The Development and Diffusion of Unanimous Agreement in Medieval Ashkenaz

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I

Any discussion of communal government in medieval Ashkenaz must take into account both the theoretical positions offered by rabbinic authorities and the actual practices of the communities. As is well-known, R. Jacob b. Meir Tam (1100-1171) favored unanimous agreement as the necessary means for enacting communal ordinances and policies, and it is in this vein that he understood the crucial talmudic passage in *Bava Batra* 8b:

רשאין בני העיר להתנות על המידות ועל השערים ועל שכר פועלים ולהסיע על קיצתן.

> The townspeople are at liberty, when they have fixed weights and measures, prices and wages, to inflict penalties for the infringement of their rules.

According to Rabbenu Tam, the townspeople are unable to fix weights and prices and the like by an agreement of the majority over minority (להסיע על קיצתן), as other medieval halakhists read this passage. Rather, this passage establishes the right of the community to enforce its rules and standards, once they have been set. In Rabbenu Tam's view, however, the rules could be set only through unanimous consent.

By now, sixty years after Yitzḥaq Baer suggested that unanimity was the dominant mode of decision-making in Jewish communities until the thirteenth century,[1] there is no longer any doubt that rule by majority was in fact the norm in the communities of Ashkenaz, beginning in the pre-Crusade period and continuing through the high Middle Ages. Moreover, this method of communal decision-making appears to have been supported by most rabbinic leaders and decisors. In light of these developments, the question arises as to

whether Rabbenu Tam, in his rulings on the need for unanimity, was attempting to support an existing minority view or was advocating a significant change in the way that the Ashkenazic communities governed themselves, on the basis of his incisive reading of talmudic literature. A major goal of Rabbenu Tam and other twelfth-century tosafists was to test Ashkenazic customs and practices and bring them into line with talmudic legalism, justifying in detail those practices that had an appropriate basis and challenging those that did not.[2] Irrespective of his precise aim in advocating the need for unanimity, it is also important to ascertain whether Rabbenu Tam was at all successful in implementing his theoretical model.

In a recent study, Yehiel Kaplan has suggested that Rabbenu Tam's position never moved past the theoretical plane. Kaplan's claim is based on several factors. Unanimous consent is a problematic form of communal decision-making, and there is confusion in subsequent generations as to the precise legal formulation and principles attributed to Rabbenu Tam. Moreover, both Germanic law and Christian canon law adopted a legal fiction in which the majority imposed its will on the supposedly consenting minority. This convention can best characterize the position of Rabbenu Tam according to Kaplan. Rabbenu Tam's conception of the need for unanimity was a legal fiction that was not intended to be adhered to in actuality.[3]

That Rabbenu Tam's view did not gain a large number of adherents is, as I have indicated, abundantly clear. Nonetheless, Kaplan's interpretation, which severely limits the scope of Rabbenu Tam's position, can be questioned in regard to at least one of its central premises. On the basis of manuscript research and more precise documentation of the relationships between various tosafists and rabbinic decisors, it is possible to demonstrate that Rabbenu Tam's position was firmly supported by a number of his closest students, who in turn transmitted it to their students. Indeed, some even attempted to extend the position further, to include additional communal situations that Rabbenu Tam had not explicitly discussed or considered. The apparent vibrancy of Rabbenu Tam's view, well into the thirteenth century, also helps to account for the attention given to this view in late medieval Ashkenaz.

It is helpful to begin with a brief review of the halakhic underpinnings of Rabbenu Tam's view, including the concerns that Rabbenu Tam had regarding the validity of rule by majority. The issues and constructs that Rabbenu Tam grappled with suggest, in and of themselves, that his formulations were intended not merely as reasonable interpretations of talmudic texts but also to correct existing Ashkenazic practices in light of specific talmudic

requirements. Following this discussion, a possible antecedent of Rabbenu Tam's position will be considered, as well as the subsequent history and diffusion of his position in medieval Ashkenaz.

II

The rabbinic sources that attribute the need for unanimity to Rabbenu Tam do not easily yield the precise reasoning behind his view.[4] Rabbenu Tam stipulates that monies can be extracted from an individual by the community on the basis of an ordinance, but only if there had been total agreement in enacting that ordinance. Two texts assert that according to Rabbenu Tam, the community as an entity (without the unanimous agreement of its members) does not have the prerogative to take the money on the basis of the principle *hefqer beit din* (or: *ẓibbur*) *hefqer*.[5] The regnant view in Ashkenaz (that the majority rules) held, on the other hand, that the community could impose its will on the minority and, like a rabbinic court, could thereby extract monies under the principle *hefqer beit din hefqer*.[6] Unlike many of his predecessors and colleagues, Rabbenu Tam apparently felt that the communities did not have the status of a *beit din*, although the power by which the community could extract the money if there had been unanimous agreement remains somewhat unclear.[7]

At the same time, the two texts just mentioned and two others which also ascribe the need for unanimity to Rabbenu Tam (as expressed in his understanding of the above-cited passage in *Bava Batra* 8b), link this need to the *sugya* in *Bava Batra* 9a that deals with arrangements made by ritual slaughterers or butchers (חנהו טבחי).[8] *Bava Batra* 9a requires the presence of an אדם חשוב (a leading local Torah scholar, referred to by Rabbenu Tam as חבר עיר) to ratify potential penalties or assessments that members of a profession or guild wished to levy against one of their group who did not abide by the established rules of the trade.[9] By linking *Bava Batra* 9a with *Bava Batra* 8b, Rabbenu Tam determined that an *ʾadam ḥashuv* was needed to approve communal enactments, and not only the agreements made within a group of artisans.

According to Rabbenu Tam, the presence of an *ʾadam ḥashuv* was necessary in both the communal and the professional realms in order to affect a proper means of transference (*qinyan*). But in addition, the linkage between *Bava Batra* 9a and 8b generated another vital component in Rabbenu Tam's structure of communal government. *Bava Batra* 9a considered it necessary to point out that all of the butchers involved had agreed in advance to the restrictions. The need for unanimity in *Bava Batra* 9a is also carried over by

Rabbenu Tam to the realm of communal government discussed in *Bava Batra* 8b.[10]

It would appear that the need for unanimity was also necessary, in Rabbenu Tam's view, in order to effect requisite modes of transference. Two *qinyan* issues are raised by Rabbenu Tam in regard to communal enactments. The first is the problem of transferring an item (in this case, a potential future payment or debt) that did not yet exist (דבר שלא בא לעולם). In addition, a binding *qinyan* could normally be effective only in regard to an object or commodity that possessed real value. There was, in theory, no meaning to a *qinyan* that imposed the performance of a duty or action. This type of deficient *qinyan* was referred to, in rabbinic parlance, as a *qinyan devarim*. According to Rabbenu Tam, the agreement of the butchers (as well as communal enactments which could extract monies in the future) presented both of these *qinyan* problems: "There is no *qinyan* [=*qinyan devarim*], and [the proposed agreement] is akin to a *davar she-lo ba' le-'olam*." The presence of an *'adam ḥashuv*, as well as unanimous agreement, were necessary to provide sufficient level of intent (*da'at maqneh*) so that a *qinyan* could, in effect, be activated in these situations as well.[11]

Rabbenu Tam was not the only Ashkenazic authority of his day to require the presence of an *'adam ḥashuv* to verify communal enactments or other arrangements between the community and its members. Without describing its precise impact, R. Eliezer b. Nathan of Mainz (Raban, circa 1090-1170) also required this approval. Raban noted, however, that the approval of an *'adam ḥashuv* was required only to set civic or communal policy in regard to the kinds of economic restrictions or guidelines outlined in *Bava Batra* 9a and 8b, such as artisans' fees and fines or price controls. A private economic agreement between two individuals, however, did not require the acquiescence of an *'adam ḥashuv*.[12]

Raban's son-in-law, R. Joel b. Isaac ha-Levi of Bonn (d. 1200) also required an *'adam ḥashuv* to ratify communal agreements, although he too added a caveat. The approbation of an *'adam ḥashuv* was required only when the condition or restriction being imposed was one that arbitrarily fined the violator of the agreement, and did not actually compensate the one who had lost. This was the type of arrangement that was represented by the case of the butchers in *Bava Batra* 9a. The violator's property was to be destroyed, rather than having him pay a fine to the butcher or slaughterer whom he had wronged. Other conditions, however, that would evenly compensate anyone who lost money did not require the agreement of an *'adam ḥashuv* according to R. Joel.[13]

Both Raban and R. Joel understood the need for an *ʾadam ḥashuv* in communal enactments (and in artisans' agreements) primarily as a means of guaranteeing that communal conditions and restrictions were fair and would not cause undue loss. Only Rabbenu Tam raised the problematics of *qinyan*.[14] Nonetheless, Rabbenu Tam addressed these concerns by employing the same kind of interpretative strategy that Raban and R. Joel used. An additional aspect of *Bava Batra* 9a (an agreement between artisans) was also to be applied to *Bava Batra* 8b (communal enactments). Thus, both an *ʾadam ḥashuv* and unanimity were required to combat problems of *daʿat maqneh*.[15] Although R. Joel's son R. Eliezer (Rabiah, d. ca. 1225), did not require either the presence of an *ʾadam ḥashuv* or unanimity, we shall see that the rabbinic court of Mainz circa 1200 (and its member R. Barukh b. Samuel in particular), required both these safeguards for communal agreements, ostensibly for the same reason that Rabbenu Tam did.[16]

Committed to the need for unanimous agreement on the basis of his interpretation of talmudic law, but recognizing that unanimity for all communal enactments would be difficult to achieve, Rabbenu Tam developed an alternative procedure that was true to his theory but more feasible in practice. Members of the communal board (*tuvei ha-ʿir*) who were elected (or selected) by unanimous agreement of the community could themselves initiate and enact (by their own unanimous agreement) communal policy on behalf of the entire community, provided that no members of the community objected at that time.[17] A properly selected communal board could function in the place of the community as a whole, and in place of the *ʾadam ḥashuv* as well.[18] Through the selection process, the members of the community granted to the *tuvei ha-ʿir* the ability to function on their behalf.

The need to provide at least a possibility for the majority to rule may account for the somewhat contradictory formulations attributed to Rabbenu Tam on whether the community possessed any methods to extract money from its members even without unanimous agreement (e.g., through a form of *hefqer ẓibbur*, or under the auspices of a leading rabbinic court).[19] Moreover, Rabbenu Tam appears to suggest that the majority does rule in situations where the community needs to control recalcitrant members.[20]

Although rule by majority was the norm throughout the pre-Crusade period in Ashkenaz, a responsum of R. Joseph Tov Elem (d. ca. 1050) suggests that unanimity was indicated in certain situations. In ruling that a *ḥerem* which had been imposed by Community A on two of its members was binding (and that its cancellation by adjacent Community B had no impact on Community A),

R. Joseph was ostensibly suggesting that the majority of Community A had the right to impose their will on the minority. Otherwise, the initial *ḥerem* could never have been enacted. Nonetheless, a careful reading of R. Joseph's words indicates that this is so only because the community had previously agreed, unanimously, to accept the rulings of selected authorities whose guidance would be adhered to regarding the payment of taxes:

וכל שכן הללו שעשו תקנתם כהוגן כשאר קהילות וביררו להם נאמנים על פי גזירה בהסכמה אחת.

Only after the ruling of the experts did the two members contest their determination. Therefore, R. Joseph's allowance of the majority to pronounce the *ḥerem* was predicated on the fact that a unanimous agreement had been previously reached. To be sure, it is possible that R. Joseph recognized the need for unanimity only in this type of (tax) situation.[21] On the other hand, by not referring explicitly to other cases, R. Joseph may have been trying to balance the fact that the majority did have power in the communities of medieval Ashkenaz with his belief that unanimity was necessary.

Rabbenu Tam received a number of R. Joseph Tov Elem's rulings (both resided in northern France), and regarded him as a significant figure of the earlier period.[22] Although Rabbenu Tam does not refer to R. Joseph by name in regard to unanimity, it is possible that Rabbenu Tam considered R. Joseph's formulation to be a model in these matters.[23]

III

The need for unanimity in communal decisions was held by two of Rabbenu Tam's closest students, R. Isaac of Dampierre (Ri, d. 1189) and R. Eliezer of Metz (d. 1198), although neither mentions Rabbenu Tam explicitly.[24] Rabbenu Tam's name is mentioned together with his approach by a R. Joseph, who asked Ri's devoted student R. Isaac b. Abraham (Riẓba, d. 1210) about whether giving charity can be compelled.[25] This R. Yosef appears to be a northern French scholar named he-Ḥaver Yosef b. he-Ḥaver Shelomoh, who was in contact with Riẓba on other issues, but about whom little else is known.[26]

As recorded in a responsum of R. Ḥayyim Eliezer ʾOr Zaruʿa, the rabbinical court in Mainz at the beginning of the thirteenth century, consisting of Judah b. Qalonymus, Moses b. Mordekhai, and Barukh b. Samuel (d. 1221), also agreed to a large extent with Rabbenu Tam. In response to a query from the rabbinical court in Worms, the Mainz court held that an *ʾadam ḥashuv* was formally required to ratify communal enactments, noting that the role of the

ʾadam ḥashuv was both to protect other members of the community (as described by Raban and R. Joel ha-Levi), and as a means of dealing with what would otherwise be a *qinyan devarim* (which was the view of Rabbenu Tam).[27] In addition, the Mainz court held that unanimity was required, except in the case of an individual who wished to throw off the yoke of the community with regard to the payment of taxes.[28]

R. Ḥayyim Eliezer ʾOr Zaruʿa next records the words of Rabiah, who responded to the issue before the Mainz court and disagreed with their view. Rabiah required neither the acquiescence of an *ʾadam ḥashuv*, nor the unanimous agreement of the community to empower its decisions. If *shivʿah tuvei haʿ-ʿir* were properly appointed, their fines and enactments were binding on all members of the community, as long as the majority of the community did not object.[29]

At the end of his response, Rabiah notes that his venerable teacher R. Eliezer of Metz required unanimity based on the linkage of *Bava Batra* 8b and *Bava Batra* 9a:

> That which the Baraita recorded, "townspeople can confirm their conditions and impose fines for [non-compliance] with their restrictions," applies in a situation where all had agreed together including the plaintiff, and he subsequently ignores the condition, similar to the case of the two butchers. But, if he [the plaintiff] did not agree, they are not able to enforce it.[30]

Indeed, Rabiah indicates that he presented his own view (that majority rules, and that the agreement of an *ʾadam ḥashuv* is not required) at great length, in order to substantiate his strong disagreement with the approach taken by R. Eliezer of Metz.[31]

Following Rabiah's response, the responsum of R. Ḥayyim ʾOr Zaruʿa (in both its published and manuscript forms) indicates that Rabbenu Baruḵh located Rabbenu Tam's view in *Sefer ha-Yashar*:[32]

> ורבינו ברוך מצא בספר הישר של ר"ת זצ"ל שפירש כן בבבא בתרא פ"ק דאין רשאין בני העיר להסיע על קיצתן אא"כ נאותו כולם.

According to Yeḥiel Kaplan, the attribution by Rabiah of Rabbenu Tam's position to R. Eliezer of Metz (and not to Rabbenu Tam), and the ensuing comment of "another Ashkenazic scholar" (Rabbenu Baruḵh) that he had found this view in Rabbenu Tam's *Sefer ha-Yashar* (but had not heard it directly in

Rabbenu Tam's name), demonstrate that Rabbenu Tam's theoretical view was not in vogue in northern France, and was therefore not known in its original formulations or versions by Rabiah and others.[33]

Although Rabiah was familiar with material in *Sefer ha-Yashar* (as Kaplan notes), it is difficult to argue that Rabiah would have felt compelled to attribute a view held by his teacher R. Eliezer of Metz to anyone else, including Rabbenu Tam.[34] Moreover, manuscript research shows that the formulation of Rabbenu Barukh was not made in connection with the words of Rabiah, as it would appear from the responsum of R. Ḥayyim ʾOr Zaruʿa. In manuscript versions of the ruling of the Mainz court, the citation from *Sefer ha-Yashar* is presented in the name of R. Barukh b. Samuel of Mainz. After his court issued its ruling, which was in consonance with the view of Rabbenu Tam but did not refer to Rabbenu Tam by name, R. Barukh himself located the precise ruling of Rabbenu Tam that was relevant and appended it. The reference to *Sefer ha-Yashar* was made by R. Barukh b. Samuel of Mainz, as a postscript to his own ruling.[35]

Two manuscript versions of *Sefer Mordekhai* from *Bava Batra* also cite the ruling of the Mainz court, apparently from R. Barukh's own (now lost) *Sefer ha-Ḥokhmah*. R. Barukh included this ruling in his work, modestly omitting his own name, but retaining the names of his two judicial colleagues. Before presenting the ruling (in the name of his colleagues), R. Barukh notes that Rabbenu Tam (in *Sefer ha-Yashar*) had preceded them in espousing this position, arguing against the view of Rabiah.[36]

Although R. Barukh of Mainz did not hear this ruling directly from Rabbenu Tam, he (like Rabiah) was a close student (and relative) of R. Eliezer of Metz. R. Barukh's awareness of Rabbenu Tam's position, and his ability to locate it in *Sefer ha-Yashar*, is therefore not surprising.[37] Indeed, manuscript versions of *Mordekhai, Bava Batra* and *Bava Meẓiʿa* note that R. Barukh is also to be included with Raban and R. Joel ha-Levi in requiring *ʾadam ḥashuv* (as Rabbenu Tam did).[38] Thus, Rabbenu Tam's position was well known to his students, and was authoritatively cited, interpreted, and disseminated by them.

IV

There is ample evidence, then, that the requirement for unanimity in communal enactments circulated amongst Rabbenu Tam's students (and their students as well) from the last quarter of the twelfth century through the first quarter of the thirteenth century. Indeed, Rabiah's elaborate halakhic justification of the right of the majority to decide was, by his own admission, a

response to the opposing view that was supported by R. Eliezer of Metz and the rabbinic court in Mainz.[39]

As we shall see shortly, there were two other areas of communal affairs in which the need for unanimous agreement is raised in the first part of the thirteenth century. These are the application of *ḥerem ha-yishuv* and the appointment of a communal cantor. Although great care must be taken in linking the need for unanimity for decision-making in different communal realms, the figures involved, and the reference in one instance to Rabbenu Tam, suggest that the rabbinic scholars who supported the need for unanimity in these other areas were following through on the basic concept enunciated by Rabbenu Tam, if not extending it further.

As a model for this kind of extension or application, it should be noted that Ri, who supported Rabbenu Tam's requirement for unanimity in communal decision-making,[40] also reportedly required unanimity in reassigning communal charity funds for other communal purposes or needs.[41] The allocation of communal charity funds is similar to the taking of communal decisions or *taqqanot ha-qahal* that involved the extraction of monies for the payment of taxes and other services. Indeed, these functions are discussed in close proximity in *Bava Batra* 8b. Thus, Ri's extension of the need for unanimity to the charity situation is readily understood. Indeed, Rabbenu Tam himself required prior unanimous agreement in order for the community to be able to compel its members to give charity.[42] In all of these issues, the need for a proper level of *daʿat maqneh* is crucial.

Others who were aware of Rabbenu Tam's view discussed the need for unanimity in different situations. R. Isaac ʾOr Zaruʿa records a responsum of R. Moses b. Ḥisdai Taku (d. ca. 1240), an active rabbinic figure in central Germany.[43] In his responsum, which discusses the appointment of a communal cantor and the imposition of a ban on settlement (*ḥerem ha-yishuv*), R. Moses notes the opinion sent to him by an older contemporary, R. Simḥah of Speyer (d. ca. 1230), that any individual member of a community can object in regard to the application of this ban by the community, and in regard to the selection of a communal *ḥazzan*. R. Moses expresses consternation at the existence of such a practice: שרי ליה מאריה כיצד נתקיים בהם המנהג הרע הזה. He would agree that if a significant, albeit small, number of people objected (i.e., three or four), the enactment or appointment should not take effect. The objection of a single individual, however, cannot be given that much weight.

To support his contention, R. Moses cites a responsum of R. Isaac b. Asher ha-Levi (Riva) of Speyer (d. ca. 1133), that if a majority of the

community is prepared to allow a newcomer to settle, he may do so. R. Moses also cites a(n unidentified) *Tosafot* text to *Bava Batra* which maintains that

> if Rabbenu Tam had been present, he would not have acknowledged the validity of this *ḥerem* as a means of banning settlement in this manner. The predecessors who implemented this ban did so only in order to keep out ruffians and informers, and those who would not abide by the ordinances of the community or pay their share of the taxes. But against others, there ought not be (such) a *ḥerem*."[44]

R. Moses Taku further states that he had in his possession a written responsum from R. Eliezer of Orleans, who wrote that he had once heard this notion expressed directly by Rabbenu Tam when the latter emerged from the synagogue in Troyes. R. Moses concludes that one must therefore "wonder about the practices that some sinful people have, to exclude certain people from settlement who do participate in the needs of the community and do not restrict the livelihood of others." Such practices are, in short, reprehensible.

The thrust of R. Moses' argument against R. Simḥah of Speyer's ruling is that Rabbenu Tam himself, who favored unanimous agreement in communal govermnent, would not have approved (or did not approve) of the implementation of the *ḥerem ha-yishuv* in this manner. For if a *ḥerem ha-yishuv* had to be enacted unanimously, that would have been self-defeating. The goal of this institution, according to Rabbenu Tam, was to keep out or to remove communal members who were recalcitrant, vicious, or non-cooperative. It was not meant to restrict the settlement of individual merchants per se. If a *ḥerem ha-yishuv* had to be approved by *all* members of the community, this measure could never protect the community from those whom it was designed to eliminate. The *ḥerem ha-yishuv* was never meant as a tool to ban or expel any settler without reason. Thus, R. Moses Taku upbraids those communities in which individuals (or perhaps even the majority) would not allow someone to settle in their midst without cause, assuming that the newcomer contributes to the overall welfare of the community and that the livelihoods of the current residents of the community are not being compromised in an inappropriate manner.

The responsum of R. Moses Taku was written to address the case of the (then) young R. Hezekiah b. R. Jacob of Magdeburg who wished to succeed his father as the cantor of the community but was not nearly as beloved to the members as was his father. This responsum clearly indicates that R. Simḥah of

Speyer did require unanimous approval for a cantor, and that there were communities which followed this approach. In addition, some communities also required unanimity in order to invoke the *ḥerem ha-yishuv*. R. Moses Taku's critique of the need for unanimity in regard to the implementation of the *ḥerem ha-yishuv* is based on the fact that Rabbenu Tam himself, the "master of unanimity," would not have agreed with its usage here.[45] Although R. Moses did not require unanimous agreement with regard to the appointment of the cantor either, he instructs the young successor to "knock on everyone's door and to placate them." At the same time, the rabbinic leaders in the community should also "humble themselves to entreat our brothers who are refusing, to force a change in their opinion, so that they will accept [Hezekiah] as a cohesive body."[46]

R. Moses Taku lived in Regensburg. Recent research has highlighted the presence of a number of Rabbenu Tam's students in that city and area of Germany.[47] Indeed, R. Moses refers specifically to information about Rabbenu Tam's position that he had received from a student of Rabbenu Tam (R. Eliezer of Orleans).[48] R. Simḥah of Speyer, who required unanimity for both the appointment of a cantor and for the implementation of the *ḥerem ha-yishuv* was (like Rabiah and R. Barukh of Mainz) a student of R. Eliezer of Metz, and was undoubtedly aware of the core position held by Rabbenu Tam that mandated unanimity for communal decisions.[49] R. Simḥah wished to extend the need for unanimity to these other areas as well.

The case of R. Hezekiah b. Jacob was also presented to R. Isaac ʾOr Zaruʿa (d. ca. 1250). R. Isaac begins by noting that his teacher R. Simḥah of Speyer ruled in actual cases that the appointment of a cantor required unanimous agreement. Throughout the rest of the Rhineland, according to R. Isaac, it was fairly common that a minority (but apparently more than just one individual) could prevent the appointment of a cantor against the will of the majority.[50]

R. Isaac continues, however, by stating that he had never asked R. Simḥah whether his position was a matter of custom or whether it had the status of formal law (אי מנהגא אי דינא). R. Isaac proceeds to demonstrate at some length that there is a biblically mandated requirement for a cantor to be appointed with the acquiescence of all the members of the community (מתוך אגודה אחת\בהסכמת כולם\מרוצה לכולם). This requirement stems from the fact that the cantor must offer his prayers on behalf of all the members of his community, and that the cantor can be compared to one who offers public sacrifices. R. Isaac concludes by citing "his pious and great" teacher, R. Judah he-Ḥasid, who told R. Isaac that a *shaliaḥ ẓibbur* must be beloved to the congregation. For if not, it will be

dangerous for those who do not love the cantor at the time that he reads the Torah portions of rebuke. Therefore, a cantor should not be appointed without the unanimous agreement of the entire congregation. Once the cantor had been appointed in this manner, he ought not be removed even if two or three or four people say that they do not want him (provided that he has not committed an act of gross malfeasance). Nonetheless, the cantor must endeavor to retain the love of the community by cultivating a modest and humble demeanor.[51]

In practice, then, R. Isaac ʾOr Zaruʿa supported the view of R. Simḥah of Speyer. But whereas R. Simḥah linked the need for unanimity regarding the appointment of a cantor to other aspects of communal policy-making, including the enactment of the *ḥerem ha-yishuv*, R. Isaac ʾOr Zaruʿa stressed the unique aspects of public prayer and worship that mandated the need for unanimity in this particular instance, citing the similar view of R. Judah he-Ḥasid.[52]

Interestingly, *Sefer Ḥasidim* does reflect the approach to communal government favored by Rabbenu Tam with regard to the implementation of a *ḥerem*. According to *Sefer Ḥasidim*, the *ḥazzan* cannot recite the phrase *ʿal daʿat ha-qahal* when a *ḥerem* is pronounced until all members agree to impose it.[53] When a *ḥerem* is pronounced, *Sefer Ḥasidim* instructs all of the righteous (Pietists) to join with the community and sign the document. If, however, one has powerful, recalcitrant individuals (אלמים) in his family who will probably not observe the *ḥerem*, he should not sign since he will not be able to assist in the enforcement of the *ḥerem*.[54] *Sefer Ḥasidim* is also against the compelling of individuals by the leadership of the community to contribute to charity.[55] Given the presence in Regensburg of a number of Rabbenu Tam's students, it is likely that R. Judah he-Ḥasid was aware of Rabbenu Tam's views,[56] although Rabbenu Tam is not referred to by name in *Sefer Ḥasidim*.[57]

V

R. Meir of Rothenburg (d. 1293) maintained the conventional view (held by Rabiah), that the majority of the members of a community could set communal policy in most cases.[58] Nonetheless, he agreed with Rabbenu Tam that unanimity was required in the apportioning of tax encumbrances because of problematic *qinyan* issues. According to R. Meir, the need for unanimity in these situations was due to the fact that tax obligations, which were assigned verbally, were considered a *qinyan devarim* whose level of efficacy was even less than that of *ʾasmakhta*, and would otherwise not be binding. Like Rabbenu Tam, R. Meir considered the case of the butchers in *Bava Batra* 9a as a situation that was based solely on a verbal commitment where the agreement was nonetheless

binding. This was so because the agreement was made by all those involved. R. Meir also used his understanding of *Bava Batra* 9a, as Rabbenu Tam did, to explain how communal enactments that were enacted only through *qinyan devarim* were binding according to *Bava Batra* 8b, although R. Meir does not make specific reference to an *ʾadam ḥashuv* (as Rabbenu Tam did). According to R. Meir, the *daʿat maqneh* amongst the butchers was the knowledge that showing sensitivity to others was a valued characteristic that would earn good will for future endeavors. R. Meir notes that he had not heard initially of Rabbenu Tam's ruling that required unanimity, but had ruled in this manner on the basis of his own reasoning.[59]

This is not the only instance in which R. Meir of Rothenburg was unaware (at least initially) of an important view of Rabbenu Tam, even one that had been formulated clearly and unambiguously.[60] Moreover, the non-systematic way that rabbinic rulings were preserved in Ashkenaz during the high Middle Ages meant that a later authority who did not have a direct tutorial link to his predecessor might well have been unaware of a particular position.[61] As we have seen, Rabbenu Tam's position regarding unanimity remained for the most part within the circle of his students, and was occasionally even renamed as a position of theirs. R. Meir is clearly aware of the position itself, if not initially of its precise attribution. In another responsum, R. Meir again utilizes Rabbenu Tam's interpretations of *Bava Batra* 8b (without attribution) to conclude that unanimous agreement allowed the apportionment of taxes based on a verbal agreement, without any formal *qinyan*.[62]

In this same responsum, Maharam also permits the *tuvei ha-ʿir* to apportion taxes, but only if they had been selected by a unanimous vote. If they were selected, however, by only part or even most of the community, their ordinances concerning tax apportionments could not be effective according to R. Meir without the approval of an *ʾadam ḥashuv*.

In another responsum, R. Meir cites the formulation of Rabbenu Tam (which he refers to as a responsum), that a decision which extracts money from a member of the community made by the *tuvei ha-ʿir* who were elected unanimously is binding.[63] In non-taxation matters, R. Meir held that a majority of the *tuvei ha-ʿir* could impose monetary fines and restrictions.[64] But even for non-taxation issues, R. Meir preferred that the *tuvei ha-ʿir* be selected by unanimous agreement. Only if unanimity was impossible to achieve does R. Meir recommend that the members of the community conduct communal affairs on the basis of rule by the majority.[65]

Like Rabbenu Tam, R. Meir's insistence upon unanimity in the cases involving tax exactions reflected his concern for ensuring the presence of sufficient *da'at maqneh* to bind all the parties involved. To be sure, Maharam felt (in consonance with the view of Rabiah) that a majority was sufficient to bind the community in regard to communal decisions which he classified as matters of *migdar milta*. This category consisted of issues that were governed by talmudic law, or were related to religious life and practice. As I. A. Agus has characterized them, enactments in this category were intended to improve the religious, social, and economic status of the community as a whole.[66] Given the generally beneficial nature of this legislation, the agreement of a majority was deemed sufficient.

The other sphere of communal activity consisted of issues that were essentially secular. In addition, it often included situations where individuals stood to lose assets due to the interests of other members of the community. Taxation matters were the major component of this category. To ensure that a proper level of prior authorization was achieved, R. Meir agreed with Rabbenu Tam's approach in this area, in order to bind all participants by means of unanimous agreement.[67]

VI

The requirement for unanimity in communal government was never dominant in Ashkenaz during the twelfth and thirteenth centuries. On the other hand, this study has demonstrated that it was certainly present in both the writings of important halakhists and in practice. Although there are ambiguities in some of Rabbenu Tam's formulations and their literary sources are not always identified, his students and successors in northern France and Germany were aware of his view, and shared it with others.

Rabbenu Tam's position engendered debate and discussion. Ashkenazic halakhists considered Rabbenu Tam's approach carefully, and some even attempted to require unanimous agreement in areas which Rabbenu Tam did not. That Rabbenu Tam wished to implement unanimity in communal government in a real sense, and was not merely proposing the illusion of unanimity achieved through the capitulation of the minority to the majority,[68] is further attested to by the fact that the opposing views of Rabbenu Tam and Rabiah regarding the power of the majority are the subject of continued debate during the late medieval period among Ashkenazic halakhists such as R. Jacob Molin (Maharil), R. Israel Isserlein, and R. Joseph Colon.[69]

Yeḥiel Kaplan points to Riva (R. Isaac b. Asher ha-Levi of Speyer) as another Ashkenazic rabbinic scholar who considered unanimity in communal decision-making as a kind of legal fiction, achieved when the majority overcomes the minority: "And Riva also stated that if they [the community] agreed to enact a decree, and one [member] said, 'I do not agree with your ordinance,' he must [recant his objection and] agree with them."[70] As Kaplan notes, a simple reading of this passage would suggest that according to Riva, actual unanimity in communal decision-making was at least desirable, if not absolutely necessary. Nonetheless, Kaplan argues that another ruling of Riva (mentioned earlier),[71] that the right of settlement can be extended by the majority without the capitulation of the minority, demonstrated that Riva in the passage just cited does not require unanimous agreement. Rather, Riva is indicating in this ruling that any disagreement by the minority is considered to be nonexistent, since the rule of the majority nullifies it.

The interpretation of Rabbenu Tam's views offered in this study suggests that the simpler reading of Riva's formulation ought to be retained. Whether Rabbenu Tam would have required unanimous agreement with regard to questions of settlement was a matter of discussion; R. Moses Taku (and others) maintained that he would not.[72] It is therefore rather unlikely that Rabbenu Tam's position on imposing a *ḥerem ha-yishuv* (which possessed its own particular goals and parameters in any event) dictated or defined the requirement for unanimity in other areas of communal decision-making.[73] Similar reasoning can be applied to the approach of Riva, a student of Rashi whose *Tosafot* reached Rabbenu Tam through their mutual student R. Isaac b. Mordekhai (Rivam) of Regensburg. Riva's view on the right of settlement did not determine his view on the requirement of unanimity with respect to communal ordinances in general. The straightforward reading of Riva's ruling in the matter of communal enactments indicates that there was at least one older German rabbinic authority who felt, as Rabbenu Tam and a number of his students did, that unanimous agreement was required or at least preferred for most kinds of communal decisions.[74]

NOTES

[1] Y. Baer, "Ha-Yesodot ve-ha-Hathalot shel 'Irgun ha-Qehillah ha-Yehudit Bimei ha-Benayim," *Zion* 15 (1940): 1-41. Baer (38, n. 31) rejects the claim made by I. Agus that the responsum found in *Sefer Kol Bo*, sec. 142, which espouses the principle of majority rule, dates from the eleventh century. For Agus' response, see his "Democracy

in the Communities of the Early Middle Ages," *JQR* 43 (1952): 153-171. More recent scholarship has demonstrated that Agus' claim concerning *Kol Bo* 142 is correct, as is his broader claim about the prevalence of the principle within the communities of early Ashkenaz. See Avraham Grossman, "Yaḥasam shel Ḥakhmei Ashkenaz ha-Rishonim ʾel Shilton ha-Qahal," *Shenaton ha-Mishpat haʿIvri* 2 (1975): 175-99; idem., *Ḥakhmei Ashkenaz ha-Rishonim* (Jerusalem, 1981), 189-93; and Haym Soloveitchik, *Sheʾelot u-Teshuvot ke-Maqor Histori* (Jerusalem, 1990), 102-5.

[2] See, e.g., Shalom Albeck, "Yaḥaso shel Rabbenu Tam li-Veʿayot Zemanno," *Zion* 19 (1954): 104-41; E. E. Urbach, *Baʿalei ha-Tosafot* (Jerusalem, 1955), esp. 55-80 (=*Baʿalei ha-Tosafot* [Jerusalem, 1980[4]], 1:60-93); H. H. Ben Sasson's review of Urbach in *Beḥinot be-Biqqoret ha-Sifrut* 9 (1956): 46-49; Jacob Katz, *Exclusiveness and Tolerance* (Oxford, 1961), esp. chapters 3-5; idem., *Halakhah ve-Qabbalah* (Jerusalem, 1986), 2-3, 344-46; and Israel Ta-Shema, *Halakhah, Minhag u-Meziʾut be-Ashkenaz* (Jerusalem, 1996), 19-35. See also Samuel Morell, "The Constitutional Limits of Communal Government in Rabbinic Law," *Jewish Social Studies* 33 (1971): 90-92, and Simcha Goldin, *Ha-Yiḥud ve-ha-Yaḥad* (Tel Aviv, 1997), 146-49. Although Rabbenu Tam tended to defend regnant practices, there were instances (such as the one before us) in which he rejected (or attempted to modify) the status quo. This was especially so with regard to *minhagim* that he felt were inappropriate.

[3] See Yeḥiel Kaplan, "Qabbalat Hakhraʿot ba-Qehillah ha-Yehudit le-Daʿat Rabbenu Tam la-Halakhah u-le-Maʿaseh," *Zion* 60 (1995): 277-300. See also idem., "Rov u-Miʿut be-Hakhraʿot ba-Qehillah ha-Yehudit Bimei ha-Benayim," *Shenaton ha-Mishpat haʿIvri* 20 (1995-97): 232.

[4] An earlier version of this segment of the present study, placed within the larger context of Ashkenazic rabbinic thought, can be found in my "Unanimity, Majority, and Communal Government in Medieval Ashkenaz," *PAAJR* 58 (1992): 79-105.

[5] See *Sefer Mordekhai* to *Bava Batra*, sec. 480; *Sefer Mordekhai* to *Bava Qamma*, sec. 179; and Kaplan, "Qabbalat Hakhraʿot," 280-82, for manuscript parallels.

[6] See Grossman and Soloveitchik, above, n. 1.

[7] See, e.g., Urbach, *Baʿalei ha-Tosafot*, 1:70, and Kaplan, 284-85.

[8] See the sources cited above, n. 5; the responsum of Rabbenu Tam cited in *Sefer Rabiah* (ms. Bodl. 637, sec. 1025, fol. 271v), and by R. Meir of Rothenburg (in I. Z. Kahana, "Teshuvot R. Yiẓḥaq ʾOr Zaruʿa u-Maharam ben Barukh," *Sinai* 8 [1941]: 273, from ms. Bodl. 844); *Teshuvot Maimoniyyot le-Sefer Nashim*, #17 (=R. Meir b. Barukh of Rothenberg, *Responsa*, ed. Prague, #268); and Kaplan, 279-80, 282, for the variants within published rabbinic texts.

[9] See, e.g., *Sefer Mordekhai*, *Bava Qamma*, sec. 179:

דהא דאמרינן ורשאין בני העיר להסיע על קיצתן הכי פירושא ורשאין להפסיד ולהסיע ממון את העובר על הקצבה שקצצו והחנו ביניהם לדעת כלם, שנתרצה בתחלת החקנה ועתה עובר עליה והוא שעשאוה בחבר עיר כי הנהו [תרי] טבחי שנתרצו וחזר בו האחד והואיל וליכא קנין וכמו דבר שלא בא לעולם הוא צריך חבר עיר. וכן מפורש בתוספתא על מי שיראה לשלטון או להגמון יחן כך וכך. אבל להפקיע שלא מדעת בעלים אסור אם לא על ידי הפקר בית דין או ציבור. וקודם מעשה זה אני מורה כך.

Variant readings of this passage, in manuscript and first edition, are conveniently collected in Avraham Halperin, *Sefer Mordekhai ha-Shalem le-Massekhet Bava Qamma* (Ph.D. Dissertation, Hebrew University, 1978), 2:226. And also see *Teshuvot*

Maimoniyyot le-Sefer Nashim, #17, in which Rabbenu Tam maintains that local custom cannot be relied upon to determine the standard *tosefet ketubah*, unless it has been properly accepted or agreed upon:
וכל האומר אחר מנהג יש לילך שוטה גמור הוא אם לא קיימו בני העיר ביניהן לומר כל הנושא בתולה יוסף לה כך וכך ולאלמנה ובחבר עיר כדמוכח שמעתא דרשאין בני העיר להסיע על קיצתן וצריך דעת כולם אבל ממילא לא.

On the linkage of *Bava Batra* 9a and 8b in subsequent medieval halakhic literature, see Menaḥem Elon, *Ha-Mishpat ha-ʿIvri* (Jerusalem, 19883), 1:580-84. According to R. Menaḥem ha-Meiri and R. Isaac bar Sheshet (Ribash), *Bava Batra* 8b should be taken separately, and an *ʾadam ḥashuv* is not required to ratify communal enactments. R. Asher b. Yeḥiʾel (Rosh) and R. Solomon ibn Adret (Rashba) ruled, on the other hand, that an *ʾadam ḥashuv* who oversees the community must be consulted, as mandated by the *sugya* of *Bava Batra* 9a.

[10] There are variant readings in regard to how many butchers were involved (הנהו [בי] תרי טבחי, or an unspecified number, והנהו טבחי); see the above note. Although a group larger than two would certainly render the need for unanimity more significant, it should be noted that R. Eliezer of Metz (as cited by his student Rabiah, below, n. 30) linked the need for unanimity in communal decision-making to the case of the two butchers:
אם כולם נאותו יחד והוא עמהם...דומיא דהנהו תרי טבחי אבל בלא דעתו לא אלימי לעשות.
Regarding the need for unanimity in *Bava Batra* 9a, cf. *Ḥiddushei ha-Ramban* and *Ḥiddushei ha-Ritva*, ad loc.; Menaḥem Elon, *Ha-Mishpat ha-ʿIvri*, 1:582, n. 117; and Shalom Albeck, "Yaḥaso shel Rabbenu Tam," 31-34.

[11] See also the formulation of Ri, below, n. 24.

[12] See *Haggahot Maimoniyyot*, *hilkhot mekhirah* 14:11[3]. Raban's name appears in the standard editions as well as in the Constantinople edition of *Mishneh Torah/Haggahot Maimoniyyot*. It is also found in ms. Budapest/Kaufmann A77 (book eleven), fol. 38v; ms. Bodl. 610, fol. 73v; ms. Bodl. 591, fol. 71v; and in a private manuscript labeled New York 6, fol. 213r [film #19512], in the collection of the Institute for Microfilmed Manuscripts at the National and University Library in Jerusalem.

[13] *Sefer Mordekhai*, *Bava Batra*, sec. 483.

[14] Unlike Raban and R. Joel, and in consonance with his concerns regarding *qinyanim*, Rabbenu Tam held that an *ʾadam ḥashuv* was necessary for the ratification of restrictive agreements between members of a community even where these restrictions were not connected to larger communal concerns, and affected only a portion of the community:
וכן כתב ר"ת בתשובתו דרשאין בני העיר להסיע על קיצתן אפי' בדברים דלא שייכ' לכל הקהל אלא ליחידים.

See Kahana, above, n. 8. See also Yaʿakov Blidstein, "Le-Hilkhot Ẓibbur shel Yemei ha-Benayim: Meqorot u-Musagim," *Dinei Yisraʾel* 9 (1978-80): 163, n 121. Also, Rabbenu Tam appears to have required this approval even if a ranking scholar was not immediately available locally. See *Sheʾelot u-Teshuvot Mahariq* #179 (fols. 209-10); Yiẓḥaq Handelsman, "Hashqafotav shel Rabiah ʿal Darkei Hanhagat ha-Qehillot be-Ashkenaz Bimei ha-Benayim," *Zion* 48 (1983): 43, n. 115; and cf. *Perushei Rabbenu Gershom le-Bava Batra*, ed. Makhon Sifrei ʾOr ha-Ḥayyim (Bnei Brak, 1988), 21 (s.v. *hekha de-lekka ʾadam ḥashuv*). For other kinds of cases in which Rabbenu Tam required an actual instrument of *gemirat daʿat* rather than relying on a presumption of obligation, see, e.g., Sinai Deutsch, "Gemirat Daʿat be-Hitḥayvuyyot ba-Mishpat ha-ʿIvri," *Dinei*

Yisra'el 3 (1972): 216-24, and my "Unanimity, Majority, and Communal Government in Ashkenaz," 94, n. 34.

[15] With regard to the forced giving of charity, Rabbenu Tam requires unanimity alone, without the need for an *'adam ḥashuv* as well. See *Sefer 'Or Zaru'a, hilkhot ẓedaqah*, sec. 4; *Mordekhai le-Bava Batra*, sec. 490; *Tosafot Bava Batra* 8b, s.v. *'akhfeh le-R. Natan*; and *Tosafot Ketubot* 49b, s.v. *'akhfeh Rava*. The inability of the community to compel an individual to give charity, without the unanimous consent of all of the community to this process, can also be viewed as a *da'at maqneh* issue. The distinction between compelling the giving of charity and other communal enactments is that according to a number of medieval authorities, *nidrei ẓedaqah*, like *nidrei heqdesh*, create their own *shi'bbud mamon* or *qinyan*. See, e.g., Naḥmanides's *Milḥamot ha-Shem* to *Bava Qamma* 36b, and *Qeẓot ha-Ḥoshen* to *Ḥoshen Mishpat* 290, sec. 3. Thus, only unanimity is required to enact the communal charity policy. Cf. Blidstein, 158, n. 103.

[16] See below, nn. 28, 36.

[17] See the responsum of Rabbenu Tam, as cited in ms. Bodl. 637, and ms. Bodl. 844 (above, n. 8).

[18] It is striking that Rabbenu Tam never actually uses the talmudic term *'adam ḥashuv* but employs instead the term חבר עיר. On the connotation of the latter term, see my "Unanimity, Majority, and Communal Government in Ashkenaz," 97, n. 39. Cf. S. Goldin, *Ha-Yiḥud ve-ha-Yaḥad*, 222, n. 19; and Y. Kaplan, "Samkhut u-Ma'amad Manhigei Ẓibbur ba-Qehillah ha-Yehudit Bimei ha-Benayim," *Dinei Yisra'el* 18 (1995-96): 272-4.

[19] See Kaplan, "Qabbalat Hakhra'ot," 284-85, and the literature cited there.

[20] As recorded in *Sefer 'Or Zaru'a, hilkhot ẓedaqah*, sec. 4, Rabbenu Tam intimates that unanimity is not required to compel an individual to so something that is unequivocally for the good of the (greater) community (לתקנת הקהל). See also *Mordekhai, Bava Batra*, sec. 480; Morell, "The Constitutional Limits of Communal Government," 93-95; and Blidstein, "Hilkhot Ẓibbur," 163. Rabbenu Tam also ruled that unanimity was not required to enforce a *ḥerem ha-yishuv* against someone whose presence was detrimental to the community. See below, nn. 44, 65; Kaplan, "Qabbalat Hakhra'ot," 293-94.

[21] See *Teshuvot Maharam* (Lemberg), #423, and Avraham Grossman, *Ḥakhmei Ẓarefat ha-Rishonim* (Jerusalem, 1995), 60-61, who also notes Maharam's reference to unanimity in tax decisions (*mi-da'at kulam*, in *Mordekhai, Bava Batra*, 481), based on R. Joseph. See also S. Albeck, "Yaḥaso shel Rabbenu Tam," 129; M. Elon, *Ha-Mishpat ha-'Ivri*, 1:580; Goldin, *Ha-Yiḥud ve-ha-Yaḥad*, 220, n. 4; Kaplan, "Rov u-Mi'ut," 232; and H. Soloveitchik, *She'elot u-Teshuvot ke-Maqor Histori*, 76.

[22] See E. E. Urbach, *Ba'alei ha-Tosafot*, 1:97; Grossman, 47, 54, 74; and cf. Rami Reiner, *Rabbenu Tam: Rabbotav (ha-Ẓarefatim) ve-Talmidav Benei Ashkenaz* (M.A. Thesis, Hebrew University, 1997), 47-55.

[23] Cf. below, at n. 74. The reason given by R. Joseph Tov Elem for not allowing an individual to be compelled to give charity is also similar to the position taken by Rabbenu Tam. See *Mordekhai, Bava Batra*, sec. 490; above, n. 15; and below, n. 55. Cf. Kenneth Stow, "Holy Body, Holy Society: Conflicting Medieval Structural Conceptions," in *Sacred Space*, ed. B. Z. Kedar and R. J. Z. Werblowsky (Jerusalem, 1998), 162-64.

[24] R. Eliezer of Metz is cited by his student Rabiah (in a responsum) as espousing this position, as preserved in *She'elot u-Teshuvot R. Ḥayyim ʾOr Zaruʿa*, #222:
והארכתי לפרש לפי שיש מרבותי שהיו אומרים דהא דתניא רשאין בני העיר לקיים תנאנז והסיע על קיצתם ה"מ אם כולם נאותו יחו' והוא עמהם ושוב עבר על תנאם דומיא דהנזזו חרי טבחי אבל בלא דעתו לא אלימי לעשות, והפקר בית דין הפקר לא שייך הכא. כך אמר מורי הזקן ממיץ ואני את אשר לבבי כתבתי...אליעזר בן יואל הלוי.
Cf. below, n. 36. Ri's view is found in *Sefer ʾOr Zaruʿa*, pt. 3, *Pisqei Bava Qamma*, 458:
פי' רבינו יצחק בן שמואל דהכי קאמר רשאין להסיע ממון ע"פ תנאי שעשו כבר כמו רשאין בני העיר להסיע על קיצתן דפ"ק דבבא בתרא. אבל אין נראה לי לפרש שרשאין להתחיל התנאי לגמרי שהיאך יתייבוהו ליתן חמור בעל כרחו.
See also *Tosafot Bava Qamma* 116b, s.v. *ve-reshaʿim ha-ḥammarin le-hatnot beinehem*, and cf. Albeck, "Yaḥaso shel Rabbenu Tam," 131-32.

[25] Although Rabbenu Tam specifically prohibited the community from compelling its members to give charity without prior agreement (see above, n. 15), R. Joseph mentions only the interpretation of *Bava Batra* 8b by Rabbenu Tam that mandates unanimity, not the specific application of charity. Cf. Kaplan, "Qabbalat Hakhraʿot," 294. Regarding Riẓba's response, see also *Sefer ʾOr Zaruʿa*, *hilkhot ẓedaqah*, sec. 4; and cf. *Mordekhai*, *Bava Batra*, sec. 502; ms. Bodl. 668, fol. 47v; and ms. Bodl. 666, fol. 45d.

[26] See Urbach, 1:266, n. 31. See also *Shitah Mequbbeẓet* to *Bava Qamma*, I, 116b, s.v. *ve-reshaʿim ha-ḥammarin*, for an anonymous version of Ri's formulation, and cf. Kaplan, 287, n. 47. Newer editions of the *Shitah* cite this passage from *Tosafot Shanẓ*.

[27] See R. Ḥayyim Eliezer ʾOr Zaruʿa, *Responsa*, #222 (fol. 74a-b). It should be noted that the Mainz court read *Bava Batra* 9a as a case where only two butchers out of the larger group had agreed. If all had agreed, however, the court would not have been concerned with issues of fairness. Cf. above, n. 10. On the other hand, the court held (against the view of Rabbenu Tam; see above, n. 14) that an *ʾadam ḥashuv* had no role in approving conditions made between individuals that did not have communal ramifications.

[28] Kaplan (298, n. 86) cites a passage found in the *Sefer Mordekhai* (*Bava Batra*, sec. 482) that the court at Mainz expressed a view which was "akin to that of Rabbenu Tam":
ובאותו דבר השיבו...וכתבו כעין דברי רבינו תנז
in regard to the need for unanimity. Kaplan notes that R. Joseph Colon (Maharıq) held, on the basis of the assessment of the *Mordekhai* text, that the Mainz court (like Rabbenu Tam) only allowed the majority to rule in the limited instance of an individual who was ready to disobey the community. Kaplan feels more inclined to agree with Y. Handelsman, who argues ("Hashqafotav shel Rabiah," 27) that the Mainz court would allow for the rule of the majority, except in situations where a community policy was inherently unfair to the individual. As we shall see, however, the comparison to the view of Rabbenu Tam made in the *Mordekhai* passage was actually formulated by a member of the Mainz court itself, R. Barukh b. Samuel of Mainz (in his *Sefer ha-Ḥokhmah*, below, nn. 35-36), suggesting a fairly high degree of correlation between the views of Rabbenu Tam and the Mainz court. In addition to the points held in common that have been noted, Rabbenu Tam also allowed the majority to prevail in cases where an individual was acting against the best interests of the community; see above, n. 20.

[29] See Handelsman, 24-27.

[30] דהא דתניא רשאין בני העיר לקיים תנאם ולהסיע על קיצתם הני מילי אם כולם נאותו יחו' והוא עמהם ושוב עבר על תנאם דומיא דהנהו תרי טבחי אבל בלא דעתו לא אלימי לעשות.

[31] According to Rabiah, the *tuvei ha-ʿir* were empowered to impose *hefqer beit din hefqer*. He was apparently unconcerned about the *qinyan* or *daʿat maqneh* issues raised by Rabbenu Tam. See my "Unanimity, Majority, and Communal Government," 99-100, and Handelsman, "Hashqafotav shel Rabiah," 41-44. Despite their strong disagreement concerning the power of the majority in communal government, Rabiah cites a responsum of Rabbenu Tam in support of his contention that properly selected *tuvei ha-ʿir* were fully empowered to carry out their policies. See ms. Bodl. 637 (*Sefer Rabiah*), sec. 1025 (fol. 271v), cited by Kaplan, 279-80, and cf. above, n. 8.

[32] *Sheʾelot u-Teshuvot R. Ḥayyim ʾOr Zaruʿa*, #222 (end) = ms. Frankfurt $4^{0}4$, fol. 170r, sec. 199 (end).

[33] Kaplan, 293-94.

[34] The difficulties in regard to the composition and diffusion of *Sefer ha-Yashar* tend to diminish the likelihood that Rabiah was aware of this passage. One the other hand, Rabiah was fully aware of Rabbenu Tam's responsum on the power of the *tuvei ha-ʿir*, in which Rabbenu Tam required the *tuvei ha-ʿir* to issue their policies on the basis of unanimous agreement; see above, n. 31.

[35] See ms. London Montefiore 130, fols. 15r-v (sec. 95). The question of the Worms court is presented to the Mainz court, which issues its ruling in the names of R. Judah b. Qalonymus, R. Moshe b. Mordekhai, and R. Barukh b. Samuel of Mainz. (The responsum of Rabiah is not included.) This is followed directly by the addendum: ואני ברוך מצאתי בספר הישר של ר"ת וכו'. In ms. Montefiore 129, fol. 82r, the following is found in a marginal note attached to the ruling of the Mainz court:

ובסוף זאת התשובה ראיתי כתוב: ואני ברוך ראיתי בספר הישר בשם ר"ת וכו'.

See Simcha Emanuel, *Sifrei Halakhah ʾAvudim shel Baʿalei ha-Tosafot* (Ph.D. Dissertation, Hebrew University, 1993), 139-40; and idem, "R. Barukh mi-Magenza—Demuto shel Ḥakham ʿal pi Seridei Ketavav," *Qovez Meḥqarim le-Zekher Prof. E. E. Urbach* (in press), n. 83.

[36] See ms. Budapest/National Museum $2^{0}1$, fol. 154c-155a; ms. Vienna 72, fol. 127a, citing *Sefer ha-Ḥokhmah*; ms. Bodl. 666, fol. 43b; and ms. Montefiore 129, fol. 82r. (A portion of the Mainz ruling is cited from *Sefer ha-Ḥokhmah* in the name of R. Barukh alone, by *Sefer Mordekhai* to *Bava Meziʿa*, ms. Budapest $2^{0}1$, fol. 123c; see Simcha Emanuel, *Sifrei Halakhah ʾAvudim*, 140, n. 76.) The printed *Mordekhai Bava Batra* passage (secs. 482-83) does not mention *Sefer ha-Ḥokhmah* as the source of this ruling (and the printed *Bava Meziʿa* passage also omits the specific reference to R. Barukh); cf. above, n. 28. (On the prevalence of sections of *Sefer ha-Ḥokhmah* included in *Sefer Mordekhai*, which the printed text often does not acknowledge, see Emanuel, 127, 134.) In light of this material, one wonders whether the comment on the initial formulation of Rabbenu Tam's position (ואני מצאתי), cited in *Mordekhai Bava Batra* 8b (sec. 480, end; and see also ms. Bodl. 666, fol. 42c, corrected by ms. Budapest $2^{0}1$, fol. 153d-154a, and ms. Vienna 72, fol. 125c; cf. Kaplan, 280-81), is also from the version of *Sefer ha-Ḥokhmah*.

[37] On the relationship between R. Eliezer of Metz and R. Barukh of Mainz, see Urbach, 1:426, and Emanuel, 123-24, 128, n. 5, 136.

[38] See ms. Budapest $2^{0}1$, fols. 123c, 154d; ms. Vienna 72, fol. 127b. The printed *Mordekhai* texts (*Bava Batra*, sec. 483, and *Bava Meziʿa* 427) omit this reference.

[39] Kaplan makes a sharp distinction between the twelfth and the thirteenth centuries in his studies, blurring the fact that Rabiah's ruling was largely in response to what preceded it. See, e.g., Kaplan, "Rov u-Miʿut be-Hakhraʿot," 225, 238; "Samkhut u-Maʿamad Manhigei Ẓibbur," 273-74, 278-79; and below, n. 51. For reservations regarding Y. Handelsman's interpretation of the point of contention between Rabbenu Tam and Rabiah (whether the process of communal government should be controlled by rabbinic or lay groups), see my "Unanimity, Majority, and Communal Government," 98, 42.

[40] See above, n. 24.

[41] See *Pisqei Halakhot le-R. Menaḥem Reqanati* (Warsaw, 1912), sec. 483 (fol. 67): פי' ר"י דוקא כל בני העיר אבל גבאי לחודיה לא.

Cf. *Mordekhai, Bava Batra*, secs. 491-92; *Tosafot Bava Batra* 8b, s.v. *ve-lishnotah* (citing Rabbenu Tam); and *Tosafot Bava Meẓiʿa* 78b, s.v. *magvat Purim.*

[42] See above, n. 15.

[43] See *Sefer ʾOr Zaruʿa*, pt. 1, responsum 115 (fol. 21a) (= ms. British Museum 530-531, Or. 2859/2860, sec. 179); R. Meir of Rothenburg, *Responsa* (Lemberg), #111; *Mordekhai, Bava Batra*, sec. 517. On this responsum, see E. E. Urbach, *Baʿalei ha-Tosafot*, 1:420-21; 2:564; Aptowitzer, *Mavoʾ la-Rabiah*, 222-23; Goldin, *Ha-Yiḥud ve-ha-Yaḥad*, 149-50; and Simon Schwartzfuchs, "Hishtalsheluto shel Ḥerem ha-Yishuv—Reʾayah mi-Zavit Aḥeret," *Sefer ha-Yovel li-Shelomoh Simonsohn* (Tel Aviv, 1993), 111. Goldin notes that R. Meir of Rothenburg (who agreed with Rabbenu Tam about the need for unanimity in allocating tax liabilities; see below, n. 59), disagrees with the need for unanimity in regard to the appointment of a *ḥazzan*. Cf. below, nn. 53, 62. On the career of R. Moses Taku, see Urbach, 1:420-25, and I. Ta-Shema, "On the History of the Jews in Twelfth- and Thirteenth-Century Poland," *Polin* 10 (1997): 308-9.

[44] כי אם וויה רבינו חם, לא היה מודה בחרם הישוב. כי אם קדמונינו לא הנהיגו חרם הישוב אלא בשביל אלמים ומוסרים ושאינם רוצים לפנות לתקנת הקהל ושאינם רוצים לפרוע עמהם מס. אבל על אחרים אין חרם.

Urbach (*Baʿalei ha-Tosafot*, 1:91) holds, against Louis Rabinowitz, that Rabbenu Tam was strongly opposed to the use of *ḥerem ha-yishuv* as a means of limiting or banning settlement for economic reasons. Individual merchants could not be kept out by the community. Although Rabbenu Tam responds in his *Sefer ha-Yashar* (ed. S. Rosenthal, secs. 71-72) to a question about the right that one member had to keep another individual out of the community, he rules only in regard to the prerogatives of a rabbinic court that had gotten involved, and not about the validity of the ban itself. Cf. Schwartzfuchs, 109; and S. Albeck, "Yaḥaso shel Rabbenu Tam," 133-34. For Rabiah's opposing view about the scope of the *ḥerem ha-yishuv*, see Handelsman, "Hashqafotav shel Rabiah," 45, and S. Goldin, *Ha-Yiḥud ve-ha-Yaḥad*, 164-67. With regard to the position of Riva, see H. Soloveitchik, *Sheʾelot u-Teshuvot ke-Maqor Histori*, 105; idem, "Three Themes in the *Sefer Ḥasidim*," *AJS Review* 1 (1976): 352-53, n. 132; and below, nn. 70-71.

[45] On the view of R. Meir of Rothenburg, see S. Goldin, *Ha-Yiḥud ve-ha-Yaḥad*, 168-72; and below, n. 53.

[46] וצריך הוא הבחור בן הרב להקיש על דלחי כל אחד ולפייסו ולרצות ולהשוות את עצמו לאהוב לו ולמשרת ולהיות ניאות בעבודתו....וכן רבותינו שעמו...גם הם יכניעו עצמם לבקש מאחינו הממאנים שיכופו דעתם ויחרצו באגודה.

[47] See below, n. 56.

[48] See Urbach, 1:44.

[49] See Victor Aptowitzer, *Mavo' la-Rabiah*, 222, 246; Urbach, 1:411; Rami Reiner, *Rabbenu Tam*, 111, n. 382 (according to Reiner, R. Simḥah studied with R. Eliezer when the latter was in Mainz); and see my *"Peering through the Lattices": Mystical, Magical and Pietistic Dimensions in the Tosafist Period* (Detroit, 2000), 102-3, n. 16.

[50] *Sefer 'Or Zaru'a*, responsum #114:
אמת ואמונה כי הורה מורי רבינו שמחה זצ"ל הלכה למעשה שיחיד יכול לעכב חזנות שלא יעשה שליח ציבור כי אם מאגודה אחת. גם פשוט בכל רינוס שהמיעוט מעכב על הרוב מלקבוע שליח ציבור. וראיתי הרבה מעשים ברינוס שהמיעוט עיכב על הרוב מלקבוע שליח ציבור.

[51] See Kaplan, "Rov u-Mi'ut," 257-59. Kaplan stresses that these attempts to impose unanimity began only in the thirteenth century. But as we have just seen, it is impossible to detach these developments from what had come before (and especially from the position of Rabbenu Tam), in the second half of the twelfth century.

[52] Note the negative reactions to the position of R. Isaac 'Or Zaru'a, cited in Kaplan, ibid.

[53] *Sefer Ḥasidim* (Parma), ed. Judah Wistinetzki (Frankfurt, 1924), sec. 1297. See also *SḤP*, 1234; Yiẓḥak Handelsman, *Temurot be-Hanhagat Qehillot Yisra'el be-Ashkenaz Bimei ha-Benayim meha-Me'ah ha-Yod Alef 'ad ha-Me'ah ha-Tet Vav* (Ph.D. Dissertation, Tel Aviv University, 1980), 283-84; and the passage from R. Eliezer of Worms' *Seder ha-Teshuvah* cited in *Sefer Mordekhai* to *Shevu'ot*, sec. 755:
אל יאמר אדם לא שמעתי החרם ולא כללתי בה עצמי.
R. Meir of Rothenburg also appears to have required unanimous agreement to pronounce a *ḥerem*. See I. A. Agus, *R. Meir of Rothenburg* (Philadelphia, 1947), 1:110-112, and below, n. 65. On the other hand, Rabiah (in his disagreement with the Mainz rabbinic court; see above, n. 27), specifically includes the implementation of a *ḥerem* as one of those communal enactments that required the approval of only a majority of its members. See Ya'akov Blidstein, "Hilkhot Ẓibbur," 149-50.

[54] *SḤP*, secs. 1294-95. See also Y. Baer, "Ha-Megamunah ha-Datit ha-Ḥevratit shel Sefer Ḥasidim," *Zion* 3 (1937): 44-45. Regarding the *ḥerem ha-yishuv*, see esp. *SḤP*, 1302, and Baer, 46-48.

[55] See H. H. Ben Sasson, "Ḥasidei Ashkenaz 'al Ḥaluqat Qinyanim Ḥumriyyim u-Nekhasim Ruḥaniyyim bein Bnei ha-Adam," *Zion* 35 (1970): 65-66.

[56] On the concentration of students of Rabbenu Tam in Regensburg and surrounding areas, and their interaction with R. Judah he-Ḥasid, see R. Reiner, *Rabbenu Tam: Rabbotav ve-Talmidav*, 68-70.

[57] In fact, *Sefer Ḥasidim* refers to almost no contemporary Ashkenazic rabbinic scholars by name. On the absence of any reference to Rashi (and his writings) in *Sefer Ḥasidim*, see I. Ta-Shema, "Miẓvat Talmud-Torah ki-Ve'ayah Ḥevratit-Datit be-Sefer Ḥasidim," *Sefer Bar Ilan* 14-15 (1977): 113.

[58] See I. A. Agus, *R. Meir of Rothenburg*, 1:108-24.

[59] See R. Meir of Rothenburg, *Responsa* (Prague, 1895), #941:
דהא דאמרינן רשאין בני העיר להסיע על קיצותן היינו קיצת שכבר נהגו קודם לכן בעיר מימי קדם או שהן עצמן באין לתקן תקנות מדעת כולם [כהנהו טבחי דמחא דאתו לקמיה דרבא דאתנו בהדי הדדי מדעת כולם] וקא א"ל דנתקיימו הדברים ואע"ג דבדיבור בעלמא קא מתנו דגרע טפי מאסמכתא דכל דאי לאו כלום הוא הכא ודאי מהני בההוא הנאה דקא צייתי להדדי במידי דאיכא רווחא להאי כמו להאי אייתי דקני גמר ומקני כי ההוא דפ' פועלים מתנה ש"ח להיות כשואל ואפי' בדברים בהוא הנאה דנפיק עלי' קלא דאינייש מהימנא הוא גמר ומשעבד נפשי'. ואנא לא שמעתיה להא דר"ת, וקיימתיה מסברא אבל לשנות שלא מדעת כולם במידי דאיכא פסידא לזה ורווחא להאי ולא מגדר מלתא הוא אין שומעי' להן לעשות תקנה לעצמן שלא כתורה כמ"ש בשם רבי' יוסף ט"ע מ"כ.

Cf. S. Morell, "The Constitutional Limitations of Communal Government," 98. On the ruling of R. Joseph Tov Elem to which R. Meir refers for support, cf. above, n. 21.

[60] In his poignant responsum that attempted to justify suicide and even the killing of others in the face of religious persecution or coercion (*Teshuvot, Pesaqim, u-Minhagim*, ed. I. Z. Kahana, 2:54, sec. 59), R. Meir makes no reference to the view of Rabbenu Tam cited in *Tosafot ʿAvodah Zarah* 18a, s.v. *ve-ʾal yaḥbol*, which permits suicide in such a situation. Indeed, R. Meir also appears to have been unaware of a formulation of Rabiah that allowed the killing of others. See my "Meẓiʾut (Realia) and Halakhah in Medieval Ashkenaz: Surveying the Parameters and Defining Limits," *Jewish Law Annual* 14 (2000), secs. 3-4 (in press).

[61] See H. Soloveitchik, "Can Halakhic Texts Talk History," *AJS Review* 3 (1979): 161, 175. Cf. Kaplan, "Qabbalat Hakhraʿot," 294, 298.

[62] See R. Meir's *Responsa* (Prague), #968:

דהא דאמר ורשאי' בני העיר וכו' היינו מדעת כולם וקמ"ל דבדיבור בעלמא בלא קנין הן הדיבורי' הנקנין באמירה ורשאי' לקנוז את מי שקבל עליו חחלה ועבר על תקנתן.

See also Agus, *R. Meir of Rothenburg*, 113, n. 205. R. Meir studied in his youth with R. Isaac ʾOr Zaruʿa, who was aware of the need for unanimous agreement according to Rabbenu Tam, at least with regard to the ability of the community to coerce the giving of charity. See above, n. 15, and cf. Kaplan, 294. Note, however, that R. Meir held that the community could coerce an individual to contribute to the charity fund, against the view of Rabbenu Tam. See Agus, *R. Meir of Rothenburg*, 112, n. 199.

[63] See above, n. 17, and see also Agus, *R. Meir of Rothenburg*, 121, n. 235. Cf. R. Meir's *Responsa* (Berlin, 1891), ms. Amsterdam, #129 (p. 206).

[64] See e.g. *Responsa* (Cremona), #165; Berlin, ms. Amsterdam, #140.

[65] See *Responsa* (Berlin), ms. Prague, #865 (p. 320). In one instance, Rabbenu Tam advised an individual who had the right to protest a change in the tax structure agreed to by the rest of the community to nonetheless find a way to come to terms with the will of the majority. It is possible that Rabbenu Tam was concerned here with the pressure that the others might bring to bear against the individual. Cf. Kaplan, 295; Albeck, 133-34; and above, nn. 20, 44.

[66] See Agus, *Rabbi Meir of Rothenburg*, 119-22.

[67] For the extent to which R. Meir espoused the views of both Rabbenu Tam and Rabiah, and a possible reason for this amalgamation, see my "Unanimity, Majority, and Communal Government," 103-5; and my "Preservation, Creativity, and Courage: The Life and Works of R. Meir of Rothenburg," *Jewish Book Annnual* 50 (1992-93): 252-54.

[68] Kaplan, 295-98.

[69] See Yedidyah Dinari, *Ḥakhmei Ashkenaz be-Shilhei Yemei ha-Benayim* (Jerusalem, 1984), 187-89; Eric Zimmer, *Harmony and Discord* (New York, 1970), 7-8, 14-29; S. Morell, "The Constitutional Limits of Communal Government," 107-8; *She'elot u-Teshuvot Maharil he-Ḥadashot*, ed. Y. Satz (Jerusalem, 1977), secs. 147, 151, 153; *She'elot u-Teshuvot Mahari Bruna*, secs. 86-7; *Terumat ha-Deshen* (*pesaqim*), secs. 252-3; and R. Isaac b. Moses, *Leqet Yosher*, ed. Jacob Freimann, part 2 [*Yoreh Deʿah*] (Berlin, 1904), 77.

[70] Riva's ruling is found in R. Meir of Rothenburg's *Responsa* (Prague), #512, cited in Kaplan, 299:

ועוד אומר ריב"א אם הסכימו לגזור ואמר אחד אי אינפשי בתקנתכם, בעל כרחו צריך להסכים עמהם.

Kaplan characterizes Riva as a thirteenth-century Ashkenazic scholar, who was preceded in this view by Rabbenu Tam. There was a R. Isaac b. Asher (Riva) ha-Levi of Speyer, sometimes referred to as ריב"א הבחור, who was a teacher of Rabiah, died a martyr's death in 1195, and is cited by R. Meir of Rothenburg. Riva ha-Baḥur was a grandson of the more prominent scholar of the same name who died ca. 1133. See Urbach, *Baʿalei ha-Tosafot*, 1:366-67, 379, and *Sanhedrei Gedolah*, ed. Y. Lifshitz, vol. 1 (Jerusalem, 1968), editor's introduction, 8. However, several of the rulings by Riva recorded in Prague #512 are part of the elder Riva's *Pesaqim* or *Tosafot* to *Sanhedrin*, suggesting that all of the rulings in this responsum attributed to Riva belong to the more prolific elder Riva, and not to Riva ha-Baḥur. See *Sanhedrei Gedolah*, ed. Lifshitz, editor's introduction, 16-24, 25, 75; and ibid., *Tosafot ha-Riva ʿal Massekhet Sanhedrin*, 13-16. See also the next note.

[71] See the responsum of R. Moses Taku, above, at n. 44. The way that Riva is referred to in this responsum (ורבינו יב"א נמצא תשובתו בשפירא) leaves no doubt that the reference here is to the elder Riva.

[72] See above, part IV.

[73] Cf. Kaplan, 292-93.

[74] Cf. H. Soloveitchik, above, n. 44.

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