Giṭ*. 36b) could arbitrarily extract monies from individuals through the mechanism of *hefqer beit din hefqer*.[24] Similarly, with regard to implementing a *prozbul* and ratifying a mode of acquisition (*qinyan*) that otherwise appears to be deficient (*asmakhtaʾ*), Rabbenu Tam indicates that only a venerable rabbinic court (*beit din ḥašuv*) can extract money from the members of the community in ways that are not in

23 See Schwarzfuchs, *Yehudei Ṣarefat bimei ha-benayim*, 136–37; *Sefer Kol Bo*, 7:242–43 (sec. 117); and see the version of Rabbenu Tam's *taqqanah* found in MS Vercelli C1, fol. 22a, in a marginal gloss: חרם קדמונים שלא להכות חברו. ואם הכהו, קודם ש[י]היה נמנה בעשר' צריך שיתירו לו החרם ע"מ שיקבל לעשות דין ע"פ ראות טובי העיר. ואם אי' רוצה שיתירו לו, הקהל יתירו לעצמן ויהיו נמנים עמו אם ירצו. ותקנת ר"ת למכה חברו ליתן לו כ"ה דינרי'. ואם הכהו בבי'[ת] הכנס'[ת] נ' דינרים מק"ו וישבה י"ד (במדבר יב:יד וספרי, 'שם). ואם חזר המוכה והכה חברו, אבד זכותו. וכן בכל דבר קטטה שאי' עוד עדי' רגילי להיו'[ת] בדבר מזומני'. . . הג 'מצא (and cf. *Sefer Mordekhai ʿal Massekhet Qiddušin*, sec. 554). As noted at the end of the passage, Rabbenu Tam's *taqqanah* includes the relaxation of certain evidentiary rules (in terms of who may testify), since it would be difficult to find qualified witnesses to these interpersonal conflicts who are not related. Cf. *Tešuvot Maharam we-Ḥaveraw*, ed. Emanuel, 326 (sec. 69), 643 (sec. 309).

24 See *Sefer Mordekhai ʿal Massekhet Bava Batra*, sec. 480 (= MS Vercelli C1, fol. 59c–d, and MS Budapest $2^0$1, fol. 154 a–b): ואני [ה"ר מרדכי] מאצתי בשם רבינו תם רשאין בני העיר להסיע על קיצתן. . .פי' היכא דכבר התנו ביניהם. אבל אם לא התנו מתחלה אין כח בבני העיר להכריע אחד מבני עירם למה שירצו. והא דאמר הפקר ב"ד הפקר כגון בי דינא דרב אמי ורב אסי דאלימי הוו לאפקועי ממונא כדאיתא בפ' השולח. . .אבל אם יש בדורם גדול כמותו אין בידן להפקיע ממון; *Tešuvot Maimuniyyot le-Sefer Šofṭim*, #10; *Sefer Mordekhai ʿal Massekhet Bava Qamma*, 223–24 (sec. 179); and my "The Development and Diffusion of Unanimity in Medieval Ashkenaz," in *Studies in Medieval Jewish History and Literature, Volume 3*, ed. Isadore Twersky and Jay Michael Harris (Cambridge, MA: Harvard University Press, 2000): 22–26.

accordance with standard rabbinic judicial procedures. For Rabbenu Tam, the application of the principle of *makkin we-ʿonešin še-loʾ min ha-din* (meting out punishments that are not consistent with formal Jewish legal procedures) cannot be applied to every rabbinic court, nor are the *ṭuvei ha-ʿir* considered to be akin to a *beit din ḥašuv* in these matters. An ordinance or fine that was imposed to compensate (and thereby deter) incidents of physical violence in the communities was the prerogative of a *beit din ḥašuv we-gadol*.[25]

To be sure, Rabbenu Tam's view as to what constitutes a *beit din ḥašuv* vacillated. At times, it appears that he believed that any highly qualified regional (or even local) court merited this designation, but in other cases, his position was less generous. It was surely his view, however, that only the highest court could promulgate an ordinance that levied a fine against someone who had engaged in personal violence. At the same time, however, the writings of his closest students indicate that Rabbenu Tam, who served as a sitting judge, supervised a network of regional courts in northern France, and even trained judges, held that any recognized rabbinic court was able to collect the fine for committing an act of violence if it had been required or instigated by a *beit din ḥašuv*. However, these lesser courts could not issue these fines.[26]

From correspondence between Asher b. Meshullam of Lunel and Ri of Dampierre, it emerges that Ri was aware of Isaac al-Fasi's approach of facilitating the collection of damages from personal attacks (*demei ḥavalah*) by all local courts, although it is likely that R. Asher was the one who brought this position to Ri's attention. In any event, Ri, like Rabbenu Tam, objected to the seizure of property by such courts. Further embracing Rabbenu Tam's overall requirements, Ri indicates that at least in his region of northern France (*bimqomenu*), only a *beit din ḥašuv* was permitted to mandate and extract such payments. According to Ri, al-Fasi's approach, which instructs rabbinic courts to impose a ban on the attacker until he satisfies his victim, was not followed in northern France. Rather, in the case of a person who had severely embarrassed another, "a *beit din ḥašuv*

25 See Israel M. Ta-Shma, "Mah hiʾ ha-ḥašivut šel beit din ḥašuv? ʿiyyun hisṭori be-muśag mišpaṭi," in *ʿIyyunim be-mišpaṭ ʿvri u-ba-Halakhah: Dayyan we-Diyyun*, ed. Y. Habbah and Amihai Radzyner (Ramat Gan: Bar-Ilan University Press, 2007): 335–45; and cf. Radzyner, *Dinei Qenasot*, 316–18, 343–50, 390–94. For *asmakhta*, see *Tosafot Nedarim* 27b, s.v. *we-hilkheta*; *Tosafot Bava Mezia* 66a, *s.v. Manyumei*.

26 See Avraham Rami Reiner, "Rabbinical Courts in France in the Twelfth Century: Centralization and Dispersion," *Journal of Jewish Studies* 60 (2009): 298–315; Shalom Albeck, "Rabbenu Tam's Attitude to the Problems of His Time" [Hebrew], *Zion* 19 (1954): 129–31; Yeḥiel Kaplan, "Decision-Making According to Rabbenu Tam: Theory and Practice" [Hebrew], *Zion* 60 (1995): 279–87; and my *The Intellectual History and Rabbinic Culture of Medieval Ashkenaz* (Detroit: Wayne State University Press, 2013), 55–56.

that wishes to be stringent according to the needs of the hour in order to maintain discipline is allowed to impose such a fine, even if there is no fixed custom." Ri adduces a proof that such a fine can be imposed, even after the original form of *semikhah* had lapsed, from a passage in the Talmud Yerushalmi (*B. Qam.* 8:6), according to which the Amora Resh Lakish took such action.[27] Although Ri did not serve as a sitting judge as Rabbenu Tam did,[28] he nonetheless agreed that only an important court could impose fines for damages resulting from aggressive behavior, in accordance with the principle of *beit din makkin we-ʿonešin še-loʾ min ha-din*, although he makes no reference to Rabbenu Tam's ordinance in this matter.

Rabbenu Tam also sought to ensure that regular rabbinic courts did not impose other fines.[29] Thus, he was wanted to ensure that a person who has had a mitzvah taken from him by another (such as an *ʿaliyyah* to the Torah, or the performance of a circumcision) should be compensated in a different manner from the approach taken by Rabban Gamliel (*B. Qam.* 91b), who imposed a large fine upon a person who had inappropriately usurped the blessing on *kissui ha-dam* (covering the blood after the slaughter of a fowl or a non-domesticated animal),[30]

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27 See *Temim Deʿim* (Jerusalem, 1959), sec. 203, end (= *Tešuvot ha-Ri*, ed. Roth and Reiner, 225, sec. 135). On the correspondence between R. Asher and Ri, see Israel M. Ta-Shma, *R. Zeraḥyah ha-Levi Baʿal ha-Mảor u-Bnei Ḥugo* (Jerusalem: Mossad ha-Rav Kook, 1992), 163–65; Ta-Shma, *Ha-Sifrut ha-Paršanit la-Talmud* (Jerusalem: Magnes Press, 2000), 2:147–50; and Urbach, *Baʿalei ha-Tosafot*, 1:236–37. See also Moses of Coucy, *Sefer Miṣwot Gadol* (Venice, 1547), *miṣwat ʿaśeh* 70 (fol. 147a–b). After mentioning the *minhag* of the two (geonic) *yešivot* in the name of al-Fasi, Moses of Coucy notes Ri's disagreement (ואין נראה לר"י) using the same language attributed elsewhere to Rabbenu Tam (לינקטיה לכובסיה דלשבקיה לגלימיה הוא; see n. 19 above) and Ri's opposition, again in terms used by Rabbenu Tam, to seizure as a means of extracting payment (above, n. 21). For the required presence of a *beit din ḥašuv* according to Ri in other kinds of long-term monetary agreements (to assure reasonability and compliance, again similar to Rabbenu Tam), see *Haggahot Maimuniyyot le-hilekhot mekhirah*, 11:13 [8]; and *Sefer Mordekhai ʿal Massekhet Bava Meṣiʿa*, sec. 324. On the penetration of al-Fasi's *Halakhot* into northern France during the twelfth century, see Urbach, *Baʿalei ha-Tosafot*, 1:56–57, 78, 251; and Avraham Grossman: "From Andalusia to Europe: The Attitudes of the Rabbinic Scholars of Germany and Northern France during the 12th and 13th Centuries toward the Halakhic Works of Rif and Rambam" [Hebrew], *Peʿamim* 80 (1999): 14–32.

28 See Kanarfogel, *The Intellectual History and Rabbinic Culture of Medieval Ashkenaz*, 57–62.

29 See Eliezer of Metz, *Sefer Yereʾim ha-Šalem*, vol. 1, sec. 164 (end).

30 See *Tosafot Bava Qamma* 91b, s.v. *we-ḥiyyevo; Tosafot Talmidei Rabbenu Tam we-R. Eliʿezer*, in M. Blau, ed., *Šiṭat ha-Qadmonim le-Bava Qamma* (New York, 1977), 302; *Tosafot Rabbenu Pereṣ ʿal Massekhet Bava Qamma*, 222; *Tosafot ha-Roš ʿal Massekhet Ḥullin*, ed. E. Lichtenstein (Jerusalem, 2002), 414–16 (87a); *Sefer Or Zaruʿa*, part 1, *hilekhot kissui ha-dam*, sec. 399; *Sefer Mordekhai ʿal Massekhet Ḥullin*, sec. 655–56; and cf. *Sefer Miṣwot Gadol*, *ʿaseh* 64 (fol. 143d); *Haggahot Maimuniyyot, hilekhot ḥovel u-maziq*, 7:14 [20]; *Pisqei ha-Roš*, *Ḥullin* 6:8; *Sefer Dinim le-Rabbenu*

a concern that had earlier been expressed by Isaac b. Asher (Riva) ha-Levi of Speyer (d. 1133).[31]

However, the first northern French Tosafist to mention Rabbenu Tam's ordinance that a person who has caused personal injury should be fined is R. Naḥman Kohen, who also suggests that these fines are still being collected. R. Naḥman's father, Ḥayyim b. Ḥanan'el Kohen (d. c. 1200), had been a student of Rabbenu Tam. Moreover, R. Naḥman adds that the same order of fines is applicable to a person who uncovers a woman's hair as a form of personal attack or embarrassment.[32] There are also formulations which indicate that Yeḥiel b. Joseph of Paris (d. c. 1260), a leading northern French Tosafist in the mid-thirteenth century – or perhaps a lesser rabbinic figure, Joseph Ḥazzan of Troyes – accepted at least the basic thrust of Rabbenu Tam's ordinance, which mandated a fine for a person who strikes his fellow.[33]

As recorded in *Sefer Mordekhai*, the German Tosafist and jurist Baruch b. Samuel of Mainz (d. 1221), who acquired knowledge of Rabbenu Tam's rulings from his teachers Moses b. Solomon ha-Kohen of Mainz and Eliezer b. Samuel of

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Pereṣ, Vienna, Österreichische Nationalbibliothek, cod. 66 (Hebr. 180), fol. 359v; *Ḥiddušei ha-Riṭva ʿal Massekhet ḤHullin*, ed. S. Raphael (Jerusalem, 1982), 95–96, s.v. *kos šel berakhah*. Ri questioned Rabbenu Tam's approach here since Rabban Gamliel had imposed a hefty monetary fine, arguing that it might be possible to assign an actual fine here according to the principle of *makkin we-ʿonešin še-loʾ min ha-din*. See *Tosafot Bava Qamma*, 91b; *Pisqei Mahariḥ* [Hezekiah of Magdeburg] in *Šiṭah Mequbbeṣet ʿal Massekhet Ḥullin*, ed. A. Shoshana (Jerusalem, 2005), 2:860–61 (87a), secs. 7–8; and *Tosafot Talmidei Rabbenu Tam we-R. Eliʿezer*, 302.

31 See *Sefer Mordekhai ʿal-Massekhet Ḥullin*, sec. 656; and *Pisqei R. Ḥayyim Or Zaruʿa*, in M. Blau, ed., *Šiṭat ha-Qadmonim ʿal Massekhet Ḥullin*, vol. 2 (New York, 1990), 313.

32 See Emanuel, *Šivrei Luḥot*, 301, n. 377. This passage comes from R. Naḥman's *Sefer Naḥmani*; see London, British Museum, MS 541 [#6092], fols. 56v–57r; and MS Israel Museum 180/51 [#32638], fol. 447r.

33 See Finkelstein, *Jewish Self-Government*, 194 (sec. 14); 199–200. In MS Warsaw 122 [#12022], fol. 25r, R. Yeḥiel maintains that the leading rabbinic scholars of northern France (*gedolei Ṣarefat*) in his day did not mandate a fixed amount to be paid by one who had struck his friend (whether outside the synagogue or within). Rather, it was left to the *beit din* hearing the case to determine the amount of the fine; cf. n. 25 above. In MS Verona 746, fol. 49v, the name (and locale) of Joseph of Troyes appears instead of the name of Yeḥiel (of Paris), and the word חזן is inserted above the line; cf. Finkelstein, *Jewish Self-Government*, 194, nn. 31, 33. On Joseph חזן (or ש"ץ) of Troyes, see Emanuel, *Šivrei Luḥot*, 216, n. 122. If the word *ḥazzan* is a later (scribal) insertion, it is possible that Joseph of Troyes connotes Rashbam's student, Joseph (b. Moses) of Troyes, also known as R. Porat; see Urbach, *Baʿalei ha-Tosafot*, 1:114–16. This identification would suggest that Rabbenu Tam's ordinance has already been modified in his own day, which might explain why even Ri of Dampierre does not mention it in his halakhic discussion of this type of assault. I have not been able to further identify רבינו יוסף קרא/קרון, who introduces R. Yehiel's view in the *taqqanot* texts presented by Finkelstein (194, n. 31; 199, n. 1).

Metz (both of whom had studied under Rabbenu Tam in northern France and who agreed with him to a large extent regarding the inappropriateness of seizure as a means of collecting damages),[34] held, like Rabbenu Tam, that a regular rabbinic court is able to collect fines for violence (even as this court cannot derive or initially impose them). According to R. Baruch, this is not considered a violation of the talmudic principle that "fines are not adjudicated in *Bavel*," because this principle applies only to those fines formally prescribed by the Torah itself (such as the fines for a rapist or a seducer, the fine of 30 talents for a person who kills a slave, the fine that requires a *ganav* to pay double the worth of the item that he has stolen, and the damage caused by an ox horn, which is in the category of *hazi nezeq*). However, fines that leading talmudic and rabbinic scholars arrive at and impose on their own authority can be collected everywhere, based on the principle of *beit din makkin ve-ʿonešin še-loʾ min ha-din*.

R. Baruch of Mainz points to the actions of Rav Naḥman (*B. Qam.* 96b), who imposed an extensive fine on a veteran thief, as well as a case in which the exilarch (*Sanh.* 27a) ordered a murderer's eyes to be put out (in place of the death penalty, which could no longer be imposed). Both of these cases involved exceptionally qualified judicial authorities, which meant, according to R. Baruch, that a standard local court could not assign fines such as these on its own authority. However, it is equally clear from R. Baruch's formulation that a fine which had been imposed by an important court to prevent or respond to bodily harm, whether by ordinance (such as that of Rabbenu Tam) or as applied by a *beit din ḥašuv* (as maintained by Ri and others), can be collected even by a regular rabbinic court.[35]

To sum up the situation during the twelfth and early thirteenth centuries: for Rabbenu Tam, Ri of Dampierre, and Baruch of Mainz, fines for inflicting bodily harm could not be adjudicated by a regular rabbinic court, but they could be collected by such a court acting under the aegis of a *beit din ḥašuv*. At the same time, however, Eliezer b. Nathan (Raban) of Mainz, Simḥah b. Samuel of Speyer (d. c. 1230), and his student, Isaac b. Moses *Or Zaruʿa* of Vienna (citing

34 For R. Baruch of Mainz's view of seizure (which is partially congruent with the position of Rabbenu Tam), see *Sefer Mordekhai ʿal Massekhet Bava Qamma*, 52 (sec. 41, end); and *Haggahot Maimuniyyot*, *hilekhot Sanhedrin* 5:16 [8], where the source is identified as R. Baruch's *Sefer ha-Ḥokhmah*, sec. 22. Cf. Emanuel, *Šivrei Luḥot*, 126, n. 103.

35 See *Sefer ha-Mordekhai le-Massekhet Giṭṭin*, ed. M. A. Rabinowitz (Jerusalem, 1990), 551–52 (44a), sec. 384; and Radzyner, *Dinei Qenasot*, 418–20. R. Baruch was less aware of the teachings of Ri; see Emanuel, *Šivrei Luḥot*, 115.

al-Fasi),[36] allowed any rabbinic court to impose a ban or to otherwise encourage the assailant to satisfy the victim. Common to all of these authorities, however, is the fact that the *ṭuvei ha-ʿir* could not be involved in the setting and collection of fines for violence, as they had been in early Ashkenaz. Nonetheless, Rabbenu Tam's ordinance that a person who strikes his fellow Jew should be fined, which was intended to serve as an effective mechanism for preventing violence, is noted by only two northern French Tosafists, Naḥman b. Ḥayyim ha-Kohen and perhaps R. Yeḥiel of Paris.

Eliezer of Metz reiterates the position held by his teacher Rabbenu Tam that the *ṭuvei ha-ʿir* can compel the members of the community to support only what had been a long-standing prior custom or a measure to which they had previously unanimously agreed; however, they cannot change a policy or create a new one that causes one to gain and another to lose, or otherwise collect monies, without the unanimous agreement of their members.[37] On the other hand, Eliezer b. Joel ha-Levi (Rabiah), a student of Eliezer of Metz, held that the *ṭuvei ha-ʿir* were like a *beit din ha-gadol* with regard to all communal matters.[38] In Rabiah's view, the *ṭuvei ha-ʿir* can enact whatever policies and payments they agree upon, whether or not individuals gain or lose and whether or not it was considered to be a matter of communal improvement or decorum (*migdar milta'*); moreover, they can punish and collect monies from anyone who does not follow their enactments. This approach had important implications for the collection of fines for personal damages in Germany during the thirteenth century.[39]

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36 See *Sefer Raban*, 3:1–5 (*B. Qam.*, sec. 443); MS Bodl. 692 (#), fol. 237a, sec. 292; *Sefer Or Zaru'a*, *pisqei Bava Qamma* (84b), secs. 326–27, 3:106a–b; *pisqei Bava Qamma* (96b), sec. 394 [96b], 3:123a–b.

37 See *Tešuvot Maharah Or Zaruʿa*, ed. M. Abbitan (Jerusalem, 2002), #222 (end), fol. 210b. In an addendum to this passage, R. Baruch of Mainz notes that this is the position of Rabbenu Tam as recorded in his *Sefer ha-Yašar*. See Kanarfogel, "The Development and Diffusion of Unanimity in Medieval Ashkenaz," 27–28.

38 See *Teshuvot Maharah Or Zaruʿa*, 209a–210b (*we-zeh ašer hešiv Avi ha-ʿEzri*); and Yizhak Handelsman, "The Views of Rabiah on Communal Leadership" [Hebrew], *Zion* 48 (1983): 34–41.

39 Rabiah, however, barely mentions or refers to such *qenasot* in his *Avi ha-ʿEzri* (which also does not contain a halakhic commentary on *Bava Qamma*), perhaps because these discussions are to be found in his no longer extant *Sefer Avi'asaf*. See also *Sefer Rabiah*, 3:134 (sec. 925, in a communication from R. Simḥah of Speyer); and 3:394 (sec. 1013). A passage from Rabiah's *Avi'asaf*, cited by *Šibbolei ha-Leqeṭ – ha-ḥeleq ha-šeni*, ed. M. Z. Hasida (Jerusalem, 1969), 213 (sec. 100), reports the censure that Rabiah's grandfather Raban placed on one who raised his hand to strike another, even if he did not actually land a blow. On this passage, see also *Tešuvot Maimuniyyot le-Hilekhot Sanhedrin*, sec. 9; Avigdor Aptowitzer, *Mavo' la-Rabiah* (Jerusalem: Mekitze Nirdamim, 1938), 240–41; *Tešuvot Maharam we-Ḥaveraw*, 840 (sec. 439); and cf. also 792 (sec. 409). Rabiah's discussion of the fine ordered by Rabban Gamliel (for one who has usurped

In the period following Rabiah, the northern French Tosafist Isaac b. Shneur of Evreux (d. c. 1250) sought to assist the communities of northern France in imposing such fines even without a special ordinance or the participation of a *beit din ḥašuv*.[40] Although Isaac of Evreux was a close contemporary of Yeḥiel of Paris, he did not ratify Rabbenu Tam's approach to the assessment and collection of fines, but instead proposed an entirely different solution. Even though rabbinic courts, according to talmudic law, could not apply fines in the Diaspora at this time, such fines could be adjudicated by the *ṭuvei ha-ʿir*. In short, R. Isaac came from the other direction and re-asserted the *ṭuvei ha-ʿir*'s power to collect all types of fines, not just those that were needed for the economic management and support of the community for which they were responsible. Isaac of Evreux states that he received this policy from his (unnamed) teachers.[41] He considers the *ṭuvei ha-ʿir* to have the authority to levy fines (including those for inflicting injury against others), even as the *ṭuvei ha-ʿir* are not considered to be a rabbinic court subject to the talmudic prohibition against adjudicating fines in the Diaspora.

Isaac b. Joseph of Corbeil (d. 1280), author of *Sefer Miṣwot Qaṭan* and a student of the Evreux *beit midraš*, does not seem to have espoused the approach suggested by Isaac of Evreux (asserting simply that *ein anu danin dinei qenasot*), but he does present an additional dimension. From the fact that Rabban Gamliel had imposed a significant monetary fine on a person who had grabbed a mitzvah away from his fellow, Isaac of Corbeil considered it inappropriate to allow someone who had caused his friend this kind of harm to escape without any liability – even though it was technically no longer possible to adjudicate *dinei kenasot* – "since he did the wrong thing (*ki loʾ ṭov ʿaśah*)." R. Isaac therefore maintains that the aggressor should placate or settle with his friend (*ṣarikh lefayyes ḥavero*). Although Isaac of Corbeil does not specifically refer to fines for inflicting physical harm here, it is likely that he held that rabbinic courts ought to pursue settlements in these cases

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the mitzvah of another) suggests that he was unaware of the approach taken by Rabbenu Tam and Riva of Speyer (see nn. 28 and 29 above). See *Sefer Rabiah*, 4:89 (sec. 1088).

40 See *Sefer ha-Mordekhai le-Massekhet Giṭṭin*, 552 (sec. 384) (in the notes to line 455): ודיני קנסות שפירש שאין דנין בזמן הזה שמעתי בשם הר"י מאיוורא שיש לדונם ע"פ שבעה טובי העיר וכן הוא מקובל מרבותיו.

41 It is difficult to identify the precise source of this approach in R. Isaac's day, although it ultimately extends back to the position of Joseph Ṭov ʿ Elem of Limoges (and his colleagues in Germany) during the eleventh century, who considered all fines (and bans) that the communities might require to be situations in which it is possible to invoke the principle of *makkin we-ʿonešin še-loʾ min ha-din*, thereby allowing the *ṭuvei ha-ʿir* to implement and manage them. See my "The Adjudication of Fines in Ashkenaz during the Medieval and Early Modern Periods and the Preservation of Communal Decorum," *Dinei Israel* 32 (2018): 161*–64*.

as well. This would not be considered, however, as the formal adjudication of a fine, since Isaac of Corbeil viewed such an undertaking as a moral imperative.[42]

A responsum by Meir b. Baruch (Maharam) of Rothenburg (d. 1293), who studied with R. Samuel, the brother of R. Isaac of Evreux, and with Yeḥiel of Paris, maintains that the *ṭuvei ha-ʿir* can indeed assign fines and payments for personal injury if this is to the benefit of the community, based on the principle of *makkin we-ʿonešin še-loʾ min ha-din*. Thus, Maharam rules that a person who strikes his friend and then mollifies him (*we-šuv piyyes oto*) can be given an additional fine beyond the letter of the law by the community if, for example, he engages in this abusive behavior regularly (*ragil be-kakh*), in accordance with the principle (*B. Bat*. 8b) that the members of the community are able to restrict those who need to be deterred (*rašaʾin bnei ha-ʿir le-hasiʿa ʿal qiṣatan*). Payments sought in accordance with basic Torah law for having inflicted bodily harm can be achieved only through negotiation and appeasement between the parties; they cannot be adjudicated by a rabbinic court in the Diaspora. However, the community, represented by the *ṭuvei ha-ʿir*, has the power to impose additional punishments as necessary (*we-ha-kol lefi ṣorekh šaʿah*).[43] Elsewhere, Maharam reiterates that

42 See *Sefer Miṣwot Qaṭan* (Constantinople, 1820), *miṣwah* 156; New York, Jewish Theological Seminary, MS Rab. 1489 [#20588], fol. 93 (*miṣwah* 153); D. Avraham, ed., *Sefer Kol Bo* (Jerusalem, 2009), 6:489–90 (sec. 108) (= *Orḥot Ḥayyim le-R. Aharon ha-Kohen mi-Lunel*, ed. Moshe Schlesinger (Berlin, 1899), part 3, 395–96 (sec. 27); *Semaq mi-Ṣurikh*, vol. 2, ed. Y. Har-Shoshanim (Jerusalem, 1977), 38 (*miṣwvah* 173). See also *Semaq mi-Ṣurikh*, *miṣwah* 182, on a rapist's imperative to marry his victim and to pay the fine prescribed by the Torah, along with damages for *bošet* and *pegam*. R. Isaac concludes (once again) that "although the laws of fines (*dinei qenasot*) are not in force now in our midst (*ein nohagin ʿattah benenu*)," assets seized by the victim may be kept in lieu of payment." A passage in *Pisqei ha-Semaq* discusses the situation of one who has struck another and who has (voluntarily) agreed to pay the victim the liabilities that resulted from the physical damages that occurred, but not the *boshet* involved. Since this cannot be adjudicated by a rabbinic court in the Diaspora, the victim was permitted (by the rabbinic court) to seek redress in non-Jewish *ʿarkȧot*. See H. S. Shaanan, "The Rulings of Isaac of Corbeil" [Hebrew], in *Ner li-Šemaʿyah: sefer zikkaron le-zikhro šel ha-Rav Šemaʿyah Šȧanan* (Bnei Brak, 1988), 27 (sec. 69); Shaanan, "Hafnayyat toveʿa le-beit mišpaṭ," *Teḥumin* 12 (1991): 252; and cf. Grossman, *Ḥakhemei Aškenaz ha-Rišonim*, 145.

43 See *Tešuvot u-Pesaqim meʾet Ḥakhemei Aškenaz we-Ṣarefat*, ed. E. Kupfer (Jerusalem: Mekitze Nirdamim, 1973), 152 (sec. 94); Handelsman, "Hašqafotaw šel Rabiah," 43–44, 46–47 (n. 130); *Šeʾelot u-Tešuvot Maharam mi-Rotenburg defus Cremona* (1547), #298; *Tešuvot Maharam mi-Rotenburg we-Ḥaveraw*, 193–96 (sec. 4), 337 (sec. 79); *Sefer Mordekhai ʿal Massekhet Bava Qamma*, 109–10 (sec. 81); *Sefer Mordekhai ʿal Massekhet Bava Batra*, secs. 480–81; *Tešuvot Maimuniyyot le-Hilekhot Sanhedrin*, sec. 10; Yeḥiel Kaplan, *Jewish Public Law* [Hebrew] (Jerusalem: Sacher Institute for Legislative Research and Comparative Law, in preparation), 24, 112–13; and above, at n. 19. Cf. Joseph Lifshitz, *R. Meir of Rothenburg and the Foundation of Jewish Political Thought* (Cambridge: Cambridge University Press, 2015), 184–86. For rulings by Maharam (and

fines and payments for causing personal injury cannot be adjudicated by rabbinic courts in the Diaspora, although he somewhat reluctantly supports the possibility that the victim may seize the aggressor's assets as a form of compensation.[44] A composite approach also emerges from the rulings of Maharam's student Asher b. Yeḥiel (Rosh, d. c. 1325), although he largely rejects the approach of Isaac al-Fasi.[45]

It appears that by the mid-thirteenth century and beyond, leading Ashkenazic rabbinic authorities had come over to al-Fasi's model (except for Rosh, whose view is also cited by his son R. Jacob ben Asher in his *Arbaʿah Ṭurim*)[46] that while a local rabbinic court does not have the ability to directly adjudicate or apply fines in its regular procedures, it can be involved in the negotiations (or even in applying pressure, via a ban) towards a settlement. In addition, fines that were levied to maintain discipline (and to otherwise improve the state of the community) can be activated by the *ṭuvei ha-ʿir* in accordance with the ordinances or customs of that city, without the involvement of a *beit din ḥašuv*. Just as Rabbenu Tam's position that unanimous agreement was necessary to enact many communal policies and provisions had been largely rejected in Ashkenaz by the end of the thirteenth century,[47] his approach to adjudicating fines (not to mention his ordinance about striking another Jew) was also not as well accepted by that time.[48]

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others in his day) regarding victims of violence who took their cases to secular authorities, see *Tešuvot Maharam we-Ḥaveraw*, 620 (sec. 292); 643 (sec. 309); 645 (sec. 311); 778 (sec. 402); *Tešuvot R. Ḥayyim Or Zaruʿa*, 24–25 (sec. 25); 132–33 (sec. 142); and 267–69 (sec. 4).

44 See *Tešuvot Maharam mi-Rotenburg defus Prague*, #994; and *Tešuvot Baʿalei ha-Tosafot*, ed. Agus, 146–47 (sec. 65).

45 See *Pisqei ha-Roš* to *B. Qam.* 8:2–3; *Pisqei ha-Roš* to *B. Qam.* 9:5; *Pisqei ha-Roš* to *Giṭ.* 4:41; and cf. Kaplan, *Mišpaṭ Šibburi ʿIvri Bimei ha-Benayim*, 17, n. 92.

46 See *Arbaʿah Ṭurim*, *Ḥošen Mišpaṭ*, sec. 1, which lists all the fines that cannot be adjudicated in the Diaspora, Like Rosh, *Arbaah Turim* concludes that a person who strikes another cannot be placed under a ban by the rabbinic court, nor can his assets be seized for payment (as Rif had maintained), because these tactics are akin to the direct collection of fines. In *Ḥošen Mišpaṭ* sec. 2, *Arbaʿah Ṭurim* notes that fines for maintaining order can now be collected in the Diaspora if they are meant to prevent decadent behavior, as Rav Naḥman intended. However, only a *gadol ha-dor* like Rav Naḥman (who was appointed by the *Naśi*) or the *ṭuvei ha-ʿir*, whose authority is accepted by the many, can do so; regular judges, however, cannot do so, precisely as Rosh had indicated.

47 See Kaplan, "Decision-Making According to Rabbenu Tam: Theory and Practice," 292–30, and Kanarfogel, "The Development and Diffusion of Unanimity in Medieval Ashkenaz," 26–35.

48 For a fuller discussion, see Kanarfogel, "The Adjudication of Fines in Ashkenaz during the Medieval and Early Modern Periods," 159–87. As noted at the conclusion of that study, Rabbenu Tam's approach was re-introduced during the sixteenth and seventeenth centuries in the Ashkenazic settlements of Eastern Europe.

Return of the Dowry

An ordinance which can be definitively attributed to Rabbenu Tam mandates that a groom whose bride had died (childless) within the first year of marriage must return all dowry monies, even those that he had already received, to her father or family. This is a monetary enactment that nonetheless appears to run counter to a talmudic law that allowed the husband to keep all dowry monies already in his possession,[49] which also experienced a mixed reception within medieval Europe.[50]

Baruch b. Samuel of Mainz cites (and applies) a similar ordinance that was apparently promulgated within the communities of the Rhineland. This ordinance mandates that if either spouse dies within the first two years of marriage, half of the dowry must be refunded, although Rabbenu Tam is not mentioned in this context.[51] Interestingly, the initial version of *Sefer Miṣwot Gadol* by Moses of Coucy

49 See Finkelstein, *Jewish Self-Government*, 163–65; and Avraham Rami Reiner, "Rabbenu Tam's Ordinance for the Return of the Dowry: Between Talmudic Exegesis and an Ordinance that Contradicts the Talmud," *Dine Israel* 33 (2019): 74*–88*. The signatories on this ordinance, aside from Rabbenu Tam, are two of his students, Isaac b. Baruch and Menahem b. Perez of Joigny, who ostensibly served in this instance as members of his *beit din*. See Urbach, *Baʿalei ha-Tosafot*, 1:96, 99, 146, 149; and cf. Emanuel, *Šivrei Luḥot*, 214, n. 116. The ordinance indicates that it followed the practice of the community of Narbonne and its sages (which was itself based on a passage in *y. Ketub.* 9:1). See also *Sefer ha-Yašar*, *ḥeleq ha-ḥiddušim*, ed. Schlesinger, sec. 465; Reiner, "Rabbenu Tam's Ordinance for the Return of the Dowry," 88*–91*; and cf. Isaac b. Abba Mari of Lunel, *Sefer ha-ʿIṭṭur*, ed. M. Yona (Warsaw, 1885), vol. 2, fol. 30d (*ot kaf ketubot*). See also *Sefer Mordekhai ʿal Massekhet Ketubot*, sec. 155, MS Sassoon 534 (#9334), fol. 337a; and MS Vercelli C1, fols. 305d–306a. In the *Mordekhai* texts, Rabbenu Tam's ordinance about the return of the dowry has the following preamble: "Rabbenu Tam composed a binding requirement that carried serious consequences if ignored which applies to residents of northern France and Normandy and had the approbation of the leading scholars of Narbonne (שכתב ר"ת והחרים בחרם חמור על יושבי צרפת ונורמנדיא"ה והסכימו עמו גדולי נרבונה)." See also *Šibbolei ha-Leqeṭ – ha-ḥeleq ha-šeni*, 183 (sec. 89, which adds the area of אניו"ב, Anjou, and places the rabbis of Narbonne as initiators rather than followers**)**. The *Mordekhai* passage then continues with the responsum of Baruch of Mainz, below, n. 51.

50 See Shalem Yahalom, "The Dowry Return Edict of R. Tam in Medieval Europe," *European Journal of Jewish Studies* 12 (2018): 144–53.

51 See *Sefer Mordekhai ʿal Massekhet Ketubot*, sec. 155 (where this ruling is also reported by David [b. Qalonymus] of Muenzberg); and *Tešuvot u-Pesaqim me-ʾet Ḥakhemei Aškenaz we-Ṣarefat*, 162–63 (sec. 103). Following his statement about the (Rhineland) ordinance concerning the return of the dowry if one of the spouses had died within the first two years of marriage, R. Baruch takes up a related situation that involved the communities (and rabbinic authorities) of Wurzburg, Worms, and Speyer. Simcha Assaf, *Ha-Taqqanot we-ha-Minhagim bi-Yerušat ha-Baʿal et Išto* (Jerusalem: Hamadpis, 1926), 91–92, assumes that this ordinance was promulgated as

(d. c. 1250), whose main teacher Judah b. Isaac Sirleon studied with Rabbenu Tam's leading student Ri of Dampierre, asserts that Rabbenu Tam's ordinance "did not spread throughout all of Israel," implying a significant geographical limitation.[52] The standard Tosafot to tractate *Ketubot*, which were compiled by the German rabbinic scholar Eliezer of Tukh in the late thirteenth century, assert that Rabbenu Tam retracted this *taqqanah* at the end of his life, a claim not found in the earlier French Tosafot to *Ketubot* produced by Samson b. Abraham of Sens (d. 1214), the leading student of Ri of Dampierre.[53]

Nonetheless, similar to the claim made in *Tosafot Tukh*, Yom Ṭov b. Abraham Ishvili (Riṭva, d. c. 1325) reproduces a Tosafot passage which maintains that Rabbenu Tam issued his edict only for his own generation, not for subsequent ones.[54] Perez b. Elijah of Corbeil (d. 1297), citing an unidentified teacher, asserts that Rabbenu Tam's ordinance "did not spread throughout Israel (*loʾ pashaṭ be-Yiśraʾel*)," a formulation which sounds exactly like the passage in *Sefer Mişwot Gadol* just noted. Rabbenu Perez also reports that he had heard that Rabbenu Tam retracted his *ḥerem*. Nonetheless, Rabbenu Perez followed a practice similar to that followed in the Rhineland: the groom returns half or a quarter of the dowry to his father-in-law, or to another who had been chosen to hold these funds, if the bride dies within the first two years of marriage.[55]

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part of the *Taqqanot Šu"m* of the early 1220s, although there is no firm evidence for this. Moreover, since Baruch of Mainz died in 1221 and he attributes this ordinance to an even earlier period, this possibility seems rather unlikely. See also *Tešuvot u-Pesaqim me-ʾet Ḥakhemei Aškenaz we-Ṣarefat*, 162–63, 318; and *Haggahot Maimuniyyot, tešuvot ha-šayyakhot le-sefer našim*, sec. 35, in which the ordinance is presented by David of Muenzberg to Baruch of Mainz, in response to a query from R. Baruch. The *Tešuvot Maimuniyyot* passage indicates that the formulations by both David of Muenzberg and Baruch of Mainz were copied from *Sefer Or Zaruʿa*, although as noted by Emanuel, *Šivrei Luḥot*, 141, n. 179, this material is not found in any extant version of that work. See also *Tešuvot Maimuniyyot*, sec. 26; and cf. Emanuel, *Šivrei Luḥot*, 144, n. 192.

52 See Moses of Coucy, *Sefer Mişwot Gadol*, fol. 33, col. 3 (*mişwat loʾ taʿaśeh* 81), אמנם רבינו יעקב גזר ותקן לשלם אפילו זכה אם מתה תוך שנה ולא פשטה גזרתו בכל ישראל; cited also by *Haggahot Maimuniyyot, hilekhot išut*, 22:1. Note, however, that a second, slightly later recension of *Semag* (also composed by Moses of Coucy himself) appears to have dropped this observation; see Moses of Coucy, *Semag ha-Šalem*, ed. Y. M. Peles et al., vol. 1 (Jerusalem, 1993), 48.

53 See *Tosafot Ketubot* 47a–b, s.v. *katav*; *Tosafot R. Šimšon b. Avraham (Rašba) mi-Šanṣ ʿal Massekhet Ketubot*, ed. A. Liss (Jerusalem, 1970), 112; *Tešuvot Maharam we-Ḥaveraw*, 789–90; and Shalem Yahalom, "Historical Reliability in the Literature of the Tosafists" [Hebrew], *Maddaʿei ha-Yahadut* 53 (2019): 193–95.

54 See *Ḥiddušei ha-Riṭva* to *Ketub.* 47a, ed. M. Goldstein (Jerusalem, 1982), 386, citing a(n unidentified) Tosafot passage: אמרי' בתוס' שהחרים ר"ת ועשה תקנה דכל שתמות תוך שנה שתחזור פורנא לבית אביה. אבל אין דנין כתקנתו בדורות הללו שלא גזר ותקן אלא לדורו.

55 See *Tešuvot u-Pesaqim*, 318; and cf. the responsum of Meir of Rothenburg preserved in *Tešuvot Maimuniyyot*, sec. 26 (below, n. 57). Rabbenu Perez could have become aware of the German

At the same time, however, *Tosafot Evreux* and Meir b. Baruch (Maharam) of Rothenburg continued to abide by the parameters of Rabbenu Tam's ordinance, at least in situations where the wife who died had been a virgin at the time of her marriage and this was her first marriage.[56] In another responsum, Meir of Rothenburg is described as applying Rabbenu Tam's ordinance (that the entire dowry should be returned) if the wife died within the first year of marriage and the conditions of the Rhineland ordinance (to return half of the dowry) if she passed away in the second year of her marriage. This money should go either to the deceased bride's father or to the one who had been chosen to manage it, if he was the one who had transferred the dowry funds to the groom.[57]

However, in contrast to the rabbinic practices in the Rhineland, nothing akin to Rabbenu Tam's ordinance was applied in Central or Eastern Europe as a means of retrieving (any part of) the dowry.[58] Indeed, Isaac b. Jacob (Ri) ha-Lavan (of Prague and Regensburg), who traveled to study with Rabbenu Tam in northern France, completely rejects Rabbenu Tam's legislation, along with his innovative interpretation of the talmudic *sugya* that may have been developed to support the ordinance.[59] In the mid-thirteenth century, Avigdor b. Elijah Katz of Vienna, who initially hailed from northern France, asserts that Rabbenu Tam's edict "had not spread to distant lands (*še-loʾ pašṭah gezerato [šel Rabbenu Tam] le-meraḥoq*)" and ruled against following this ordinance in his locale.[60] R. Avigdor's predecessor in the Vienna rabbinate, Isaac *Or Zaruʿa*, attests that his relative (*aḥyano*), an otherwise unidentified R. Ephraim, had ruled against following

approach from his senior colleague Maharam. Eliezer of Tukh's assertion (see n. 53 above) that Rabbenu Tam recanted his own *taqqanah* is explicitly rejected by R. Joseph, the brother of Rabbenu Perez (Urbach, *Baʿalei ha-Tosafot*, 2:576, 578); see *Tešuvot Maharam we-Ḥaveraw*, 790.

56 See *Tešuvot Maharam we-Ḥaveraw*, 791. Cf. n. 40 above.

57 See *Tešuvot Maimuniyyot le-Sefer Našim*, sec. 26. This type of halakhic compromise was characteristic of Maharam's legal thought and method; see my "Compromise and Inclusivity in Establishing Minhag and Halakhah: Contextualizing the Approach of R. Meir of Rothenburg," in *Minhagim: Custom and Practice in Jewish Life*, ed. Joseph Isaac Lifshitz, Naomi Feuchtwanger-Sarig, Simha Goldin, Hasia Diner, and Jean Baumgarten (Berlin: De Gruyter, 2020): 53–71.

58 See Yahalom, "The Dowry Return Edict of R. Tam in Medieval Europe."

59 See Ri *ha-Lavan*'s *Tosafot Ketubot* (47a), ed. P. Y. Ha-Kohen (London 1954), 49–51, s.v. *katav*; *Sefer Rabiah*, 3:66 (sec. 712); *Sefer Mordekhai ʿal Massekhet Ketubot*, sec. 154 (citing Rabiah); and Yahalom, "The Dowry Return Edict of R. Tam in Medieval Europe," 144–45. See also *Ḥiddušei ha-Rašba ʿal Massekhet Ketubot*, ad loc.

60 See *Tešuvot Maharam we-Ḥaveraw*, 788 (sec. 408). See also *Tešuvot u-Pesaqim*, 320–21; Yahalom, "The Dowry Return Edict of of R. Tam in Medieval Europe," 145–46; and cf. *Semag*, n. 52 above.

Rabbenu Tam's approach in Regensburg.[61] In sum, Rabbenu Tam's ordinance made some headway in the Rhineland (at least by implication), but it received almost no support in Central Europe. Even within northern France, the extent to which Rabbenu Tam's ordinance remained in effect during the thirteenth century generated different assessments among the Tosafists of that period.

Objecting to a Bill of Divorce

In his *Sefer ha-Yašar*, Rabbenu Tam reports that he had decreed in the marketplace at Troyes (attaching strong consequences for disobedience) that no Jew should raise any kind of *ʻirʿur* (technical objection) against a bill of divorce once it had been given; all such concerns must be addressed beforehand. Although Rabbenu Tam's formulation suggests that this ordinance was issued solely under his own authority, a passage in *Sefer Mordekhai* notes that it received the approbation of his student Rabbenu Moses, along with that of "all the *gedolim*," when it was decreed in the Troyes marketplace. It is possible, however, that this wider agreement reflects a later stage and that R. Moses had initially joined Rabbenu Tam's court in order to issue this decree.[62]

However, while this ordinance apparently received some early support within the Champagne region of northern France, subsequent support for it was much less forthcoming. The earliest citations of this ordinance (nearly a century after it was announced) appear in the mid-thirteenth-century Italian compendium *Šibbolei ha-Leqeṭ* and in the late thirteenth-century German compendium *Sefer*

61 See *Tešuvot Maharam we-Ḥaveraw*, 790. This cannot, however, be the Tosafist Ephraim b. Isaac of Regensburg (who studied with Rabbenu Tam) as suggested by Kupfer (*Tešuvot u-Pesaqim*, 320) and accepted by Yahalom ("The Dowry Return Edict of R. Tam in Medieval Europe," 145), since Isaac *Or Zaruʿa* (d. c. 1250) could not have observed or been simultaneously aware of the practice of R. Ephraim (who died in 1175). During the late thirteenth century and beyond, several lesser-known German and Austrian rabbinic figures debated the accuracy of the claim made by *Tosafot Tukh* that Rabbenu Tam himself rescinded this *taqqanah* toward the end of his life, and they also considered the extent to which Rabbenu Tam's ordinance should be applied. See *Tešuvot u-Pesaqim*, 321; *Tešuvot Maharam we-Ḥaveraw*, 791; and Yahalom, "The Dowry Return Edict of R. Tam in Medieval Europe," 145–46, 149–51.

62 See *Sefer ha-Yašar*, *ḥeleq ha-Ḥiddušim*, 105 (sec. 140); *Šibbolei ha-Leqeṭ*, *ha-ḥeleq ha-šeni*, 187 (sec. 93); and *Sefer Mordekhai ʿal Massekhet Giṭṭin*, 870–72 (sec. 455). Cf. Finkelstein, *Jewish Self-Government*, 43–46, 105–6; and Reiner, "Taqqanah, Halakhah u-Mah še-Beneihen," 139–41. Modern scholarship has suggested several possibilities for the identity of R. Moses in this passage: Moses b. Solomon *ha-Kohen* of Mainz, Moses of Pontoise, or Moses b. Joel of Regensburg. See Reiner, "Taqqanah, Halakhah u-Mah še-Beneihen," 139, n. 2

Mordekhai.[63] Rabbenu Perez of Corbeil also records this *ḥerem*, albeit without attribution to Rabbenu Tam.[64] However, it is not found in any other Tosafist sources or halakhic compendia composed in either Germany or northern France during the twelfth and thirteenth centuries.

Rami Reiner has pointed to a series of weaknesses in the halakhic underpinnings of this ordinance and in the talmudic interpretations and conceptualization that were behind it. As in the case of fining a Jew who has struck another, Rabbenu Tam intended this ordinance to address an ongoing, thorny problem in a more effective way. Reiner also suggests that the instances in Rabbenu Tam's corpus in which it appears that he did respond to criticisms of valid bills of divorce made after the fact occurred before he issued his ordinance.[65] However, these instances leave open the possibility that Rabbenu Tam backed away from his ordinance at a certain point, perhaps due to the lack of additional rabbinic support for it.

Curtailing the Impact of a Striking Leniency

The four ordinances attributed to Rabbenu Tam discussed here were largely ignored by subsequent Tosafists for several reasons. In the first instance, the precise contours of the ordinance (concerning trade in or the sale of church objects, or only those that had been stolen) remain unclear. The fine proposed for a Jew who had struck another was not especially well founded within talmudic law, allowing the favoring of other approaches that sought to achieve the same goal. The ordinance about a husband's return of a dowry in a case where his wife had died within the first year of marriage was deemed by some to be against talmudic law (even as Rabbenu Tam sought to eliminate those doubts), and his opposition to casting aspersions about the efficacy of particular bills of divorce was largely ineffective. Overall, German Tosafists expressed little interest in or

63 See the above note and cf. Emanuel, *Šivrei Luḥot*, 71.

64 Rabbenu P Perez's formulation is recorded in *Arbaʿah Ṭurim, Even ha-ʿEzer*, sec. 154 (end): וצריך לשום חרם על כל העומדים שם שלא יוציאו לעז על הגט. It originates in the *dinei ha-get* by Rabbenu Perez (following his glosses to *Sefer Miṣwot Qaṭan*, sec. 184). See *Semaq mi-Ṣurikh*, 2:148 (= *Sefer ʿAmmudei Golah* [Constantinople, 1820], *yom reviʿi*, fol. 40a); and cf. Reiner, "Taqqanah, Halakhah u-Mah še-Beniehen," 150, n. 52.

65 See Reiner, "Taqqanah, Halakhah u-Mah še-Beniehen," 149–53, 163. Reiner notes that Rabbenu Tam's initiative to compel a husband to divorce his wife if she made the claim that "he disgusts me (*mȧis ʿalai*)," and the innovative talmudic arguments that he offered in that connection (albeit not as an ordinance) were widely accepted by subsequent Tosafists.

affinity for these initiatives, although hesitations were also expressed by Tosafists in northern France. Most of these ordinances seem to have run their course by the mid to late thirteenth century, if not earlier.

Interestingly, a remarkable allowance put forward by Rabbenu Tam which maintains that a female apostate to Christianity who repented and returned to the Jewish community could remain with her Christian lover if he converted to Judaism, and that she could perhaps even return (instead) to live with her (Jewish) husband, suffered a similar fate. In this instance, German Tosafists completely rejected Rabbenu Tam's ruling, while the Tosafists of northern France managed to weaken this allowance until it was virtually non-existent. Here too, it seems that the radical extent of the allowance and the question of its talmudic basis stood at the center of the controversy.

In describing how Rabbenu Tam dealt with the challenging halakhic situations posed by the presence of apostates from Judaism, Ephraim Urbach writes:

> Rabbenu Tam attempted to ease the return of apostates to the Jewish fold. Thus, it is reported that he permitted a Jewess who had apostatized and engaged in sexual relations with a Christian prior to her reversion, and whose Jewish husband had divorced her, to be married to her former Christian partner who himself had converted to Judaism.[66]

The Tosafot passages that record Rabbenu Tam's position note the strong objections to his ruling put forward by one of his senior students, Isaac b. Mordekhai (Ribam) of Bohemia. In Ribam's view, the relations that the Jewess had had with her lover while he was a Christian disqualify her not only from returning to her Jewish husband, but also from returning to her former lover if he subsequently converts to Judaism, in accordance with the halakhic principle that a married woman who commits adultery is prohibited both to her husband and to the one with whom she has had illicit relations (*asurah la-baʿal asurah la-boʿel*).[67] Passages in Moses of Coucy's *Sefer Mišwot Gadol* and in *Sefer*

66 See Urbach, *Baʿalei ha-Tosafot*, 1:82. Even Rashi was not prepared to go this far in easing the return of the female apostate under such circumstances; see *Haggahot Mordekhai ʿal Massekhet Ketubot*, sec. 286 (= MS Vercelli C1, fol. 96r, in the margin at the bottom of the page); and Gerald J. Blidstein, "Maʿmadan ha-iši šel našim ševuyyot u-mešummadot," *Šenaton ha-Mišpaṭ ha-ʿIvri* 3/4 (1976/77): 35, 56–59.

67 See *Tosafot Ketubot* 3b, s.v. *we-lidroš*; *Tosafot ha-Raš mi-Šanṣ ʿal Massekhet Ketubot*, 6; *Tosafot ha-Roš ʿal Massekhet Ketubot*, 17–19; *Tosafot Sanhedrin* 74b, s.v. *we-ha*; *Tosafot ha-Roš ʿal Massekhet Sanhedrin* (74b) in *Sanhedrei Gedolah*, vol. 3, ed. B. Lipkin (Jerusalem, 1970), 204–5; and *Tosafot Yešanim Yomá* 82a, s.v. *huṣ*, ed. A. Arieli (Jerusalem, 1993), 179–80. This last passage attributes the stringent position to Isaac b. Meir (Rabbenu Tam's brother), perhaps due to a different (but imprecise) reading of the acronym Ribam. See Urbach, *Baʿalei ha-Tosafot*, 1:199; *Sefer Mordekhai ha-Šalem ʿal Massekhet Sanhedrin*, ed. Y. Horowitz (Jerusalem, 2009), 142, n. 9 (*we-*

Mordekhai intimate that Ri of Dampierre also agreed with Ribam's stringent view, although Ri's position cannot be confirmed on the basis of any direct statement that he made.[68]

At the same time, however, several northern French Tosafist formulations point to an additional – and even more striking – leniency offered by Rabbenu Tam in this context. If the reverting female apostate wished to return to her husband instead, she could do so, provided that the husband did not otherwise wish to divorce her (and that he was not a *kohen*).[69] *Tosafot Yešanim* on tractate *Yomaʾ*, which was compiled by Moses of Coucy (on the basis of the Tosafot by his teacher, Judah Sirleon), records that in addition to allowing the returning female apostate to marry her former non-Jewish paramour who had converted to Judaism, Rabbenu Tam also ruled that "the Torah nullified (*afqereh*) the seed of an idolater so that his relations do not prohibit a woman from returning to her husband," so that neither part of the principle that "just as she is prohibited to her husband, she is also prohibited to the adulterer" is applicable.[70] Using similar terms, a composition known as *Tosafot še-ʿal ha-Alfas* asserts that according to Rabbenu Tam, sexual relations with a Gentile do not have the legal standing to render a woman forbidden to her husband. As such, she also cannot become

Ribam aḥiw); and the citation from *Sefer Miṣwot Gadol* discussed in the next note. The so-called *Tosafot Šanṣ* on the printed page of the Talmud to *Soṭah* 26b (= *Tosafot Evreux ʿal Massekhet Sotah*, ed. Y. Lifshitz [Jerusalem, 1969], 70) associates Rabbenu Tam with the stringent position and does not attribute the more lenient view to anyone; cf. *Tosafot ha-Rosh ʿal Massekhet Soṭah*, 50–52. On Ribam as a senior student of Rabbenu Tam, who studied first with Isaac b. Asher (Riba) *ha-Levi* of Speyer (d. 1133), see Urbach, *Baʿalei ha-Tosafot*, 1:196–98.

68 See Moses of Coucy, *Sefer Miṣwot Gadol* (*Semag*), *loʾ taʿaśeh* 121, fol. 42a (= *Sefer Miṣwot Gadol haŠalem*, ed. Makhon Yerušalayim, vol. 2 [Jerusalem, 2003], 224–25, and esp. an. 36). Just prior to this possible reference to Ri, *Semag* (and see esp. Vatican City, Bibliotheca Apostolica Vaticana, MS Ebr. 144, fol. 63c) records the views of Rabbenu Tam, Ribam, and Ri on a related matter, the status of a woman who had been captured by Gentiles (based on *Ketub.* 26b). See also *Sefer Mordekhai ha-Šalem ʿal Massekhet Sandhedrin*, 139 (sec. 720); Chaim Dickman, "Sefer Mordekhai ha-Šalem," in *Sefer Zikkaron ha-Ṣvi we-ha-Ṣedeq*, ed. D. Z. Steinberg (Beer-Sheva, 2000): 38 (based on MS Vienna 72); MS Bodl. 778, fol. 244a–b; MS Bodl. 667, fols. 12b–13a; Bibliotheca Apostolica Vaticana, MS Ebr 141, fol. 144b–d; *Haggahot Maimuniyyot, hilekhot issurei biʾah*, 18:2 [1] (*we-ein nirʾeh le-Ri we-[gam] la-Ribam*)

69 The Provencal talmudic commentator Menahem b. Solomon *ha-Meiri* (d. 1316), in his *Beit ha-Beḥirah ʿal Massekhet Ketubot* (3b), ed. A. Sofer (Tel Aviv, 1968), 18, and *Beit ha-Beḥirah ʿal Massekhet Sanhedrin*, ed. A. Sofer (Jerusalem, 1971), 279, cites the view of "a few of the northern French rabbis" (= Rabbenu Tam) that "the relations of a non-Jew are not considered relations that prohibit the woman to her husband, and they therefore do not prohibit her to her paramour."

70 See *Tosafot Yešanim le-Massekhet Yomȧ* 82a, s.v. *ḥuṣ*, ed. A. Arieli (Jerusalem, 1993), 179–80; on the dating and provenance of these *Tosafot*, see Urbach, *Baʿalei ha-Tosafot*, 1:477–78.

forbidden to her paramour if he has undergone conversion, although obviously, only one of these relationships can be allowed to continue.[71]

Rabiah's father, Joel ha-Levi of Bonn, ruled leniently in the case of a Jewess who had freely gone off with Christians, remaining with them for three days until she was extricated via the payment of a bribe. R. Joel ha-Levi held that in this instance, she was permitted to return to her husband; the relatively short duration of her stay and the fact that no conversionary activity was even intimated undoubtedly figured prominently in his ruling.[72] However, Rabbenu Tam's rulings in these matters are clearly the most far-reaching among rabbinic authorities in both northern France and Germany, through the twelfth century and beyond.

Later thirteenth-century texts did not understand Rabbenu Tam's position in this way, reflecting a less permissive approach.[73] According to these later sources, Rabbenu Tam maintained that if a woman had voluntarily had sexual relations with a non-Jew while married to a Jew, her husband was required to divorce her and she could not return to him. At the same time, however, Rabbenu Tam also held that in halakhic terms, relations with a non-Jew were not considered to be the same as relations with a Jewish adulterer (to whom she would remain prohibited, even after her husband had divorced her). As such, a female apostate who had returned to the Jewish community and who had been divorced by her husband could live with her former non-Jewish paramour if he had converted. Yeḥiel of Paris and Asher b. Yeḥiel (Rosh), a student of Meir of Rothenburg who fled to Spain from Germany in the early years of the fourteenth century, ratified Rabbenu Tam's allowance for the repentant woman to remain with her former paramour who had converted in practice, although they both noted that their permissive rulings flowed from a different line of halakhic reasoning than that

71 See *Tosafot še-ʿal ha-Alfas le-Rabbenu Mošeh b. Yom Ṭov mi-Londriš, Massekhet Ketubot* (3b), in M. Blau, ed., *Šiṭat ha-Qadmonim ʿal Massekhet Qiddušin* (New York, 1970), 326 (based on MS Paris BN 314): *loʾ miṣerah be-biʾat goy, de-biʾato einah biʾah*. Although Urbach, *Baʿalei ha-Tosafot*, 1:495–97, disagrees with Blau's assessment that Moses of London is the author or compiler of this composition, he agrees that this commentary contains material from a series of northern French (and English) Tosafists.

72 See *Sefer Rabiah*, 3:107 (sec. 928); *Sefer Or Zaruʿa*, *hilekhot yibbum we-qiddušin*, 1:506 (sec. 615); and cf. Blidstein, "Maʿmadan ha-iši šel našim ševuyyot u-me šummadot," 61. Indeed, the brief duration and absence of evidence for promiscuity (or apostasy) in this situation suggests to Ḥayyim b. Isaac *Or Zaruʿa* that R. Joel was prepared to allow the wife to return to her husband in this instance even if he was a *kohen*. See *Tešuvot Maharah Or Zaruʿa*, 93–94 (sec. 103).

73 See *Sefer Mordekhai ʿal Massekhet Sanhedrin*, sec. 720 (end), 139: *mi-tokh kakh pasaq Rabbenu Tam de-ešet iš še-hemirah datah we-niśeʾt la-nokhri we-ḥazrah we-nitgaršah min ha-Yiśrâel we-šuv nitgayyer baʿalah ha-nokhri, we-hittir Rabbenu Tam laqaḥat otah le-išah*. See also *Encyclopedia Talmudit*, 5:298–99; and Blidstein, "Maʿmadan ha-iši," 52 (n. 51).

of Rabbenu Tam,[74] and Rosh again stresses that this ruling cannot be utilized to allow the woman to return to her husband.[75]

However, no other rabbinic authorities in thirteenth-century Germany employed – or even referred to – Rabbenu Tam's ruling that allowed a willful apostate to return and marry her former lover if he converted. The German rabbinic authorities at this time were more comfortable with the approach associated with Rashi – that willful apostasy automatically prohibits a woman to her Jewish husband even if she has repented fully and returned – and with Ribam's view that sexual relations with a non-Jew outside of marriage were considered to be an adulterous act.[76]

By the mid-thirteenth century in northern Europe, the possibility that a reverting (willful) female apostate could return to her Jewish husband no longer existed, although some Tosafists still permitted her to marry her former lover if he had converted. Rabbenu Tam's leniencies regarding sexual encounters with Christians had been largely discounted.[77]

Despite Rabbenu Tam's status as the leading Tosafist of his generation and beyond, it appears that some of his more far-reaching ordinances and rulings (whether issued early on or later in his career) encountered opposition from other Tosafists and were sometimes ignored even by his own students and successors. The remarkable creativity and textual mastery that Rabbenu Tam exhibited as

74 See *Sefer Mordekhai ʿal Massekhet Sanhedrin*, sec. 720 (end), 142; and *Sefer Semaq mi-Ṣurikh*, 2:50 (sec. 93). Isaac of Corbeil suggested that the approach of his father-in-law, Yehi'el of Paris, is ultimately insufficient to permit the woman to remain even with her former paramour. See Cambridge, University Library, MS Add. 3127 (#17556), fol. 167v (in the upper margin); and Emanuel, *Šivrei Luḥot*, 206–7.

75 See *Pisqei ha-Roš* to *Ketub*. 1:4 (end): *we-nirʾah li le-qayyem pesaq Rabbenu Tam we-loʾ mitaʿameh*). Rosh's modification of Rabbenu Tam's approach is recorded in both their names in the *Arbaʿah Ṭurim* of Rosh's son, R. Jacob; *Arbaʿah Ṭurim*, *Even ha-ʿEzer*, sec. 178 (*hilekhot soṭah*). See also *Tosafot ha-Roš* to *Ketub.* 3b and *Soṭah* 26b; *Tešuvot ha-Roš*, 32:8; and Blidstein, "Maʿmadan ha-iši," 100–102.

76 See nn. 67 and 68 above. Rabbenu Tam's older German contemporary Eliezer b. Nathan (Raban) goes so far as to suggest that a child born from relations between a married Jewish woman and a non-Jew in which the Jewess had willingly participated (*be-raṣon*) may not be fully Jewish. See *Sefer Raban* to *Yebam.* 45b, 3:434 (sec. 509). See also *Tesšvot R. Isaiah di Trani (RID)*, ed. A. Y. Wertheimer (Jerusalem, 1967), 285–88 (responsum 58); and see also Blidstein, "Maʿmadan ha-iši," 53–54 (n. 59), and 59–60. On RID's presence in Ashkenaz in c. 1200, see Israel Ta-Shma, *Knesset Mehqarim*, vol. 3 (Jerusalem: Mossad Bialik, 2005), 9–43.

77 For further discussion, see my "Mešummadot neśuʾot še-ḥazru: heteran li-benei zugan ha-yehudi w-eha-nokhri lefi meqorot Ṣefon Ṣarefat we-Aškenaz bimei ha-benayim," in *Halakhah u-mišpaṭ: Sefer ha-zikkaron li-Menahem Elon*, ed. A. Edrei, B. Lifschitz, and B. Porat (Jerusalem: The Hebrew University Faculty of Law, 2018): 593–606.

he put forward his ordinances, alongside his overarching concern for the communal good and for resolving halakhic dilemmas that might interfere with the well-being of the communities and their members, may have been seen as simply too creative or innovative.

In rejecting a lenient ruling by Rabbenu Tam about touching a (hanging) candle on the Sabbath, Isaac *Or Zaruʿa* writes that "the capacious intellect of Rabbenu Tam is well known. He even had the ability to argue that a rodent (*šereṣ*) is permitted. Perhaps his expression in this instance was merely an intellectual exercise, and I therefore will not rely upon it."[78] The present study suggests that the *taqqanot* of Rabbenu Tam should be looked at anew, not only in order to verify which of them were in fact issued by him, but also to better understand his considerations in promulgating them, in addition to tracing the extent to which these extra-talmudic ordinances were adopted by other rabbinic authorities in medieval Ashkenaz and beyond.[79]

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78 See *Sefer Or Zaruʿa*, *hilekhot ʿerev Šabbat*, sec. 33 (end), 2:44 (והדבר ידוע גודל לבו של ר"ת שהיה בידו להתיר השרץ ושמא לא דבר בדבר זה אלא לפלפולא בעלמא. ואיני סומך על הוראה זו).

79 On Rabbenu Tam's rulings being intended to justify Ashkenazic practices that appear to be in conflict with talmudic law and the extent to which he sought to create these leniencies *a priori* within his talmudic analyses, see Shalom Albeck, "Yaḥaso šel Rabbenu Tam li-Beʿayot Zemanno," 104–41; Urbach, *Baʿalei ha-Tosafot*, 1:60–93; and H. H. Ben-Sasson, "Hanhagatah šel Torah," *Beḥinot be-Biqqoret ha-Sifrut* 9 (1956): 39–53. My friend and colleague Rami Reiner's forthcoming monograph on Rabbenu Tam will also address his *taqqanot*. I thank Prof. Reiner for providing me with a draft of this part of his study.

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Polemical and Exegetical Polarities in Medieval Jewish Cultures

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