

RABBINIC AUTHORITY AND THE RIGHT TO OPEN AN  
ACADEMY IN MEDIEVAL ASHKENAZ

The Tosafists of northern France and Germany (c. 1100–1300) have been comprehensively identified and their literary creativity has been thoroughly analyzed.<sup>1</sup> Some recent studies have advanced new theories about the inner workings of the Tosafist academies as well as the economic status of scholars and the diffusion of Torah study within Ashkenazic society.<sup>2</sup> Still, some basic areas and issues remain unaddressed. New academies did not simply appear out of nowhere. Phrases such as *liqboa' / lehoshiv / litpos / lehaqziq yeshivah (beit) midrash* (to establish / found / secure / retain an academy or study hall), found sparingly in the rabbinic literature of this period, signify that an academy had been opened in a particular locale.<sup>3</sup> As is often the case with this literature, the texts

- 1 The two major works devoted entirely to this inquiry are: — א.א. אורבך, בעלי התוספות — מהרורה רביעית, ירושלים 1980; א. אפטוביצר, מבוא לספר תולדותיהם, חיבוריהם, שיטתם, מהרורה רביעית, ירושלים 1980; א. אפטוביצר, ירושלים תרע"ד–תרצ"ח ראבי"ה, ירושלים תרע"ד–תרצ"ח.
- 2 See e.g., מ. ברזיאר, 'לחקר הטיפולוגיה של ישיבות המערב בימי הביניים', פרקים בתולדות, ירושלים תש"ם, החברה היהודית בימי הביניים ובעת החדשה (בעריכת ע. אטקס וי. שלמון), ירושלים תש"ם, עמ' 45–55; י. תא-שמע, 'מצות תלמוד תורה כבעיה חברתית-דתית ב"ספר חסידים"', בר-אילן, ספר השנה, יד–טו (תשל"ז), עמ' 98–113; הנ"ל, 'על פטור תלמידי חכמים ממשום בימי הביניים', עיונים בספרות חז"ל במקרא ובתולדות ישראל (בעריכת י.ד. גילת ואחרים), רמת גן 1982, עמ' 312–322; H. Soloveitchik, 'Three Themes in the Sefer Ḥasidim', *AJS Review*, 1 (1976), pp. 345–354, and my forthcoming *Jewish Education and Society in the High Middle Ages*, Wayne State University Press.
- 3 See e.g., Ms. Bodl. 1208, fol. 40b, published by S. Eidelberg in: (1955) 6 תלפיות, עמ' 707; ר' חיים אור זרוע, שו"ת, למברג 1860, סי' קסד, עמ' נה.

rarely even allude to the mechanisms by which these new beginnings came about. The purpose of this study is to clarify the initiatives through which an academy was opened in Ashkenaz during the Tosafist period.

During this period in Spain, the communities themselves authorized qualified scholars to open academies in their midst. The qualifications were decided upon and judged by leading scholars, but it was the community that appointed, and usually paid, the *rosh yeshivah*, just as the community appointed and supported its rabbinic leaders.<sup>4</sup> None of this occurred in northern France and Germany. The Tosafist academies were small, private institutions. They were identified as the schools of their *roshei yeshivah*, in whose homes they were most often situated, rather than as the academies of the towns in which they were located. Leading Tosafists and their students received no salaries or stipends. In addition, there is no evidence of organized communal support for those who studied in non-Tosafist *battei midrash*. Unlike Spanish Jewish society, Ashkenazic Jewry believed, as a matter of religious principle, that it was inappropriate to offer any direct financial support to its scholars.<sup>5</sup>

There are some significant parallels between the Tosafist academies and the cathedral schools of Christian Europe. The cathedral schools were also named after their masters or the neighbourhoods in which they lived rather than after the town or some larger entity. Students of the cathedral schools were much more inclined to indicate with whom they studied

ספר חוקי התורה, בתוך: ש. אסף (עורך), מקורות לתולדות החינוך בישראל, מהדורה שנייה, תל אביב 1954, כרך א, עמ' 10, סעיף ב; מגילת אחימעץ, הרי"ל ב. קלאר, ירושלים תש"ד, עמ' 47; ר' אברהם אבן ראוד, ספר הקבלה, הרי"ל ג.ר. כהן, ניו יורק 1967, עמ' 47. These terms appear more frequently in Ashkenazic literature of the late Middle Ages. See M. Breuer (below, n. 11), p. 9.

4 See A. A. Neuman, *The Jews in Spain*, Philadelphia 1942, 2, pp. 86–91; יהודה בן ברזילי, *היהודים והברגלונים*, ספר השטרות, הרי"ל הלברשטאם, ברלין 1898, עמ' 131–132; ש. אלבק, 'יסודות משטר הקהילות בספרד ער הרמ"ה', צינן, כה (תש"ך), עמ' 114–121; י. כץ, הלכה וקבלה, ירושלים 1986, עמ' 208–210.

5 See my 'Compensation for the Study of Torah in Medieval Rabbinic Thought', *Of Scholars, Savants, and Their Texts* (Essays in Medieval Religious Philosophy in Honour of Prof. Arthur Hyman), ed. R. Herrera, New York 1989, pp. 149–161.

rather than where.<sup>6</sup> In both the Jewish and Christian settings, students wandered from the school of one master to another, and when a master moved on or passed away, the school that he left behind often closed.<sup>7</sup>

The cathedral schools became more institutionalized and less proprietary after 1200 as a result of the requirement that scholars had to secure the *licentia docendi* in order to teach.<sup>8</sup> This licence obviously played a role in the opening of new schools as well. R. Isaac bar Sheshet wrote (c. 1390) that rabbinic ordination (*semikhah*) in Ashkenaz, which he assumed had originated much earlier, included permission for the student to open an academy.<sup>9</sup> R. Jacob Weil and other fifteenth-century halakhists referred to the authorizations that they and other scholars received from teachers to open an academy.<sup>10</sup> Some Ashkenazic communities in the fifteenth and sixteenth centuries approved and regulated the opening and operation of academies in their midst, including the selection of the *rosh yeshivah*.<sup>11</sup> The existence, however, of a formal *semikhah* in Ashkenaz before the late fourteenth century has not been sufficiently established.<sup>12</sup>

6 See R. W. Southern, *The Making of the Middle Ages*, New Haven 1953, pp. 193–203, and 'The Schools of Paris and the School of Chartres', *Renaissance and Renewal in the Twelfth Century*, eds. R. L. Benson and G. Constable, Cambridge, Mass. 1892, pp. 113–132; M. D. Chenu, *Nature, Man, and Society in the Twelfth Century*, Chicago 1968, pp. 270–273, 300–309; G. Pare, A. Brunet and P. Tremblay, *La Renaissance du XIIIe siècle: Les écoles et l'enseignement*, Paris-Ottawa 1933, pp. 18–38.

7 See my *Jewish Education and Society in the High Middle Ages*, chapter four.

8 See J. Baldwin, *Masters, Princes, and Merchants*, Princeton 1970, pp. 74–77, and 'Master of Paris from 1179 to 1215 (A Social Perspective)', *Renaissance and Renewal in the Twelfth Century*, pp. 158–163.

9 מ. ברזילאי, 'הסמיכה', Cf. Katz, above, n. 4; ריב"ש, שו"ת, קושטא ש"ז, סי' רעא, דף קצב ע"ב האשכנזית, צינן, לג (תשכ"ח), עמ' 17–18; י. יובל, חכמים ברורם, ירושלים 1989, עמ' 335–334. Some of Ribash's assumptions about Ashkenazic *semikhah*, including its earlier history, are open to question.

10 יעקב וייל, שו"ת (מהדורת ירושלים 1959), סי' קנא; ר' ישראל ברנא, שו"ת (מהדורת ירושלים 1979), סי' רנז; ר' יוסף בן משה, לקט יוסף, הוצאת פריימאן, ברלין 1903, חלק ב, עמ' 37–38. Cf. G. Blidstein (below, n. 19).

11 See S. Eidelberg, *Jewish Life in Austria in the Fifteenth Century*, New York 1962, pp. 63–66; מ. ברזילאי, הישיבה האשכנזית בשלהי ימי הביניים, עבודה לשם קבלת התואר דוקטור, 63–66; לפילוסופיה של האתיכריסטיה העברית בירושלים, 1967, עמ' 25–36, 55–56.

12 A survey and fresh analysis of the substantial secondary literature can be found in Yuval (above, n. 9), pp. 11–20. See also above, n. 9.

M. Breuer has suggested that during the days of Rashi and the Tosafists as well, a student was not able to decide matters of law, and by extension, to open an academy, unless he received some form of approbation from his teacher, as was required by Talmudic law. At the same time, Breuer acknowledges that there is no evidence from that period for any procedures that transferred these privileges to students.<sup>13</sup>

There is, however, evidence that students in at least one area during the Tosafist period opened their own academies without authorization and did not hesitate to refute openly their teachers' legal decisions. This emerges from a passage ascribed to the brothers of Evreux, northern French Tosafists of the mid-thirteenth century, concerning the signs of respect that a student must show to his major teacher in accordance with Talmudic law. In the brothers' view, these demonstrations of reverence on the part of student were no longer required:

For the Talmudic texts, the commentaries, the novellae, the [halakhic] compositions, they are the teachers of men. And all [is determined] by one's perspicacity.

Thus, it was usual in their locale (*be-'iram*) that a student opened his own study hall (*liqboa' / yahaziq ha-talmid midrash le-aqmo*) without concern for [the Talmudic dictum that] 'one who decides a matter of law in his teacher's presence is punishable by death'. Similarly, the student, by means of superior reasoning, could contradict his teacher [his ruling].<sup>14</sup>

To fully appreciate the significance of this text, and others that will be discussed below, it is necessary to focus briefly on the Talmudic restrictions that were placed upon a student who wished to decide matters of law or to open an academy. The Talmudic requirement that a student must receive his teacher's approbation in order to decide matters of law (*talmid al yoreh ela im ken natal reshut me-rabbo*) was an attempt to ensure the competence

of the student. In addition, a student was constrained from rendering legal decisions in a place proximate to his teacher (*talmid al yoreh bifnei rabbo/be-maqom rabbo ela im hayah raḥoq mimenu shalosh pars'ot: Kol ha-moreh halakhah be-maqom rabbo ḥayyav mitah*).<sup>15</sup> These restrictions were reflections of the substantial honour that a student had to extend to his major teacher. This code of honour required that even a competent student could not decide matters of law in competition with his teacher.<sup>16</sup>

Nor could a student challenge the authority of his teacher in other significant ways. Rav warned, if his words are taken literally, against coming into conflict with the academy of one's teacher (*holeq 'al yeshivat rabbo*).<sup>17</sup> Maimonides understood this Talmudic passage, as well as the modified formulation (*ha-holeq 'al rabbo*) that was attributed to Rav's student R. Hisda,<sup>18</sup> as referring to a student who opened his own study hall in any location during his teacher's lifetime, without the latter's permission. Rambam connected this prohibition to the one of deciding matters of law in the presence of one's teacher.<sup>19</sup> Rashi did not explain the cautionary statement of Rav in his Talmudic commentary, but did link it to the shorter form.<sup>20</sup> Within Rashi's responsa and other halakhic writings of his school,<sup>21</sup> Rav's formulation was understood as referring to a student who

15 סנהדרין ה ע"ב; עירובין סב ע"ב, סג ע"א; ברכות לא ע"ב

16 In *talmid al yoreh bifnei rabbo* was also instituted to thwart student incompetence or inappropriateness. As we shall see, however, the discussion in medieval rabbinic sources, following the mainstream Talmudic view, presumed that it was a matter of honour. See also below, n. 28.

17 סנהדרין, קי ע"א

18 ברכות, כז ע"א, ע"ב

19 On this and related issues in Maimonidean thought, see. *י. בלידשטיין, 'היתר הוראה במשנת הרמב"ם ומשמעותו החברתית', תרביץ, 51 (1982), 587-577 עמ' See also below, n. 37.*

20 סנהדרין, קי ע"א, ר"ה חולק על רבו

21 and the sources cited in n. 38. *תשובות רש"י (בעריכת י. אלפנבין), ניו יורק 1943, עמ' 132* See also 25-24 עמ' 1966, *ירושלים רש"י, ליפשיץ, א.מ. ליפשיץ, רש"י, ירושלים 1966, עמ' 25-24* and the so-called commentary of Rashi to *קרה לא קרה*. (This commentary was actually composed in Mainz during the eleventh century. See *י. ג. אפשטיין, 'המיוחס לרש"י' (להוריות, תרביץ, יג [חשב"ב], עמ' 218*

13 M. Breuer (above, n. 9), pp. 15-16. Cf. below, n. 34.

14 The brothers of Evreux made their position known in a letter reproduced by ר' אהרן הכהן *The 'letter' is cited, with slight variation, in א סי' א, 479-480, and M. Elon, 'The Law, Books, and Libraries', National Jewish Law Review, 2 (1987), pp. 16-18.*

had challenged a large body of his teacher's decisions (and had thus theoretically opened a competing school), or, perhaps, to one who challenged the ruling of his teacher's *beit din* (=yeshivah).<sup>22</sup>

In interpreting and applying these passages, both Rashi and Maimonides were undoubtedly guided by the fact that one who challenged his teacher in this manner was considered, according to the Talmudic texts, to have challenged, or desecrated, the Divine presence. Such a fate would have been much too harsh for the student who had simply disagreed with his teacher on various occasions.<sup>23</sup> Therefore, these passages must refer to a student who had challenged his teacher's authority in a patently disrespectful or at least in a calculated, systematic way.

We are now prepared to analyze the Evreux text more closely. The brothers maintained that due to the vicissitudes of time, written sources had replaced human instructors as the most effective teachers. As such, there was no longer a concept of *rabbo muvhhaq* (one's major teacher) for whom deep respect or honour had to be shown.<sup>24</sup> The conventions of the Talmudic period concerning the rights of students and the prerogatives of those teachers were necessarily set aside. A student was no longer required to seek his teacher's approval in order to decide matters of law in his presence or to open an academy in his town. The basic competence of the student who undertook these roles was presumed. The validity of the student's arguments would be determined by his ability to defend his decisions and interpretations against the full range of Talmudic sources, commentaries, and codes.

Whether or not other Ashkenazic scholars agreed with the brothers' assessment of the relationship between teachers and students in their day, the Evreux text indicates that students, in that town or region, opened their own academies quite freely. Moreover, the text intimates that even before this, students were free to open academies in other locations, even though they were in relatively close proximity to their teachers (i. e., less

22 מ. פרנק, קהילות אשכנז ובתי דיניהם, תל אביב 1937, עמ' 126-127.

23 Thus, R. Hisda himself vigorously argued points of law with his teachers: see e. g., ברכות, תוספות גידה יד ע"ב, ד"ה מאי לאו; ר' ישראל איסרלין, תרומות הרשן, Cf., כה א"ע; ערכין כב ע"א פסקים, סי' רלח

24 הרמב"ם, משנה תורה, הלכות תלמוד תורה, ה:יא. Cf.

than the Talmudically mandated three *parsa'ot*), as long as they were not in the same city or town. This state of affairs plausibly explains the absence of formal authorizations for students to open academies in the Tosafist period.

In expressing frustration with R. Meshullam of Melun, and other scholars, for rendering halakhic decisions based on their emendations of Talmudic texts, Rabbenu Tam writes: 'I have also told the rabbis face to face, that there are those among them about whom it would be proper to decree that they should not be able to maintain an academy (*ra'ui ligzor shelo lehoshiv yeshivah*).'<sup>25</sup> From R. Tam's remark, and from a response that will be reviewed shortly, it appears that the rabbis in question had set out on their own without formal recognition. R. Tam, who was extremely upset, considered taking the unusual measure of removing them from their positions by decree, since they had tampered with Talmudic texts.

There are no other Tosafist sources that refer specifically to the right of a student to open an academy.<sup>26</sup> While this may be unfortunate, it is not all surprising. We have noted that Rashi interpreted the Talmudic passage about a student who is at odds with *yeshivat rabbo* as referring not to a student's competing academy but rather to a student who had argued with the body of his teacher's legal decisions. Moreover, even Maimonides, who did interpret this passage as restricting a student from opening his own academy, linked this restriction to the prohibition for a student to render a legal decision in his teacher's presence. This linkage is readily understood. Since an academy head rendered legal decisions, implicitly if not explicitly in the course of his lectures as well as on other occasions, the student who wished to open an academy in close proximity to his teacher automatically had to confront the Talmudic prohibitions concerning the rendering of legal decisions in a place near to his teacher. Whether or not the Maimonidean interpretation and application of *holeq 'al yeshivat rabbo* was held, the Talmudic restrictions about deciding matters of law in a teacher's presence clearly applied to one who opened an academy as well.

As a case in point, the Evreux text, in both its extant versions, linked the relaxation of the presumed restriction for a student to open an academy in

25 ספר הישר לרבנו תם (תשובות) (בעריכת ס. דהנשל), ברלין 1898, עמ' 105.

26 Cf. below, n. 49.

his teacher's locale to the relaxation of the prohibition for a student to decide matters of law in the presence of his teacher. In addition, Rabbenu Tam's desire to prevent those who, in his view, carelessly emended Talmudic texts from continuing '*lehoshiv yeshivah*', referred as much to curtailing their ability to issue independent legal decisions as it did to maintaining an academy. His purpose becomes clearer when we note R. Meshullam's reaction. Mindful of R. Tam's earlier remark, R. Meshullam wrote in regard to another of his halakhic rulings that was challenged because of textual emendations:

Had I known that you were so concerned (*she-hayitem maqpidim kol kakh*), even about a simple matter, I would have said nothing. As our rabbis said,.... 'Even a simple matter should not be decided by a student in the presence of his teacher [*Ketubot* 60b]'. They made this [restriction] only within three parsangs ... but our teachers teach [=extend their domain] for one hundred parsangs including all of Provence (France) until Ramerupt. Since they would like to rule [to study] this way, I will set aside the scholars of the Talmud and study their teachings. For you are my teachers and I can explain nothing until I can hire a messenger to reach you and know whether you will agree with me concerning the readings [of the Talmudic texts].<sup>27</sup>

In an apology offered only after the fact, R. Meshullam suggested that he should have checked with his teachers (= R. Tam and Rashbam) before issuing rulings based on his reading and emendation of Talmudic texts. His use of the phrase 'had I known that you were so concerned' further indicates that capable scholars who wished to undertake these ventures simply did so on their own initiative. To be sure, R. Meshullam, and in all likelihood the scholars censured by R. Tam as well, did not actually study with R. Tam in their youth. Thus, the somewhat exaggerated statements of R. Tam and R. Meshullam may not accurately reflect the realities that confronted regular students. Nonetheless, R. Meshullam's stated ignorance of R. Tam's concerns strongly suggests that formal rabbinic approbation was usually waived. Indeed, *Tosafot* texts to *Ketubot* 60b

27 *Sefer ha-Yashar*, p. 93. Cf. Urbach (above, n.1), 1, p. 77, n. 30.

noted that if the Talmudic prohibition against a student ruling in the presence of his teacher was presumed to be a function of the honour and respect that the former must show for the latter, the restriction could be waived at the teacher's discretion.<sup>28</sup>

Despite the absence of other sources that refer directly to the opening of academies by students, there is additional twelfth-century Tosafist material that deals with the applicability of the Talmudic dictum of *talmid al yoreh bifnei rabbo*. These sources will show that the prohibition was curtailed during the Tosafist period, not merely through a passive form of waiver, but in precisely the same manner that the Evreux text described in regard to the restrictions on opening an academy. Indeed, the reasons given for the curtailment were also quite similar. This material indicates, in light of the foregoing discussion, that the practice of allowing students to open academies without authorization was indeed prevalent in northern France well before the brothers of Evreux.

A formulation attributed to Ri by the fourteenth-century *Semaq mi-Zurich* maintains that the Talmudic principle that 'a student should not decide matters of law in a place proximate to his teacher, but only if he is three parsangs away' applies:

only in the period of the Tannaim and Amoraim who derived/arrived at their rulings from a depth of analysis and from [great] knowledge. Thus, a teacher/rabbi was crowned with glory through rendering a decision.

However, now that legal rulings and decisions (*ha-pesaqim veha-hora'ot*) are in written form, and everyone can look into legal rulings [and books] and render a decision, a rabbi does not retain as much honour as in those days. [Therefore, a student may rule] if he is not right in front of him.

28 תוספות כתובות ס ע"ב, ד"ה כי אפקדתי; תוספות הר"ש משנן על מסכת כתובות (כעריכת א. תוספות הגהות אשרי לעידובין סג ע"א ליס), ירושלים 1973, לני"ל (עמ' 162) which ruled, on the basis of a passage in יד ע"א, מגילה יד ע"א, that a student could issue a ruling in a place where it was known that his teacher did not object (*be-maqom de-yadua' delo qapid rabbo*). This is also recorded in *Sefer Mordekhai Qutan* (cited in the Har-Shoshanim edition of the *Semaq mi-Zurich* [see next note], p. 275, n. 27).

An alternate reading specifies that the student cannot rule in the same city as the teacher but need not be a particular distance away.<sup>29</sup>

Ri's name appears in all extant manuscripts of the *Semaq mi-Zurich*.<sup>30</sup> Still, the attribution of this text to Ri is problematic. There are several *Tosafot* texts which contain other formulations of Ri, offered in the course of interpreting the relevant Talmudic *sugyot*, that also sought to limit the effects of the prohibition *talmid al yoreh bifnei rabbo*. The prohibition does not apply in a case where the halakhic principles involved were known to the questioner who would therefore not be surprised if he received a lenient ruling. Additionally, it does not apply if the student was asked to indicate according to whom the *halakhah* should be decided, but

29 Bodl. 879 (fol. 68v) and Paris 381 (fol. 34) read *im lo be-otah ha'ir mamash* as opposed to *im lo be-fanav mamash*. There may not be, however, a practical difference between these phrases. There are several variants of the phrase which describes the works that 'everyone can look into ... and render a decision'. In Bodl. 879 (fol. 68r), Bodl. 880 (fol. 58r), Paris 381 (fol. 34), Parma 172 (fol. 51), Vienna Cod. Hebr. 129 (fols. 135–136) the phrase reads *be-sifre ha-pesaqim*. (*Kevod Hakhamim* [below, n. 37] has *be-divrei ha-posqim* which is obviously a distortion of this reading.) British Museum 514, upon which *Sefer ha-Semaq mi-Zurich* (... ונלוו אליו...) was based, reads *bi-sefarim ha-pesaqim*. If the *mem* in *sefarim* is dropped, this manuscript conforms with those just mentioned. On the other hand, כ:ב, בית מדרש לרבנים, יב: has *bi-sefarim* only, and even more significantly, the phrase in Ginzburg 187 (fol. 49v) and Berlin 37 [2] (fol. 49r-v) is *bi-pesaqim uvi-sefarim*. In this last reading, which refers to legal codes/collections as a separate entity, *sefarim* may refer not to post-Talmudic legal works but to Talmudic commentaries. This entire written corpus, taken together, would have made it appreciably easier for a student in Ri's day to issue legal rulings than it was in the Talmudic period when the literature was still in a state of flux and development. For examples (in similar contexts) of *sefer* as Talmudic commentary and even as the Talmud itself, see above, n. 14 (compare the two versions of the Evreux text), and the texts of R. Samson of Sens, and R. Isaiah di Trani, below, n. 45.

30 All the manuscripts referred to in the above note contain the initials of Ri (= R. Isaac of Dampierre; see below, n. 36). The Institute of Microfilms of the National and University Library in Jerusalem (where all manuscripts referred to in this study were checked) has a photograph (#5137) of a private manuscript that also reads Ri. Mss. Cambridge 559, Parma 583, Paris (L'Alliance) #482 do not contain this section. JTS Rabbinic 653 is unavailable. Cf. 179–178 עמ' (1978) 4, עלי ספר, י:ש. לנגה, ילענין הסמיק מציריך, עלי ספר, 4 (1978), עמ' 179–178.

was not asked to rule in an actual situation.<sup>31</sup> Of similar nature is the formulation of Ri's student, R. Isaac b. Abraham (Rizba), that the prohibition to rule in the place of one's teacher applies only to a place that the teacher visits frequently.<sup>32</sup> None of these *Tosafot* texts cite the overarching ruling of Ri, found in the later *Semaq mi-Zurich* text, which would appear to supersede the other more modest modifications suggested by Ri.

Although Ri's two types of rulings proceeded from different assumptions, they may have had a similar aim. Because there was no communal regulation of rabbinic appointments or ordination in Ashkenaz, the rights and privileges of legal decisors were determined solely on the basis of Talmudic law. In the *Tosafot* formulations, Ri wished to demonstrate the limitations that the Talmud itself had built into this prohibition. In the *Semaq mi-Zurich* ruling, Ri argued that within the post-Talmudic period, the prohibition had been virtually eliminated. Indeed, The only practical difference between the positions of Ri and the brothers of Evreux is in regard to the detail of whether a student could rule in the actual presence of his teacher (*be-fanav mamash*) or not.<sup>33</sup> Both arguments were marshalled by Ri to support the practice in the Tosafist period that students did in fact rule on halakhic matters in close proximity to their teachers. To be sure, students could not do so unless they were competent, as per Talmudic law, and Ri apparently favoured at least a tacit form of *netilat reshut*.<sup>34</sup> But the restrictions connected with *talmid al yoreh bifnei rabbo* were, for the most part, no longer in effect.

31 See תוספות הרא"ש, תוספות ד' ר"ה מהו, ד' ע"ב, תוספות עירובין סב ע"ב, ד"ה מהו, ד' חסדא מהר"ם מרוטנבורג, תשובות, פסקים, *ad. loc.*; פסוק, ספר מרדכי, חידושי הריטב"א and the *Semaq mi-Zurich* text. (בעריכת י.ז. כהנא), חלק ב, ירושלים 1950, עמ' 252 (סי' קפט)

32 Cf. the gloss in *Sefer Mizvot Qatan*, ms. Paris Alliance #482, section 113.

33 The essential relationship between the Ri and Evreux texts has been noted by Urbach, and discussed briefly by Elon (above, n. 14). See also Breuer (above, n. 11), p. 90 (= מ. ברדאר, 'עליות הפלפול והחילוקים בישיבות אשכנז', ספר הזיכרון לר' יחיאל יעקב ויינברג, ירושלים 1969, עמ' 254). On the differences in formulation between the Ri and Evreux texts, see below, n. 41.

34 See in the standard edition of הלכות חלמוד תורה ה:ג, עשה יג (מהדורת ונציה, צח ע"ג) עשה יג, משהגה תורה, הלכות חלמוד תורה ה:ג, ms. Kaufmann-Budapest 77, fol. 30v,

As Jacob Katz has shown, this kind of two-pronged approach typified other attempts by Ri (and other Tosafists) to justify the fact that a particular Talmudic restriction was no longer operant. Conditions had changed so that the prohibition in question was not quite practical or workable. At the same time, the Talmudic material itself already included a framework for limiting the prohibition.<sup>35</sup> The *Tosafot* texts understandably reproduced Ri's interpretations of the relevant *sugyot*, while the Ri's overarching halakhic ruling was recorded in the *Semaq mi-Zurich* legal code.<sup>36</sup>

Curiously, R. Israel Bruna, in a query addressed to R. Yosef Colon (Mahariq), cited the *Semaq mi-Zurich* passage as a position of R. Meir of Rothenburg rather than of Ri.<sup>37</sup> As we have indicated, all the manuscripts

Bodl. 578, fol. 28v: *Semaq mi-Zurich*, *op. cit.*; ר"ה אלא אם כן; תוספות סנהדרין ה ע"ב, ר"ה אלא אם כן; Cf. above, n. 16. *Sefer Hasidim* (סעיף 1924, פרנקפורט 1924), ריטנינצקין, פרנקפורט 1924, (תחית ספר חסידים [בעריכת י. ויטנינצקין], פרנקפורט 1924), perhaps the only non-exegetical medieval Ashkenazic source to refer to *netilat reshut* (cf. Breuer, above, n. 13), does not necessarily reflect realia. The student's responsibility to his teacher is the central point of this passage and the use of the Talmudic *netilat reshut* serves to sharpen it.

35 J. Katz, *Exclusiveness and Tolerance*, Jerusalem 1961, pp. 29–36.

36 Cf. Soloveitchik, קבלה דימורי עצמי, הלכה, קבלה דימורי עצמי (above, n. 2), pp. 82–84. As indicated above in notes 31–32, the *Semaq mi-Zurich* text also contains Ri's halakhic *perushim* on this issue as found in *Tosafot*, cited both before and after the overarching ruling. This sequence and cluster of citations eliminates any possibility that the Ri who composed this ruling was not R. Isaac of Dampierre but another Tosafist whose name began with the letter *yod*.

37 מיסר רוד ליאון, כבוד חכמים, הו"ל ש. ברנפלד, Cf. ר' יוסף קולון, שו"ת, סי' קע, דף קפו ע"א 95 עמ' 1899, ברלין 1899, The attribution to Maharam in the latter text was apparently derived, as was most of the work, from the responsum of Mahariq. See ר. תמר, 'על ספר "כבוד חכמים" לר' רוד מיסר ליאון', קריית ספר, כו (חש"י), עמ' 96–100, and cf. Breuer, above, n. 33. Mahariq and Mahari Bruna (among others of their day) were engaged in a protracted discussion concerning the right of a student to rule in front of older colleagues. See מ. ברדיאר, 'מעמך הרבנות בהנהגתן של קהילות אשכנז במאה הטר', ציון, 55–54 עמ' 54–55. In light of his conservative position in this debate, and without his copy of *Semaq mi-Zurich* in front of him (which perhaps renders the attribution to Maharam a simple case of human error; cf. בוקסבאום, מבוא לשאלות ותשובות ופסקי י. מהרי"ק החרשים [בעריכת ע. פינס], ירושלים 1970, עמ' 29–30), Mahariq attempted to arbitrarily limit the scope of what was affected by the generational change found in the *Semaq mi-Zurich* text. (Ironically, he had earlier in the very same responsa defended

of *Semaq mi-Zurich* attribute this formulation to Ri. R. Meir's student, R. Meir ha-Kohen, does record, in *Haggahot Maimuniyyot*, a lengthy discussion of his teacher on the status of the prohibition *talmid al yoreh bifnei rabbo*. R. Meir of Rothenburg begins by citing, in Ri's name, the small-scale limitations of the prohibition found in the various *Tosafot* texts: the student can recite the various halakhic positions relevant to a case without offering an actual ruling; the student can rule in a situation where the issues and positions are basic and well known to all. The *Haggahot Maimuniyyot* text then continues:

R. Meir also ruled [Ri's name is absent here] that anything written explicitly [*be-ferush*] in books of Geonic rulings can be decided by a student, even within the lifetime of his teacher. He may not, however, rule on the basis of his own ideas or rely upon his own proofs in order to compare one case to another through his own reasoning.<sup>38</sup>

At first blush, this last section appears to be similar to the *Semaq mi-Zurich* passage that was attributed to Ri. Yet, while R. Meir cited Ri as the source of the initial rulings, he omitted Ri's name from the section in question. Once again, the manuscript evidence unequivocally confirms the citation

the use of *Semaq mi-Zurich* against R. Israel's charges that it was intended as a resource work that compiled many views but that the work itself could not be viewed as a final source of law. See also responsum #184.) Mahariq correctly notes that, in any event, other important legal decisors such as Maimonides and R. Ya'akov *Ba'al ha-Turim* ruled that all these prohibitions were still in effect and that there was no distinction between the Talmudic period and their own day. See עמ' 91, כבוד חכמים, 91 עמ' 91, below, n. 42. Somewhat incongruously, several later Spanish scholars attempted to explain Maimonides' omission of the Talmudic requirement that a scholar must reach the age of 40 in order to issue halakhic rulings (unless no one as competent is available) by suggesting that Maimonides did hold the 'times have changed' view of Evreux (and Ri) in regard to this aspect of student involvement. See Elon (above, n. 14), pp. 18–21. Note that the only Tosafist halakhist to discuss this requirement was R. Isaac Corbeil (ר' יצחק קורבייל) omission of the Talmudic requirement that a scholar must reach the age of 40 in order to issue halakhic rulings (unless no one as competent is available) by suggesting that Maimonides did hold the 'times have changed' view of Evreux (and Ri) in regard to this aspect of student involvement. See Elon (above, n. 14), pp. 18–21. Note that the only Tosafist halakhist to discuss this requirement was R. Isaac Corbeil (ר' יצחק קורבייל) תוספות סוטה כב ע"ב, ר"ה רשב"ן. Cf. (עמודי גולה [סמ"ק], סי' קיב

38 See *Teshuvot Maharam* (above, n. 31), pp. 252–253. The term *geonim* in this passage perhaps has the connotation of all post-Talmudic scholars prior to Maharam's day. Cf. I. Twersky, *Introduction to the Code of Maimonides*, New Haven 1980, p. 66, n. 113.

of Ri in the earlier sections and the absence of his name in the latter passage which was specifically attributed to R. Meir alone.<sup>39</sup>

A closer look at the statement of R. Meir of Rothenburg reveals one significant difference between it and the formulation of Ri. Like Ri, R. Meir recognized the value of post-Talmudic legal works as a repository of information for the student. Another formulation of Maharam further demonstrates his concern that communities and senior scholars should not fetter the hands of younger legal decisors.<sup>40</sup> But whereas Ri was prepared to extend to the student almost as much freedom in using these sources as did the brothers of Evreux, R. Meir was willing to permit the student to utilize only those rulings that were found explicitly in Geonic (post-Talmudic) works. Ri noted that the existence of these works meant that a decisor of law did not have to possess the same depth of understanding or breadth of knowledge that had been necessary in order to decide the *halakhah* during the Talmudic period. As a result, a well-established decisor of law could not command the same degree of honour from his students as he had in the past — *ein la-rav attarah kolkakh kemo be-otan ha-yamim*. While Ri was less expressive than the brothers of Evreux, who wrote that a student could now 'outrason' his teacher, he too sought to categorically eliminate the prohibition of *talmid al yoreh* by virtue of the literary resources that students in his day had at their disposal.<sup>41</sup> He did not espouse the narrower view, held by Maharam, that

39 In addition to the *Haggahot Maimuniyyot* manuscripts and editions cited by Kahana, and above, n. 34, see ms. Budapest-Kaufmann 78, fol. 20v, as well as Frankfurt 2° 15, fol. 31. All the texts, except the Constantinople edition which reads simply *ve-od katav* (referring back to R. Meir), have a variation of *ve-od horeh/katav mori rabbi/ha-RaM/Maharam*.

40 (143 עמ' 1954, סי' סב (עמ' 143); תשובות בעלי התוספות (בעריכת י.א. אגוס), ניו יורק 1954, סי' סב (עמ' 143). On the larger implications of this source for the origins of *semikhah* in Ashkenaz, see above, n. 12. On Maharam's attitude towards *sifrei pesaq*, see also Urbach (above, n. 1), 2, p. 549.

41 See above, n. 33. Both the Ri and Evreux texts distinguished between an earlier period when all restrictions applied and a later one when they could not. The nature of the deterioration is phrased, however, in different terms. In the Evreux text, the vicissitudes of Jewish history, which began even before the Talmud was complete (destruction of the Temple, exile from Eretz Israel, and the like), led to a lessening of intellectual capacity that brought sweeping changes in its wake. In the Ri text, the distinction is made between the superior scholarship and ability of the scholars of the Talmud, which

a budding legal decisor could offer only those rulings that appeared explicitly in earlier codes but could not rely upon his own comparisons and analysis.<sup>42</sup>

Because of this difference, R. Meir composed, in his name alone, a formulation which was related to Ri's *Tosafot* comments but markedly less permissive than Ri's larger position. Perhaps R. Meir makes no reference to the Evreux formulation because of the same considerations.<sup>43</sup> And yet, the similarities in content and style between the formulations of Ri and Maharam, coupled with Maharam's citation of Ri in connected issues and sentences, serve to explain how the *Semaq mi-Zurich* passage in question came to be attributed by a fifteenth-century source to Maharam instead of to Ri.

served them well in dealing with *halakhah* in their day, and the lesser abilities of and lesser challenges that faced contemporary scholars. The difference in these views perhaps reflects the less secure position that Jews in northern France found themselves in as the thirteenth century wore on. See below, n. 46.

42 Mahariq, who wished to curtail the independence of a student from his major teacher (above, n. 37), did minimize the distinction between the actual views of Ri and Maharam. He tried to restrict Ri's formulation that 'everyone could look into the books and rule' (which had been attributed to Maharam) by claiming that only those written final rulings that also included a full explanation and analysis of the issue at hand could be used by 'everyone'. Rulings that were written down, however, without explanation, could not be utilized by all. For even if the decisor had a full range of written evidence before him, he then had to be able to clarify and properly weigh the conflicting views that would inevitably emerge from the data. 'Substantial knowledge is required to decide ...'. Ri (of the *semaq mi-Zurich* passage) was clearly prepared to give the decisor this responsibility; see above, n. 29. R. Samuel de Modena asserted that Mahariq had misinterpreted the *Semaq mi-Zurich* formulation which, in all fairness, he was aware of only through his questioner. Furthermore, had Mahariq been cognizant of the Evreux position, he certainly would not have taken the position that he did. See *Teshuvot Maharashdam* (above, n. 14).

43 The omission by Maharam of the Evreux text is, of course, much less critical than the omission of a position of Ri, even though R. Meir had been a student at Evreux. Indeed, the diffusion of the Evreux position may have been somewhat limited or slow since even the author of *Semaq mi-Zurich*, who apparently was aware of the brothers' teachings generally (see Lange, above, n. 30), does not cite the Evreux passage in conjunction with his presentation of Ri's formulations. Even Mahariq seems to have been unaware of it. See the above note.



Ri's motives for adopting the position that he did are not easily ascertained. It seems a bit unusual that Ri, who in terms of Talmudic methodology was so much in the mould of the Amoraim,<sup>44</sup> chose to distance his own period from the era of the Talmud in regard to the rights of students and teachers. Perhaps he was concerned that there were not enough students opening academies or taking leadership roles as decisors of Jewish law, especially in light of the fact that Ashkenazic communities did little to regulate these functions. Given what is known, however, about the nature of Ashkenazic society in the late twelfth century, this possibility seems unlikely. Rather, it appears that Ri's motivations were mostly ideological. The existence of post-Talmudic halakhic literature diminished the singular status of the teacher who decided matters of Talmudic law. The teacher was no longer as authoritative as he was before, since decision-making was now based on books which everyone could study and from which everyone could draw his own conclusions.

Indeed, this type of ideology dominated Tosafist thought. The brothers of Evreux claimed that a student could directly overrule his teacher if he demonstrated a clearer and deeper understanding of relevant Talmudic and rabbinic texts. But the primacy of the Talmud and its commentaries as the ultimate authorities of Jewish law, subject equally to the analysis of teachers and students alike, had already been maintained by Ri's student, R. Samson of Sens, and by R. Isaiah di Trani, and was later held by R. Asher b. Yehiel.<sup>45</sup> Only R. Meir of Rothenburg was unwilling to grant the

student a free hand in utilizing the corpus of post-Talmudic halakhic literature.<sup>46</sup>

We have suggested that Ri's formulation permitting a student to decide matters of law in close proximity to his teacher also allowed a student to open an academy with few restrictions or requirements. Ri's position adumbrated the more strident Evreux formulation in regard to this provision as well, and thus serves to further confirm and explain the absence of formal procedures for the opening of an academy in twelfth- and thirteenth-century Ashkenaz. Tosafist views of the restrictions that were in effect during the Amoraic period provide additional support for the use of Ri's formulation in this manner. Both the Ri and Evreux formulations maintained that the restrictions concerning *talmid al yoreh bifnei rabbo* were in force during the Talmudic period itself,<sup>47</sup> as did a number of *Tosafot* in their interpretation of the relevant *sugyot*.<sup>48</sup> Several other *Tosafot* texts held this position in regard to the possibility of students opening their own academies as well. These *Tosafot* emphatically assert, in at least one instance in the name of Ri, that it was impossible for

46 Perhaps R. Meir was motivated by a desire to preserve the full honour of teachers in light of the declining fortune of Ashkenazic society in his day. Unusual concern for preserving the honour of Torah scholars can also be found in R. Meir's unique position that a teacher should rise for his students. See *הגהות מיימוניות*, הלכות תלמוד תורה ה: ח; Urbach (above, n. 1), 2, pp. 522-523; and I. A. Agus, *R. Meir of Rothenburg*, New York 1947, pp. 40-41. Cf. *ר"ה אין תלמיד חכם*; *תשובות הרב אב*. On contemporary rabbinic expressions of *yeridat ha-dorot* in late thirteenth-century Ashkenaz, see, e.g., א: תטו; ספר אור זרוע, א: חטו; *תשובות ר' חיים אור זרוע*, ס"י קסג and Urbach (above, n. 1), 2, pp. 585-586. In the eighteenth century, 'the books are our teachers' was invoked to require decisors to examine written sources when issuing a ruling. See *Elon* (above, n. 14), pp. 21-22.

47 See also *ריא"ז למסכת עירובין* (בעריכת א. וערטהיימר), *ירושלים* 1966, עמ' 86: 'וחכמי ה' החלמוד היו נזהרין שלא להורות במקום רבם אפילו בדבר הפשוט ודוע לכל'.

48 See *תוספות סנהדרין ה ע"ב*, ר"ה אלא, וחדושי הר"ן לניל; *סנהדרין כג ע"א*, ר"ה כגון בי דינא ע"א. ר"ה הונא, ותוספות הרא"ש לניל; *תוספות עירובין סב ע"ב*, סג ע"א, ר"ה רב אמנונא ותוספות ברכות לא ע"ב, ר"ה מורה הלכה; Cf. ר"ה מורה הלכה; *ירושלמי יורה דעה כד ע"א*, ר"ה נידה יד ע"ב, ר"ה מאי לאו; *תוספות הרא"ש*, שבתנא ע"א, ר"ה אילו היה; *סנהדרין כד ע"א*, ר"ה דאילו ר' יוסי; *רשב"א*, שרית, חלק א, ס"י קיא; ר' מנחם המאירי, בית הבחירה, עירובין, שם, וכתובות ס ע"ב; ר' ישראל ברונא, שו"ת, ס"י קפת, רסט

44 See Urbach (above, n. 1), 1, p. 251; 2, pp. 679-680, 717, 727, 738-739.

45 For R. Samson of Sens, see Ramah's *Kitab al Rasa il*, ed. J. Brill, Paris 1871, pp. 131-132; (עמ' 6-7), *ס"א* ירושלים 1967, *ירושלמי*, *תעריכי* א. בעריכת א. תעריכי (מ), *ירושלים* 1967, *ס"ב* (302-303); *פירוש הרא"ש* למסכת סנהדרין ד: ו: *תא"ש* מע, 'הלכתא ככתראי — בחינה היסטורית של כלל משפטי, שנתן. 5\*, n. 479. Cf. *ספר ראב"ן* section 6 (comment to *פסחים כא ע"א*). This view accords well with the absence of centralized legal codes in medieval Ashkenaz and with the reason for this absence suggested by Ta-Shema (*תא"ש* מע, *קליטתם של ספרי הר"ף*, הר"ח ו'הלכות גדולות" בצרפת ובאשכנז, קריית ספר, נה 197-196 [תשמ"ז], עמ' 197-196). It is also linked to the generally high degree of academic freedom prevalent in Ashkenaz. See Breuer (above, n. 2), pp. 45-48.

R. Yoḥanan to have opened his own academy during the lifetime of his teacher Ḥizqiyah. Indeed, R. Yoḥanan would not even have been asked 'questions' that could otherwise have been directed to his teacher.<sup>49</sup>

The right to open a *yeshivah* in northern France and Germany was governed not by the tenets of communal self-rule but by the halakhically defined relationship between teachers and students. The lack of communal involvement in the maintenance of Tosafist academies can also be demonstrated.<sup>50</sup> At the same time, the academies played no fixed role in communal government.<sup>51</sup> Despite or, perhaps, because of these developments, the Tosafist academies flourished.

49 תוספות גיטין פר ע"ב, ר"ה ר' יוחנן אומר, ותוספות הרא"ש לנ"ל; מנחות עג ע"ב, ר"ה כי סליק; conclude that it is prohibited for a student to open an academy (*lihyot ba'al yeshivah*) during the lifetime of his teacher. It is ill-advised, however, to view this passage as a reflection of realia within the Tosafist period itself for several reasons. A variant reading limits this restriction to one who wished to open a school in the same place as his teacher (*be-maqom rabbo* = the position of Ri). Also, the *Pisqei ha-Tosafot* were compiled during the fourteenth century, at a point when some of the procedures may have begun to change. Finally, the passage mirrors the contents of the *Tosafot* in *Gittin* which is limited to the interpretation of a specific situation in the Talmudic period when the prohibition was indeed in effect. See Urbach (above, n. 1), 2, pp. 734–736.

50 See my *Jewish Education and Society*, chapter three.

51 I hope to deal with this issue in a separate study.

**PUBLICATIONS OF THE DIASPORA  
RESEARCH INSTITUTE**

Edited by  
Shlomo Simonsohn

Book 79



The School of Jewish Studies  
Tel-Aviv University

**MICHAEL**

ON THE HISTORY OF THE  
JEWS IN THE DIASPORA

XII

Editors  
Joseph Shatzmiller and Shlomo Simonsohn

The Diaspora Research Institute  
Tel-Aviv 1991