The Adjudication of Fines in Ashkenaz during the Medieval and Early Modern Periods and the Preservation of Communal Decorum

Ephraim Kanarfogel*

The Babylonian Talmud (*Bava Qamma* 84a–b) rules that fines and other assigned payments in situations where no direct monetary loss was incurred--or where the damages involved are not given to precise evaluation or compensation--can be adjudicated only in the Land of Israel, at a time when rabbinic judges were certified competent to do so by the unbroken authority of ordination (*semikhah*). In addition to the implications for the internal workings of the rabbinic courts during the medieval period and beyond, this ruling seriously impacted the maintaining of civility and discipline within the communities. Most if not all of the payments that a person who struck another is required to make according to Torah law fall into the category of fines or forms of compensation that are difficult to assess and thus could not be collected in the post-exilic Diaspora (*ein danin dinei qenasot be-Bavel*).[1]

* Bernard Revel Graduate School of Jewish Studies, Yeshiva University.

1 See *Arba'ah Turim*, *Ḥoshen Mishpat*, sec. 1, and *Beit Yosef*, ad loc. In his no longer extant *Sefer Avi'asaf*, Eli'ezer b. Joel *ha-Levi* of Bonn (Rabiah, d. c. 1225) concludes that the victim of an assault can be awarded payments by a rabbinic court for the cost of his healing (*rippui*) and for money lost if he is unable to work (*shevet*), since these are more common types of monetary law, with more precisely assessed forms of compensation. See *Sefer Mordekhai 'al Massekhet Bava Qamma*, sec. 80, ed. A. Halpern (Jerusalem: Machon Yerushalayim, 1992), 107; and see also Maimonides, *Mishneh Torah, Hilkhot Sanhedrin* 5:8–9. The strong consensus of medieval authorities, however, is that payments claimed for *nezeq* (a lost or disabled limb), *tsa'ar* (pain and suffering), and *boshet* (embarrassment) cannot be adjudicated by the rabbinic courts in the Diaspora. See Israel Isserlein, *Terumat ha-Deshen*, *pesaqim*, sec. 208, ed. S. Abbitan (Jerusalem, 1991), 412; and Moses Isserles, *Darkhei Mosheh ha-Shalem le-Ḥoshen Mishpat* 1:2 (Jerusalem: Machon

During the geonic period, Rav Natronai Gaon (Sura, mid-ninth century) reported on a person who had knocked out the tooth of another and appeared for judgment before his predecessor, Rav Tsadok Gaon. Rav Tsadok ruled that the payment for the lost tooth (*nezeq*) could not be set by the rabbinic court, since this was among those payments that can no longer be adjudicated. The court should instead instruct the aggressor to placate the one whom he had struck, either through his words or by offering him compensation, since such compensation would not be the result of a judicial ruling. As Robert Brody has suggested, "in this way it was possible to achieve two goals that were ostensibly in opposition: to maintain public order and justice on the one hand, while still remaining within the judicial restraints imposed by the Talmud on the other." The Geonim of Sura were prepared to further facilitate the satisfaction of the victim by placing the aggressor under a ban (*ḥerem*) if he did not offer appropriate compensation.[2]

This became the standard procedure for addressing these matters in both Sura and Pumbeditha, and was characterized as "the custom of the two *yeshivot*." However, in order to prevent the victim from attempting to exact an exorbitant amount of compensation from his attacker, Rav Sherira Gaon of Pumbeditha (d. 1005) proposed that rabbinic judges broadly estimate what they believed the victim was owed, without revealing this evaluation. The attacker should be placed under a ban until he came close to offering that amount, or until the victim was otherwise satisfied with the amount offered. If, however, the victim held out for too large a sum, it was up to the judges to convince him to accept the more reasonable figure.[3] R. Isaac Alfasi (Rif, 1013–1103, in Fez and Lucena) supported the geonic approach, although he also permitted the victim to seize assets from his attacker (which could then be evaluated and used as compensation) if the attacker failed to respond after a ban had been implemented.[4]

Yerushalayim, 1978), fol. 1a. For the geonic period, see Amihai Radzyner, *Dinei Qenasot* (Jerusalem: Sachar Institute for Comparative Law, 2014), 224–30.

2 See Robert Brody, "Dinei Ḥavalot be-Bavel bi-Tequfat ha-Geonim," in *Studies in Bible and Talmud*, ed. S. Japhet (Jerusalem: The Hebrew University, 1987), 91–94. See also idem, *Teshuvot R. Natronai b. Hilai Gaon* (Jerusalem: Machon Ofek, 1994), 490; Simcha Assaf, *Ha-'Onshin Aḥarei Ḥatimat ha-Talmud* (Jerusalem, 1922), 46, 51, 53–54; and A. Radzyner, *Dinei Qenasot*, 198–207.

3 See Brody, "Dinei Ḥavalot," 95–96.

4 See *Hilkhot ha-Rif 'al Massekhet Bava Qamma* (at the beginning of *Pereq ha-Ḥovel*), fol. 30b.

In Ashkenaz during the pre-Crusade period, both the rabbinic courts and the elected communal boards (*tuvei ha-'ir*) adjudicated fines and imposed other forms of payment related to physical attacks. Although the *tuvei ha-'ir* were not necessarily Torah scholars, they were empowered like a rabbinic court in a number of ways, and especially in their ability to extract monies from the members of the community in support of communal projects and initiatives, or to collect and recoup funds that were due for taxes and other purposes, all of which was accomplished through the mechanism of *hefqer beit din hefqer*.[5] The prerogative of the rabbinic courts and the *tuvei ha-'ir* to extract fines and other forms of payment from members who did not adhere to communal practices and policies that were in effect--including those who were guilty of physical abuse--was justified in this period according to an extra-judicial principle (first enunciated by the Tanna R. Eli'ezer b. Jacob, a student of R. Aqiva, as recorded in *b. Sanhedrin* 46a and *Yevamot* 90b), that "a rabbinic court may beat or otherwise punish an aggressor not in accordance with formal legal procedure (*beit din makkin ve-'onshin shelo min ha-din*), in order to maintain decorum and foster proper behavior that benefits the community (*bikhdei la'asot seyyag ve-geder ule-migdar milta*)."[6]

As compared to the approach taken by the Geonim and Alfasi, the early Ashkenazic approach reflects a more restrictive understanding of the talmudic prohibition for rabbinic judges in the Diaspora to adjudicate fines and other such payments as a normal function of the court. Just as the *beit din* is unable to assign compensation, it cannot evaluate the damages that had been done, nor can it compel or even advise the attacker to make any payments. The principle that a *beit din* may issue special punitive rulings and demand payments beyond the letter of the law (*shelo min ha-din*) in order to maintain proper societal order and function is what allowed the rabbinic courts and the *tuvei ha-'ir* to in early Ashkenaz to directly fine and otherwise punish one who had committed an act of physical violence against another.

5 See A. Grossman, "The Attitude of the Early Scholars of Ashkenaz towards the Authority of the Kahal," *Shenaton ha-Mishpat ha-'Ivri* 2 (1975): 175–99 (Hebrew); Ya'akov Blidstein, "Medieval Public Law: Sources and Concepts," *Diné Israel* 9 (1978–80): 127–49 (Hebrew); idem, "Individual and Community in the Middle Ages: Halakhic Theory," in *Kinship and Consent*, ed. D. J. Elazar (New Brunswick: Transaction Publishers, 1997), 327–47.

6 On the scope of this principle and its origins, see Hanina Ben-Menahem, "'Anishah she-Lo min ha-Din," *Mishpetei Erets*, vol. 1, ed. Y. Ungar (Ofra, 2002), 152–63; and Menachem Elon, *Jewish Law* (Jerusalem: Magnes, 1973), vol. 2, 421–25 (Hebrew).

Thus, an eleventh-century authority in Mainz, perhaps R. Judah *ha-Kohen* (author of *Sefer ha-Dinim*), or another of Rabbenu Gershom's students, R. Isaac b. Judah, ruled that the community has the ability to levy a monetary fine on one who had struck another in order to maintain proper decorum (*la'asot seyag ve-geder*), whether the injury resulted in an actual out-of-pocket loss to the victim (due to lost wages or medical costs), or whether it embarrassed him but did not cause him a calculable loss.[7] Joseph b. Samuel *Tuv Elem* Bonfils (of Anjou and Limoges during the mid-eleventh century) embraced a similar stance.[8] In one instance, he was asked about an attacker who told his victim that he would accept whatever demands and monetary fine that the rabbinic

7 See *Ma'aseh ha-Geonim*, ed. A. Epstein and J. Freimann (Berlin, 1910), 69–70 (sec. 81); Avraham Grossman, *The Early Sages of Ashkenaz* (Jerusalem: Magnes, 1981), 193–94, 255 (Hebrew) (and the addendum in the Jerusalem, 1989 edition, 444 [to p. 255], based on ms. Bodl. 844, sec. 395); *Responsa of Rabbi Meir of Rothenburg and His Colleagues*, ed. S. Emanuel (Jerusalem: World Union of Jewish Studies, 2012), 338 (sec. 80) (Hebrew); and S. Emanuel, "Seridim Ḥadashim mi-Sefer ha-Dinim shel R. Yehudah ha-Kohen," *Qovets 'al Yad* n. s. 20 (2011): 85, 101–2. Grossman presents another ruling from this period and area (found in the compendium *Basar 'al Gabbei Geḥalim*), in the case of an individual who had struck another and also "profaned him with words in a place of feasting (*be-beit ha-mishteh*)," which maintains that "the important and venerable members of the community (*he-ḥashuvin veha-zeqenim*)" can not only require the aggressor to monetarily compensate his victim, "according to the custom of his place," but "they may also give him lashes or place him in a ban to preserve proper order, on the basis of the communal powers that they had been granted by the early authorities (*ule-hasi'a 'al qitsatan she-tiqnu lahem ha-qadmonim*)." Moreover, all of this obtained, "whether or not any property had been seized by the victim." See also Yehiel Kaplan, *Jewish Public Law in the Medieval Period* (Jerusalem: Sacher Institute for Comparative Law, The Hebrew University of Jerusalem, forthcoming), 12–13 (Hebrew).

8 See *She'elot u-Teshuvot Maharam ben Barukh (defus Lvov)*, ed. R. N. G. Rabinowitz (Lemberg, 1860), #423; *Responsa of the Tosafists*, ed. I. A. Agus (New York: Yeshiva University, 1954), 39–42 (sec. 1) (Hebrew); A. Grossman, "Offenders and Violent Men in Jewish Society in Early Ashkenaz and Their Influence Upon Legal Proceedings," *Shenaton ha-Mishpat ha-'Ivri* 8 (1981): 135–40 (Hebrew); idem, *The Early Sages of* France (Jerusalem: Magnes, 1995), 56–62 (Hebrew); and Haym Soloveitchik, *The Use of Responsa as a Historical Source* (Jerusalem: Merkaz Shazar, 1991), 66–86 (Hebrew). Both Soloveitchik (ibid., 31–37), and Kaplan (op. cit., 13, n. 66), point to suggestive differences between the rulings of Meshullam b. Qalonymus of Lucca in these matters and those of Joseph *Tuv Elem*. See also Joseph Lifshitz, *R. Meir of Rothenburg and the Foundation of Jewish Political Thought* (Cambridge: Cambridge University Press, 2016), 61–69.

court might impose upon him (*kol riddui u-qenas she-yomru beit din*), but he then wanted the victim to forgive him. For his part, the victim took an oath that he would never grant the attacker forgiveness. It is that issue which Bonfil addresses, noting that the victim need not grant forgiveness merely because the prescribed fine had been paid by his attacker. However, the fact that a rabbinic court could impose such a fine and make related demands was tacitly assumed by Bonfil.[9] As we shall see below, there is also evidence from this period for a ban against participating in public prayer which was applied immediately against one who struck another.[10]

It should be noted that in a responsum, Isaac Alfasi also permitted a local rabbinic court to exact payment from one person who struck another based on the notion of *beit din makkin ve-'onshin she-lo min ha-din,* that a *beit din* can assign punishments above and beyond the legal requirements in order to protect the Jewish community and its members.[11] In addition, Alfasi rules in accordance with the action taken by the Amora Rav Naḥman (*Bava Qamma* 96b), who imposed an overly large payment on an inveterate thief as a means of fining him for (and dissuading him from) his nefarious activities (*hai 'inish gazlana 'atiqa hu u-be'ina de-'iqneseh*). Alfasi notes that Rav Naḥman was a Babylonian Amora and judge who nonetheless imposed this fine. He cites as support the passage from tractate *Sanhedrin* in the name of the tanna R. Eli'ezer b. Jacob, that a court has the prerogative to order a punishment that is beyond the Torah's requirements, since this is being done not to transgress the Torah but rather to establish a needed societal limit and boundary.[12]

For Rif then, the rule of thumb was that fines and payments for more common physical damages, which were meant to be adjudicated according to the standard procedures of Jewish civil law, could not be administered directly by a rabbinic court. Rather, the court was only able to place the attacker under a ban which might compel him to appease his victim, although the court could also estimate the value of any property seized by the victim (and assign that money to him). In particularly dire cases, however, Rif agreed that

9 This responsum appears in *Shibbolei ha-Leqet*, pt. 2, ed. M. Z. Hasida (Jerusalem, 1969), 215–18 (sec. 48). It was published more recently (from ms. Bodleian 844) in *Responsa of Rabbi Meir of Rothenburg and His Colleagues*, ed. S. Emanuel, 1:463–64 (sec. 165); and see also Grossman, *Early Sages of France*, 57–58 (n. 43).

10 See below at n. 23.

11 See *Teshuvot ha-Rif*, ed. M. H. Leiter (Brooklyn, 2003), #36; and see also #146.

12 See *Hilkhot ha-Rif*, *Bava Qamma* (*Pereq ha-Gozel 'Etsim*), fol. 34a.

rabbinic courts have the ability to directly impose any fine or exaction that was deemed appropriate, since the potential societal breakdown allows the rabbinic court to act beyond the regular legal procedures available.

Unlike their pre-Crusade predecessors who allowed both the *beit din* and the *tuvei ha-'ir* to collect fines for violent attacks, leading twelfth-century Ashkenazic rabbinic authorities, in both Germany and northern France, presumed that the levying of fines or other payments against one individual who struck another was the responsibility of the rabbinic courts alone, a shift that was purposeful and intentional. At the beginning of his commentary to tractate *Bava Qamma* (found in his halakhic compendium, *'Even ha-'Ezer*), Eli'ezer b. Nathan (Raban) of Mainz discusses the collection of fines for bodily injury, stressing time and again that even though these types of payments and fines may not be collected in the Diaspora at this time, property seized by the injured party requires the rabbinic court to evaluate the amount that the victim is owed in order to determine whether any part of the assets that had been seized had to be returned to the attacker, to avoid overcompensation.[13]

Raban's approach is closer to that of Isaac Alfasi (and the Geonim) than to his Ashkenazic predecessors, although Raban does not mention Rif or the Geonim and was likely unaware of the specific formulations of these earlier authorities from the Islamic orbit. Raban was unwilling to permit a *beit din* in the course of its regular procedures to directly fine a person who struck another, although he was also in agreement with Alfasi's view that the *beit din* can impose punishments beyond its established judicial powers (*makkin ve-'onshin she-lo min ha-din*) in more vexing or unusual situations. Thus, Raban held that the community can monetarily punish (through *hefqer beit din hefqer*) or even give lashes to one who flouts communal regulations.[14]

13 See *Sefer Raban—'Even ha-'Ezer*, ed. D. Deblitzky (Bnei Brak, 2012), 3:1–5.

14 See *Sefer Raban--'Even ha-'Ezer* to *Gittin, pereq ha-Sholeaḥ* (36a), s.v. *shevi'it ba-zeman hazzeh*, ed. D. Deblitzky, 3:630: *ha-qahal rasha'in le-ha'anish le-'eḥad be-mamon ve-gam le-halqoto ve-lo la'avor 'al divrei Torah 'ela la'asot seyag la-Torah*. Because Raban derives this policy from the ability of rabbinic judges to implement a *prozbul*, it would seem that these actions as well need to be administered on behalf of the community by the rabbinic court rather than by the *tuvei ha-'ir*, who are not mentioned in this passage. For Raban's activities on the Mainz *beit din*, see my "Religious Leadership during the Tosafist Period: Between the Academy and the Rabbinic Court," in *Jewish Religious Leadership*, ed. J. Wertheimer (New York: JTSA, 2004), 1:275 (n. 42), 282 (n. 69). The role of *tuvei ha-'ir* in enforcing policies of communal government is virtually absent from Raban's work; this

Similarly, in the first half of the thirteenth century, Isaac b. Moses *Or Zaru'a* of Vienna ruled in accordance with the "custom of the two [Geonic] academies," as cited by Alfasi. He also adduces a related passage from the geonic *Sefer ha-Miqtso'ot*, which includes the caveat that if the victim had seized any assets, these should not be removed from his possession until they can be assessed and applied toward the damages that he is owed.[15] A manuscript passage suggests that R. Isaac's teacher, Simḥah b. Samuel of Speyer (d. c. 1230), held much the same way. Attempts to coerce the aggressor to pay the fines that he owes are appropriate, as long as the rabbinic court does not physically take possessions from him.[16] At the same time, Isaac *Or Zaru'a* also rules in accordance with Rif about the appropriateness of Rav Naḥman's especially large fine for a persistent thief, based on the principle that a court may punish a litigant above and beyond the letter of the law if this was deemed to be necessary in an exceptional case.[17]

role is assigned instead to the rabbinic court or to other rabbinic scholars such as the *ḥakhmei ha-'ir*. See A. M. Shapiro, "Jewish Life in Germany of the Twelfth Century: A Study of *Even ha-'Ezer* of Rabbi Eliezer ben Nathan of Mainz" (Ph.D. diss., Dropsie College, 1968), 162–67, 188–93. See also *Haggahot Maimuniyyot*, *Hilkhot Mekhirah* 14:11 [3]; *Pisqei ha-Rosh le-Bava Batra*, 1:33; and my "Unanimity, Majority and Communal Government in Ashkenaz during the High Middle Ages: A Reassessment," *PAAJR* 58 (1992): 84–86. Indeed, the reference in one of Raban's responsa (sec. 100, ed. Deblitzky, 1:328–35) to the presence of *tuvei ha-'ir*, who were called upon to oversee a complex matter of acquisition, is actually a passage from a responsum composed by Yosef *Tov Elem* which Raban was citing. See also *Teshuvot Maimuniyyot le-hilkhot Sanhedrin*, sec. 9; and below, n. 40.

15 See *Sefer Or Zaru'a, pisqei massekhet Bava Qamma*, secs. 326–27 [*Bava Qamma* 84b] (Jerusalem: Machon Yerushalayim, 2010), 3:106a–b.

16 See ms. Bodl. 692, fol. 237a (sec. 292): שמעי' מינה אע"ג דנידוי הוי כדנקטי' ליה בכובסיה בשלהי השואל (ב"מ דף קא ע"ב), נכוף אותו בכל מיני כפיות שמעצמו יוציא הקנס מתחת ידו, רק שלא יגבו ממנו בידים למשכנו בעל כרחו והוי כתפס דלא מקפינן מיניה. The source of this passage is identified as מס"ע של הש"ר, which refers to Simḥah of Speyers' (no longer extant) halakhic compendium, *Seder 'Olam*; R. Simḥah was often identified by the (reverse) acronym ש"ר. See also Simcha Emanuel, *Fragments of the Tablets* (Magnes: Jerusalem, 2006), 159, n. 25 (Hebrew); and below, n. 19.

17 See *Sefer Or Zaru'a, pisqei Bava Qamma*, sec. 394 (to *Bava Qamma* 96b), 3:106a–b, 123a–b. See also ibid., *pisqei Sanhedrin*, sec. 36, ed. Machon Yerushalayim, 3:529b–530a, on the applicability of *makkin ve-'onshin shelo min ha-din* only to cases that are truly exceptional. Unlike Raban's work, *Sefer Or Zaru'a* is replete with citations from Rif (and various geonic responsa and treatises), since these texts had by now penetrated more heavily into northern Europe; see, e.g., E. E. Urbach, *The* Tosafists (Jerusalem: Mosad Bialik, 1980), 1:447 (Hebrew).

Isaac b. Asher (Riba) *ha-Levi* of Speyer (d. 1133), Raban's older Rhineland contemporary, also did not embrace the pre-Crusade position that immediately applied the principle of *makkin ve-'onshin she-lo min ha-din* to cases of personal violence. "An incident came before Riba concerning one who had struck his friend, and the victim then seized a silver goblet which belonged to the aggressor. The *rav* [Riba] was hesitant about how to proceed in this matter (*hayah libbo me-hases ba-davar*). R. Shmaryah [b. Mordekhai] was sitting before him at that time, and he asked Riba if he would like to be freed from having to offer a decision in this case." When Riba replied in the affirmative, R. Shmaryah instructed him to tell the complainant that it is necessary for the court to assess the amount of damages caused by the wound. However, since the Talmud (*Bava Qamma* 84a) stipulates that it is no longer possible to undertake such an assessment in the Diaspora (*kol davar she-tsarikh shuma 'ein danin be-Bavel*), the victim will be unable to pursue his claim. In making this argument, R. Shmaryah was suggesting to Riba that it is best to encourage the victim and his attacker to reach an agreement about compensation on their own, without the victim seizing any assets. The passage concludes by noting that Riba was pleased with R. Shmaryah's suggested course of action.[18]

The leading northern French Tosafist at this time, R. Jacob Tam (1100–1171) also sought to limit the seizure of property, in an even wider variety of cases involving fines and related payments. Rabbenu Tam put forward this position not because he held that an assessment could not be undertaken, but because of the Talmud's insistence that the payments that resulted could not be adjudicated by a rabbinic court at this time. For Rabbenu Tam, when a rabbinic court assesses the value of the seized property and thereby helps the victim and the aggressor to come to a monetary agreement, the court has become fully involved in adjudicating fines, which it may not do. Indeed, based on a talmudic formulation, Rabbenu Tam characterizes this kind of assessment as akin to one who grabs and holds his friend, until the friend 'agrees' to relinquish his cloak; *beit din* is, in effect, forcing a settlement in

18 See *Sefer Mordekhai 'al Massekhet Bava Qamma*, secs. 41–42, ed. A. Halperin (Jerusalem, 1992), 52–53; *She'elot u-Teshuvot Maharam mi-Rothenburg defus Prague*, ed. M. A. Bloch (Budapest, 1895), #742. A slightly abridged version is cited in *Teshuvot Maimuniyyot le-Sefer Neziqin*, which gives its source as the (no longer extant) *Sefer ha-Ḥokhmah* by Barukh b. Samuel of Mainz (d. 1221). See Emanuel, *Fragments of the Tablets*, 282–83; and cf. below nn. 33, 36.

this instance that it is not permitted to make.[19] A similar view was expressed by Rabbenu Tam's nephew and leading student, Isaac b. Samuel (Ri) of Dampierre (d. 1189).[20]

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

Faced with the need to provide more effective recourse for victims of personal violence in light of the restrictions placed on the rabbinic courts by talmudic law, Rabbenu Tam (and his court) promulgated by ordinance a fine of twenty-five *dinarim* against one who struck his fellow. If this behavior occurred in the synagogue, the fine was to be doubled to fifty *dinarim*.[22] The texts that report Rabbenu Tam's ordinance and fine also note that there had

19 See *Haggahot Maimuniyyot, Hilkhot Sanhedrin*, 5:14 [6–7]. The talmudic passage that Rabbenu Tam cites is found in *Bava Metsi'a* 101a, and *Shevu'ot* 41a (לינקטיה לכובסיה ולשבקיה לגלימיה הוא). Cf. A. Radzyner, *Dinei Qenasot*, 445–47.

20 See *Haggahot Maimuniyyot, Hilkhot To'en ve-Nit'an*, 3:10 [20]; and below, n. 27. See also Solomon Luria, *Yam shel Shelomoh 'al Masskehet Bava Qamma*, 3:36 (New York, 1968), fol. 25d.

21 See *Tosafot Bava Qamma* 15b, s. v. *ve-'i tafas*; *Tosafot ha-Rosh 'al Massekhet Ketubot* 41b, ed. A. Lichtenstein (Jerusalem, 1999), 292–93; *Sefer Qitsur Semag*, ed. Y. Horowitz (Jerusalem, 2005), 95–96; *Tosafot Rabbenu Perets 'al Massekhet Bava Qamma* 84b (Jerusalem, 1975), 210, s. v. *ki 'avdinan; Sefer Mordekhai 'al Massekhet Bava Qamma*, sec. 14, ed. Halpern, 26–27; and ibid., sec. 40, ed. Halpern, 51–52. A comparison between the geonic approach (and that of Alfasi) to collecting these payments as outlined above, and the approach of Rabbenu Tam (and Ri) is presented in *Tosafot ha-Rosh*, ibid., 294–96; *Tosafot Rabbenu Perets*, ibid.; and *Sefer Mordekhai 'al Massekhet Bava Qamma*, sec. 199, ed. Halpern, 108–9.

22 See Louis Finkelstein, *Jewish Self-Government in the Middle Ages* (Feldheim: New York, 1964), 177–78, 187–88, 210. There are several different formulations of this passage, at least one of which (ibid., 194) characterizes it as a *taqqanah* of Rabbenu Tam *u-beit dino*.

been an earlier ban (*ḥerem ha-qadmonim*) against anyone who struck another person, and these texts contrast the earlier policy with that of Rabbenu Tam. In the earlier period, one who struck his friend could henceforth be counted as part of the *minyan* (quorum) of ten men required for prayer (through the release of this *ḥerem*) only if he immediately agreed to have the matter adjudicated by the *tuvei ha-ʿir.* The fines enacted by Rabbenu Tam were ostensibly intended to achieve the aim of this earlier process—to curtail interpersonal violence—with greater effect. Indeed, Rabbenu Tam's ordinance also includes the caveat that if the victim responded by striking his attacker back, he would no longer be entitled to collect the prescribed fine.[23]

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

23 See Simon Schwarzfuchs, *Yehudei Tsarefat Bimei ha-Benayim* (Tel Aviv: Ha-Kibbutz ha-Me'uḥad, 2001), 136–37; and see the version of Rabbenu Tam's *taqqanah* found in ms. Vercelli 1, fol. 22a (in a gloss toward the top, on the left side of the page): חרם קדמונים שלא להכות חברו. ואם הכהו, קודם ש[י]היה נמנה בעשר' צריך שיתירו לו החרם ע''מ שיקבל לעשות דין ע''פ ראות טובי העיר. ואם אי' רוצה שיתירו לו, הקהל יתירו לעצמן ויהיו נמנים עמו אם ירצו. ותקנת ר''ת למכה חברו ליתן לו כ''ה דינרי'. ואם הכהו בביי[ת] הכנס[ת] נ' דינרים מק''ו וישבה י''ד (במדבר יב: יד וספרי, שם). ואם חזר המוכה והכה חברו, אבד זכותו [לגבות את הקנס; בספר מרדכי למסכת קידושין, סי' תקנ''ד: כתב הר''י על דבר חבלות וגידופין, המתחיל פורע הקנס לבדון]. ואשה או קרוב שלו מעידי' על זה. וכן בכל דבר קטטה שאי' עוד עדי' רגילי להיו[ת] בדבר מזומני'... הג' מצא'. As noted at the end of the passage, Rabbenu Tam's *taqqanah* also includes the relaxation of certain evidentiary rules since it was often difficult to find witnesses to these interpersonal conflicts. Cf. *Responsa of Rabbi Meir of Rothenburg and His Colleagues*, ed. Emanuel, 326 (sec. 69), 643 (sec. 309).

Palestinian Amoraim) R. Ami and R. Asi (*Gittin* 36b) could arbitrarily extract monies from individuals through the mechanism of *hefqer beit din hefqer*.[24]

In a number of other halakhic contexts and talmudic *sugyot*—the best known among these are *prozbul* and ratifying a mode of acquisition (*qinyan*) that otherwise appears to be insufficiently based (*asmakhta*)—Rabbenu Tam indicates that only an important, venerable rabbinic court (*beit din ḥashuv*) can extract money from the members of the community in ways that do not accord with standard judicial procedures (*din Torah*). For Rabbenu Tam, the principle of *makkin ve-'onshin she-lo min ha-din* was not in the purview of every rabbinic court, nor were the *tuvei ha-'ir* considered in these matters to be akin to a *beit din ḥashuv*. An ordinance or fine that was imposed to compensate (and to thereby deter) incidents of physical violence in the communities was the prerogative of a *beit din ḥashuv ve-gadol*.[25]

To be sure, Rabbenu Tam's view as to what constitutes a *beit din ḥashuv* vacillated over time. In some instances, it appears that he believed that any highly qualified and competent regional or even local court merited this designation, but in others, his position is less clear. It was surely his view, however, that only the highest court could promulgate the kind of ordinance just described. Nonetheless, the writings of his closest students indicate that Rabbenu Tam, who served as a sitting judge and supervisor of a network of regional courts in northern France and even trained judges, also saw a

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

25 See I. M. Ta-Shma, "What is the Significance of the *Beit Din Hashuv*?" *Studies in Jewish Law*, ed. Y. Habba and A. Radzyner (Ramat Gan: Bar-Ilan University, 2007), 335–45 (Hebrew); and cf. Radzyner, *Dinei Qenasot*, 316–18, 343–50, 390–94. For *asmakhta*, see *Tosafot Nedarim* 27b, s.v. *ve-hilkheta*; *Tosafot Bava Metsia* 66a, *s.v. Manyumei*. In his *Sefer ha-Yashar* (*Ḥeleq ha-ḥiddushim*), ed. S. Schlesinger (Jerusalem, 1974), 325–26 (sec. 549), and 379–80 (sec. 657), Rabbenu Tam analyzes Rav Naḥman's actions against the veteran thief (*Bava Batra* 96b) but does not explicitly connect this discussion to contemporary issues.

significant role for other recognized and capable rabbinic courts in northern France, to apply and to collect the fines for violence inflicted upon others.[26]

From correspondence between Asher b. Meshullam of Lunel and Ri of Dampierre, it emerges that Ri was aware of Alfasi's approach to facilitating the collection of damages from interpersonal attacks (*demei ḥavalah*), even as it is likely that R. Asher was the one who brought this position to Ri's attention. In any case, like his teacher Rabbenu Tam, Ri objected to the seizure of property in such cases. Further embracing Rabbenu Tam's overall requirements, Ri indicates that at least in his region of northern France (*bimqomenu*), only a *beit din ḥashuv* was permitted to extract such payments. The approach of Alfasi, which instructed the rabbinic court to impose a ban on the attacker until he satisfied his victim, was not followed there according to Ri. Rather, in the case of one who had severely embarrassed another (the fine for which could not be collected according to talmudic law), "a *beit din ḥashuv* that wishes to be stringent according to the needs of the hour in order to maintain discipline is allowed to impose such a fine, even if there is no fixed custom to do so." Ri also adduces proof that such a fine can be collected, even after the original form of *semikhah* had lapsed, from a passage in the Talmud Yerushalmi (*Bava Qamma*, 8:6) according to which Resh Laqish took such action.[27] Although

26 See Avraham (Rami) Reiner, "Rabbinical Courts in France in the Twelfth Century: Centralization and Dispersion," *JJS* 60 (2009): 298–315; Shalom Albeck, "Yaḥaso shel Rabbenu Tam li-Be'ayyot Zemano," *Zion* 19 (1954): 129–31; Yehiel Kaplan, "Qabbalat Hakhra'ot ba-Qehillah ha-Yehudit le-Da'at Rabbenu Tam le-Halakhah ule-Ma'aseh," *Zion* 60 (1995): 279–87; my *The Intellectual History and Rabbinic Culture of Medieval Ashkenaz* (Detroit: Wayne State University Press, 2013), 55–56; and I. Ta-Shma in the above note. See also *Teshuvot Ḥakhmei Tsarefat ve-Lothaire*, ed. Joel Mueller (Vienna, 1881), 14 (sec. 27); Grossman, *Early Sages of Ashkenaz*, 148; and cf. *Ḥiddushei ha-Ritva 'al Massekhet Yevamot*, ed. R. A. Joffen (Jerusalem, 1988), 2:1220–21 (89b), s. v. *hefqer beit din hefqer*.

27 See *Temim De'im* (Jerusalem, 1959), sec. 203. [In an annotated edition of Ri's responsa being prepared for publication by Rami Reiner and Pinchas Roth, this passage appears at the end of sec. 25, p. 60.] On the correspondence between R. Asher and Ri, see I. Ta-Shma, *R. Zeraḥyah ha-Levi Ba'al ha-Ma'or u-Bnei Ḥugo* (Jerusalem: Mosad Harav Kook, 1992), 163–65; idem, *Talmudic Commentary in Europe and North Africa: Literary History* (Jerusalem: Magnes, 2000), 2:147–50; and Urbach, *Tosafists*, 1:236–37. See also Moses of Coucy, *Sefer Mitsvot Gadol* (Venice, 1547), *mitsvat 'aseh* 70 (fol. 147a–b). After mentioning the *minhag* of the two (geonic) *yeshivot* in the name of Alfasi, Moses of Coucy notes Ri's disagreement (ואין נראה לר"י) using the same language that is attributed elsewhere to Rabbenu Tam (לינקטיה לכובסיה דלשבקיה לגלימיה הוא; see above, n. 19) and his opposition, again in terms used by

Ri did not serve as a sitting judge as Rabbenu Tam did,[28] he nonetheless agrees that only an important court can collect fines for damages resulting from aggressive behavior, in accordance with the principle of *beit din makkin ve-ʿonshin she-lo min ha-din*.

A responsum by Isaac b. Abraham of Dampierre (Ritsba, d. c. 1209), a leading student of Ri, confirms the notion that in northern France, the imposition and collecting of fines for injuring another was not administered by *tuvei ha-ʿir* or a regular rabbinic court. Ritsba was asked about how a town should relate to one who had struck his friend. He argues that placing the aggressor under a ban (*niddui*) among the townspeople cannot be effective, citing biblical verses (2 Sam 2:26, "will you forever eat the sword," and Ps 103:9, "will you always have to be on guard?") in support. Rather, it is appropriate for the townspeople to compel the aggressor to "conduct himself according to the law (*linhog din be-ʿatsmo*)" and ask forgiveness from his victim. The victim should openly accept this apology and forgive him, as the Talmud recommends (*Bava Qamma* 92a). Ritsba adds, "And you, our rabbis, do not push him [the aggressor] too hard, but exert your leadership slowly if he will listen to you as the verse states (Zech 8:19), "truth and peace should be loved." Ritsba's questioners appear to have been the members of the local rabbinic court. They did not constitute a *beit din ḥashuv* and so they could not fine the aggressor. At the same time, however, Ritsba does not turn this matter over to the communal leadership (*tuvei ha-ʿir*) either. Rather, in the absence of a *beit din ḥashuv*, Ritsba's recommendation is that both the rabbis and the townspeople try to prevail upon the aggressor to step forward and do the right thing on his own.[29]

Rabbenu Tam, to seizure as a means of extracting payment (above, n. 20). See also *Qitstsur Semag*, ed. Horowitz, above, n. 21. For the required presence of a *beit din ḥashuv* according to Ri in other kinds of long-term monetary agreements (to assure reasonability and compliance, once again similar to Rabbenu Tam), see, e.g., *Haggahot Maimuniyyot le-hilkhot mekhirah*, 11:13 [8]; *Sefer Mordekhai ʿal Massekhet Bava Metsiʿa*, sec. 324; and cf. above, n. 23. On the penetration of Alfasi's *Halakhot* into northern France during the twelfth century, see Urbach, *Tosafists*, 56–57, 78, 251; and cf. above, n. 17.

28 See my *Intellectual History and Rabbinic Culture*, 57–62.

29 See *Responsa of Rabbi Meir of Rothenburg and His Colleagues*, ed. Emanuel, 730 (sec. 367). My student, Jesse Abelman, who is completing a dissertation on the scope of interpersonal violence in medieval Ashkenaz against the backdrop of Christian society, including the problems that arose when attempting to seek redress both within the Jewish community and before non-Jewish courts, correctly

Rabbenu Tam's decision to establish hefty fines via ordinance to be paid by one who struck another (which were to be collected by a *beit din ḥashuv*) was not necessarily the result of increased violence in the communities. Rather, in accordance with his halakhic approaches to *ein danin dinei qenasot be-Bavel*—and to the status and prerogatives of the *tuvei ha-'ir*—it was not possible according to Rabbenu Tam for a victim to collect money from his attacker in any other way, neither via *ḥerem* nor through seizure. Indeed, Rabbenu Tam sought to ensure that regular rabbinic courts did not adjudicate or collect other fines as well.[30] Thus, he was concerned that one who had a *mitsvah* taken from him should be compensated in a manner different from the approach taken by Rabban Gamli'el (*Bava Qamma* 91b), that one who had inappropriately usurped the blessing on *kissui ha-dam* (covering the blood after the slaughter of a fowl or non-domesticated animal) must pay a large fine to the one who slaughtered the animal (and was therefore entitled to make the blessing for *kissui ha-dam* as well). In a case that came before him, Rabbenu Tam ruled that one who usurped an *'aliyyah* to the Torah from his friend should provide him with a fowl to be slaughtered, over which two blessings are also recited (one for the slaughter and one for the covering of the blood). Such a form of compensation does not look at all like a fine of the kind imposed by Rabban Gamli'el. Rabbenu Tam ruled similarly in the case of a *mohel* who jumped in and performed a circumcision that had been intended for another *mohel*. Rabbenu Tam's approach in these matters was simply to give the aggrieved party the opportunity to perform another *mitsvah* for which the same number of blessings was involved, thereby avoiding the payment of anything that resembled a fine.[31] In this instance, Ri questioned

notes that this responsum reflects the fact that immediate and effective financial redress was not always available. Cf. *Sefer Ḥasidim* (*Parma*), ed. J. Wistinetski (Frankfurt, 1924), 169 (sec. 631), and 257 (sec. 1024); *Sefer Ḥasidim* (Bologna), ed. R. Margoliot (New York, 1957), 86 (sec. 20), 91, (sec. 23); *Responsa of Rabbi Meir of Rothenburg and His Colleagues*, ed. Emanuel, 641–42 (sec. 308); and below nn. 43, 48, 65.

30 See R. Eli'ezer of Metz, *Sefer Yere'im ha-Shalem* (Vilna, 1902), sec. 164 (end).

31 See *Tosafot Bava Qamma* 91b, s.v. *ve-ḥiyyevo; Tosafot Talmidei Rabbenu Tam ve-R. Elie'zer* in *Shitat ha-Qadmonim le-Bava Qamma*, ed. M. Blau (New York, 1977), 302; *Tosafot Rabbenu Perets 'al Massekhet Bava Qamma,* 222; *Tosafot ha-Rosh 'al Massekhet Ḥullin*, ed. E. Lichtenstein (Jerusalem, 2002), 414–16 (87a); *Sefer Or Zaru'a,* pt. 1, *hilkhot kissui ha-dam,* sec. 399; *Sefer Mordekhai 'al Massekhet Ḥullin*, sec. 655–56; and cf. *Sefer Mitsvot Gadol*, *'aseh* 64 (ed. Venice, fol. 143d); *Haggahot Maimuniyyot, hilkhot ḥovel u-maziq*, 7:14 [20]; *Pisqei ha-Rosh*, *Ḥullin* 6:8; *Sefer Dinim le-Rabbenu*

Rabbenu Tam's ruling since Rabban Gamliel had imposed a hefty monetary fine, arguing that it may be possible to assign an actual fine here using the principle of *makkin ve-'onshin she-lo min ha-din*.[32] However, Riva of Speyer adumbrated Rabbenu Tam's approach in this kind of situation, just as he had avoided (following the advice of his student R. Shmaryah) the imposing of a fine by a rabbinic court for an act of violence, as we have seen.[33]

R. Naḥman, the son of R. Ḥayyim *Kohen* (d. c. 1200; R. Ḥayyim was another student of Rabbenu Tam) not only mentions the *taqqanah* of Rabbenu Tam concerning the fines to be paid by one who strikes another but also suggests that these remained in full force in his day. Moreover, R. Naḥman *Kohen* adds that the same order of fine is applicable to one who uncovers a woman's hair, as a sign of attack or embarrassment.[34] There are also formulations which suggest that R. Yeḥi'el of Paris, a leading northern French Tosafist in the mid-thirteenth century, accepted and ratified the basic ordinance of Rabbenu Tam to impose a fine of 25 *dinarim* for one who struck his fellow.[35]

As recorded in *Sefer Mordekhai* to tractate *Gittin*, Barukh b. Samuel of Mainz, who received a fair amount of Rabbenu Tam's teachings from his teachers, Moses b. Solomon *ha-Kohen* of Mainz and Eli'ezer b. Samuel of Metz (d. 1198, both of whom had studied under Rabbenu Tam in northern France) and agreed with Rabbenu Tam to a large extent regarding the inappropriateness of seizure as a means of collecting damages,[36] nonetheless held that a regular

Perets, ms. Vienna Hebr. 180, fol. *359v*; *Ḥiddushei ha-Ritva 'al Massekhet Ḥullin*, ed. S. Raphael (Jerusalem, 1982), 95–96, s.v. *kos shel berakhah.*

32 See *Tosafot Bava Qamma*, ibid. See also *Pisqei Mahariḥ* [Hezekiah of Magdeburg] in *Shitah Mequbbetset 'al Massekhet Ḥullin*, ed. A. Shoshana (Jerusalem: Machon Ofek, 2005), vol. 2, 860–61 (87a), secs. 7-8; and *Tosafot Talmidei Rabbenu Tam,* ibid.

33 See *Sefer Mordekhai 'al-Massekhet Ḥullin*, sec. 656; *Sefer Or Zarua', op cit*.; *Pisqei Rabbenu Ḥayyim Or Zaru'a*, in *Shitat ha-Qadmonim 'al Massekhet Ḥullin*, vol. 2, ed. M. Blau (New York, 1990), 313; and see above, n. 18.

34 See Emanuel, *Fragments of the Tablets*, 301, n. 377. This passage comes from R. Naḥman's *Sefer Naḥmani* and is recorded in ms. British Museum 541 [IMHM #6092], fols. 56*v*–57*r*.

35 See Finkelstein, *Jewish Self-Government in the Middle Ages*, 177, sec. 8; 194, sec. 14.

36 For R. Barukh of Mainz' view on seizure (which was in partial congruence with the position of Rabbenu Tam), see *Sefer Mordekhai 'al Massekhet Bava Qamma*, sec. 41 (end), ed. Halpern, 52; *Haggahot Maimuniyyot*, *hilkhot Sanhedrin* 5:16 [8], where the source is identified as R. Barukh's *Sefer ha-Ḥokhmah*, sec. 22. Cf. Emanuel, *Fragments of the Tablets*, 126, n. 103.

rabbinic court can collect fines for violence (even as they could not assign them), and that this was not considered a violation of the talmudic principle that "fines are not adjudicated in *Bavel*." In R. Barukh's view, this principle was applicable only to fines prescribed by the Torah itself, such as the fines for a rapist or a seducer, or the Torah's fine of 30 talents for one who killed a slave, or the fine that requires a thief (*ganav*) to pays double the worth of the item(s) that he stole, or the damage caused by the horn of an ox in the category of *ḥatsi nezeq*. However, fines that leading talmudic and rabbinic scholars arrived at on their own and imposed can be collected everywhere, based on the principle of *beit din makkin ve-'onshin she-lo min ha-din*.

R. Barukh of Mainz points to the case of Rav Naḥman (*Bava Qamma* 96b), who imposed an extensive fine on a veteran thief (as has been noted), as well as a case in which the *resh galuta* (*Sanhedrin* 27a) ordered the eyes of a murderer be put out (because the death penalty could no longer be imposed). Both of these cases involved exceptional judicial authorities, which meant that R. Barukh was not prepared to allow every local court to assign these fines themselves. However, it is equally clear from his formulation that a fine that had been imposed by an important court to prevent or to respond to bodily harm, whether by ordinance (such as that of Rabbenu Tam) or as applied by a *beit din ḥashuv* (as maintained by Ri and others) may be collected even by a regular rabbinic court.[37]

To sum up the situation during the twelfth century and into the thirteenth: for Riva *ha-Levi* and Shmaryah b. Mordekhai of Speyer, and for Rabbenu Tam, Ri, and Eli'ezer of Metz in northern France, fines for inflicting bodily injury and for acts of embarrassment could not be adjudicated by a regular rabbinic court, although they could be assigned and collected under the aegis of a *beit din ḥashuv*. On the other hand, Raban of Mainz, Simḥah of Speyer, and Isaac *Or Zaru'a* of Vienna (citing Rif), allowed rabbinic courts to impose bans or to otherwise encourage the assailant to satisfy the victim. Barukh of Mainz, who followed Rabbenu Tam's essential position about the need for a *beit din ḥashuv* to impose these fines, nonetheless allowed a regular court to collect them. What is common to all of these positions is that the *tuvei ha-'ir*

37 See *Sefer ha-Mordekhai le-Massekhet Gittin* (44a), sec. 384, ed. M. A. Rabinowitz (Jerusalem: JTSA, 1990), 551–52; A. Radzyner, *Dinei Qenasot*, 418–20; and see below, nn. 47, 52, 60. R. Barukh was less aware of the teachings of Ri; see Emanuel, *Fragments of the Tablets*, 115.

could not be involved in the setting and collection of fines for violence, as they had been in early Ashkenaz.

Eli'ezer of Metz reiterates the position held by his teacher Rabbenu Tam, that "*tuvei ha-'ir* can compel the members to support only what was a long-standing prior custom, or a measure that they had previously agreed to unanimously. They cannot, however, change a policy or create a new one that causes one to gain and another to lose, or to otherwise collect monies, unless there was unanimous agreement of the members."[38] However, Eli'ezer b. Joel *ha-Levi* (Rabiah), a student of Eli'ezer of Metz, held that *tuvei ha-'ir* were like a *beit din ha-gadol* with regard to all communal matters.[39] In his view, they could enact whatever policies and payments they agreed upon, whether or not individuals gained or lost, and whether or not it was considered to be a matter of communal improvement or decorum (*migdar milta*), and they could punish and collect monies from anyone who did not follow the enactments of the *tuvei ha-'ir*. This approach obviously had important implications for the collection of fines for personal damages in Germany during the thirteenth century.[40]

38 See *Teshuvot Maharaḥ Or Zaru'a*, #222 (end), ed. M. Abbitan (Jerusalem, 2002), fol. 210b. In an addendum to this passage, R. Barukh of Mainz notes that this is the position of Rabbenu Tam as recorded in his *Sefer ha-Yashar*. See my "Development and Diffusion," 27–28.

39 See *Teshuvot Mahara h Or Zaru'a*, ibid., 209a–210b (*ve-zeh 'asher heshiv Avi ha-Ezri*); and Yizhak Handelsman, "The Views of Ravyah on Communal Leadership," *Zion* 48 (1983): 34–41 (Hebrew).

40 Rabiah, however, barely mentions or relates to such *qenasot* in his *Avi ha-'Ezri*, which also does not contain a halakhic commentary to *Bava Qamma*, perhaps because these discussions are to be found in his no longer extant *Sefer Avi'asaf*; see above, n. 1. See also *Sefer Rabiah—Avi ha-'Ezri*, ed. David Deblitzky (Bnei Brak, 2005), 3:134a (sec. 925, in a communication from R. Simḥah of Speyer); 3:394a (sec. 1013). A passage from Rabiah's *Avi'asaf* cited by *Shibbolei ha-Leqet*, pt. 2, ed. M.Z. Hasida, 213 (sec. 100), reports and ratifies the censure (and deficient status as a witness) that Rabiah's grandfather placed on one who raised his hand to strike another even if he did not actually land a blow. On this passage, see also Avigdor Aptowitzer, *Mavo la-Rabiah* (Jerusalem, 1938), 240–41; *Teshvuvot Maharam ve-Ḥaverav*, 840 (sec. 439); and cf. also ibid., 792 (sec. 409). See also *Teshuvot Maimuniyyot le-Hilkhot Sanhedrin*, sec. 9. Rabiah's discussion of the fine ordered by Rabban Gamli'el (for one who usurped the *mitsvah* of another) suggests that he was unaware of the avoidance approach taken by Rabbenu Tam and Riba (above, nn. 31, 33). See *Sefer Rabiah*, ed. Deblitzky, 4:89 (sec. 1088).

Moreover, in the period following Rabiah, Isaac b. Shne'ur of Evreux (d. c. 1250) sought to assist the communities in northern France in imposing such fines even without a special ordinance or the participation of a *beit din ḥashuv*.[41] Although Isaac of Evreux was a close contemporary of Yeḥi'el of Paris, he did not ratify Rabbenu Tam's approach to the assessment and collection of fines as R. Yeḥi'el did but instead proposed an entirely different overarching solution. Even though rabbinic courts could not apply fines in the Diaspora at this time, such fines can be adjudicated by the *tuvei ha-'ir*. R. Isaac came from the other direction and re-asserted the power of the *tuvei ha-'ir* to collect all types of fines, not just those that were needed for the economic management and support of the community for which they were responsible. Isaac of Evreux states that he received this policy from his (unnamed) teachers, suggesting perhaps that they had followed it as well. It is hard to identify the precise source of this approach in R. Isaac's day, although it ultimately involves a return to the position of Joseph *Tov Elem* of Limoges and his colleagues in Germany during the eleventh century, who considered all fines (and bans) needed by the communities as situations in which it is possible to invoke the principle of *makkin ve-'onshin she-lo min ha-din*, and to allow the *tuvei ha-'ir* to implement and manage them. R. Isaac considers the *tuvei ha-'ir* as having the authority to levy fines (including those for inflicting injury against others), but at the same time, the *tuvei ha-'ir* are not considered to be a rabbinic court in terms of the talmudic prohibition against adjudicating fines in the Diaspora.

Isaac b. Joseph of Corbeil (d. 1280), author of *Sefer Mitsvot Qatan* and another student of the academy at Evreux, does not seem to have espoused the policy suggested by Isaac of Evreux with regard to fines (asserting simply that *ein anu danin dinei qenasot*), but he does present an additional dimension. From the fact that Rabban Gamli'el imposed a significant monetary fine on one who grabbed a *mitsvah* away from his fellow, Isaac of Corbeil considered it inappropriate to allow someone who caused his friend this kind of harm to escape without any liability—even though we no longer are able to adjudicate *dinei qenasot*—"since he did the wrong thing (*ki lo tov 'asah*)." R. Isaac therefore maintains that the aggressor should placate or settle with his friend (*tsarikh le-fayyes ḥavero*). Although Isaac of Corbeil does not refer here

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

specifically to fines for causing physical harm (*ḥavalah*), it is likely that he held that rabbinic courts ought to pursue settlements in these cases as well. This would not be considered like the adjudication of a fine, since such an undertaking was viewed by Isaac of Corbeil as a moral imperative.[42]

A responsum attributed to Meir b. Barukh (Maharam) of Rothenburg (d. 1293; Maharam studied at Evreux with R. Samuel, the brother of R. Isaac, and with R. Yeḥi'el of Paris) holds that the *tuvei ha-'ir* can indeed assign fines and payments for personal injury if this is to the benefit of the community, based on the principle of *makkin ve-'onshin she-lo min ha-din*. Thus, Maharam rules that one who struck his friend and then mollified him (*ve-shuv piyyes 'oto*) can be given an additional fine beyond the letter of the law by the community if, for example, he has engaged in this abusive behavior regularly (*ragil be-kakh*), in accordance with the principle (*Bava Batra* 8b) that the members of the community are able to restrict those who need to be deterred (*rasha'in benei ha-'ir le-hasia 'al qitsatan*). Payments sought in accordance with basic Torah law for inflicting bodily harm can be achieved only through negotiation and appeasement between the parties; they cannot be adjudicated by the rabbinic court in the Diaspora (*ein danin dinei qenasot ve-ḥavalot be-Bavel*, which was also with the view of Maharam's early teacher, Isaac *Or Zaru'a*). However, the community, represented by the *tuvei ha-'ir*, does have the power to impose

42 See *Sefer Mitsvot Qatan* (Constantinople, 1820), *mitsvah* 156; ms. JTS Rab. 1489 [IMHM #20588], fol. 93 (*mitsvah* 153); *Sefer Kol Bo*, sec. 108, ed. D. Avraham, vol. 6 (Jerusalem, 2009) 489–90 [=*Orḥot Ḥayyim le-R. Aharon ha-Kohen mi-Lunel*, pt. 3, ed. M. Schlesinger (Berlin, 1899), sec. 27, 395–96]; *Semaq mi-Zurikh*, ed. Y. Y. Har-Shoshanim (Jerusalem, 1977), 2:38 (*mitsvah* 173). See also *Semaq*, *mitsvah* 182, on the imperative for a rapist to marry his victim and to pay the fine prescribed by the Torah, along with damages for *boshet* and *pegam*. R. Isaac concludes (once again) that "although the laws of fines (*dinei qenasot*) are not in force now in our midst (*'ein nohagin 'attah benenu*)," assets seized by the victim may be kept in lieu of payment. A passage in *Pisqei ha-Semaq* discusses the situation of one who struck another and (voluntarily) agreed to pay the victim the liabilities that resulted from the physical damages that occurred but not the *boshet* involved. Since this cannot be adjudicated by a rabbinic court in the Diaspora, the victim was permitted (by the rabbinic court) to seek redress in non-Jewish *'arka'ot*. See H. S. Shaanan, "Pisqei Rabbenu Ri mi-Corbeil," *Ner li-Shemayah: Sefer Zikkaron le-Zikhro shel ha-Rav Shemayah Shaanan* (Bnei Brak, 1988), 27 (sec. 69); idem, "Hafnayyat Tove'a le-Beit Mishpat," *Tehumin* 12 (1991): 252; and cf. Grossman, *Early Sages of Ashkenaz*, 145 (with regard to a similar ruling attributed to Rabbenu Gershom), and the next note.

additional punishments as necessary (*veha-kol lefi tsorekh sha'ah*).[43] Elsewhere in his responsa, Maharam reiterates that fines and payments for causing personal injury cannot be adjudicated by rabbinic courts in the Diaspora, although he supports somewhat reluctantly the possibility of seizure of the aggressor's assets by the victim as a form of compensation.[44]

A composite approach also emerges from the rulings of Maharam's student, Asher b. Yeḥi'el (Rosh, d. c. 1325). *Pisqei ha-Rosh* to *Bava Qamma* (*Pereq ha-Ḥovel*) cites Alfasi and the custom of the two *yeshivot* (along with additional geonic material) regarding payment for bodily injury, including the permissibility of seizure, and that the *beit din* can declare a ban on the aggressor. Rosh suggests, however, that this is not in accordance with the final legal ruling of the Talmud (that such fines can no longer be collected), because a ban by the rabbinic court will lead directly to payment (*ein lekha geviyyah gedolah mi-zo*).[45] In his *pesaqim* to the ninth chapter of *Bava Qamma*, Rosh holds like Alfasi that in special situations, a singular scholar like Rav Naḥman—employing the principle that *beit din makkin ve-'onshin she-lo min ha-din la'asot seyag la-Torah*—can implement fines as necessary. Rosh adds, however, that this is also true for the *tuvei ha-'ir*, "whom the many accepted over them (*she-himhum rabbim 'aleihem*)," but this cannot be done by regular rabbinic judges (*aval dayyanei de-'alma lo*).[46] In *Gittin* (44a), Rosh

43 See *Teshuvot u-Pesaqim me-'et Hakhmei Ashkenaz ve-Tsarefat* (Jerusalem: Mekitse Nirdamim, 1973), ed. E. Kupfer, 152 (sec. 94); Y. Handelsman, "Hashqafotav shel Rabiah," 43–44, 46–47 (n. 130); *She'elot u-Teshuvot Maharam mi-Rothenburg defus Cremona* (1547), #298; *Responsa of Rabbi Meir of Rothenburg and His Colleagues*, ed. Emanuel, 193–96 (sec. 4), 337 (sec. 79); *Sefer Mordekhai 'al Massekhet Bava Qamma*, sec. 81, ed. Halpern, 109–10; *Sefer Mordekhai 'al Massekhet Bava Batra*, sec. 480–81; *Teshuvot Maimuniyyot le-Hilkhot Sanhedrin*, sec. 10; Kaplan, *Mishpat Tsibburi 'Ivri Bimei ha-Benayim*, 24, 112–13; and above, n. 15. Cf. Joseph Lifshitz, *R. Meir of Rothenburg and the Foundation of Jewish Political Thought*, 184–86. For rulings by Maharam (and others in his day) regarding victims of violence who took their cases to the secular authorities, see *Responsa of Rabbi Meir*, ed. Emanuel, 620 (sec. 292); 643 (sec. 309), 645 (sec. 311); 778 (sec. 402); *Teshuvot R. Ḥayyim Or Zaru'a*, ed. Abbitan, 24–25 (sec. 25); ed. Abittan, 132–33 (sec. 142); and ed. Abbitan, 267–69 (sec. 4).

44 See *Teshuvot Maharam mi-Rothenburg defus Prague*, #994; and *Teshuvot Ba'alei ha-Tosafot*, ed. Agus, 146–47 (sec. 65).

45 See *Pisqei ha-Rosh, Bava Qamma*, 8:2–3; and see also above, n. 21.

46 See *Pisqei ha-Rosh* to *Bava Qamma*, 9:5. Cf. Kaplan, *Mishpat Tsibburi 'Ivri Bimei ha-Benayim*, 17 (n. 92).

argues against the conclusion of Rif and the Geonim, that fines which were instituted by rabbinic scholars to establish proper boundaries are included in the talmudic prohibition against collecting fines in the Diaspora, ruling instead in accordance with the approach of R. Barukh of Mainz that only fines established by the Torah itself can no longer be collected.[47]

In a situation in which one person called another a *mamzer*, which talmudic law concludes (*Qiddushin* 28a) is punishable by lashes—in Rashi's words, *hayu qonsin lo makkat mardut*—Ḥayyim b. Yeḥi'el *Ḥefets Zahav*, an active judge in Cologne in the days of Meir of Rothenburg, rules that the current policy "in this land" is to fine him instead. R. Ḥayyim's point is that although the talmudic prescription was meant to create a deterrent (and is thus certainly justified), the custom developed that proposed a fine instead. The talmudic ruling, that fines are not adjudicated in the Diaspora, applies only in cases where the question is whether the money can actually be extracted. But in order to "build a fence to prevent sin," imposing such a fine is surely allowed. Isaac b. Meir, author of *Sha'arei Dura*, agrees with R. Ḥayyim's ruling, adding that "we follow what the community in that place ordained." Another leading judge and relative of Maharam, Yaqar b. Samuel *ha-Levi* of Cologne, wrote similarly that although according to the Geonim, the procedure at this time in matters of fines is to ban the aggressor until he accepts the amount that he has to pay in accordance with what the "scholars of his generation instruct him," where there is a local custom or ordinance that had been enacted by the administration of the town or city (*ḥever 'ir*), all is determined by that local custom. In the same context, Rosh rules that if it can be determined that there were well-established communal regulations concerning the punishment for verbally demeaning another (*divrei giddufin*), these ordinances should be followed rather than the more general talmudic laws, although Rosh adds that the precise amount of the fines to be levied for the various insults involved should be evaluated by the *beit din*.[48]

47 See *Pisqei ha-Rosh* to *Gittin*, 4:41. Rosh does not, however, mention R. Barukh of Mainz by name; indeed, he rarely cites R. Barukh's *Sefer ha-Ḥokhmah*. See Emanuel, *Fragments of the Tablets*, 142–43.

48 See *Teshuvot ha-Rosh*, 101:1, ed. Y. S. Yudlov (Jerusalem, 1994), 422–23; Assaf, *Ha-'Onshin Aḥarei Ḥatimat ha-Talmud*; and Simcha Goldin, *Uniqueness and Togetherness* (Tel Aviv: Ha-Kibbutz ha-Me'uḥad, 1997), 124–25 (Hebrew). See also *Teshuvot ha-Rosh*, 6:27, ed. Yudlov, 39, about the powers of local rabbinic courts to prosecute one who ignores their policies; and 13:4, ed. Yudlov, 56, about a *taqqanat ha-'ir* (ostensibly in Spain) that one who strikes another must

It appears then that by the mid-thirteenth century and beyond, leading Ashkenazic rabbinic authorities had come over to Alfasi's model (except for Rosh, whose view is also cited by his son R. Jacob in *Arba'ah Turim*),[49] that a local rabbinic court does not have the ability to directly adjudicate or apply fines according to its regular procedures, but that it can be involved in the negotiations (or even in applying pressure, via a ban) toward a settlement. In addition, fines that were levied to maintain discipline (and otherwise improve the state of the community) can be activated by the *tuvei ha-'ir* in accordance with the ordinances or customs of that city, without the involvement of a *beit din ḥashuv* (or even an *adam ḥashuv*) as Rabbenu Tam and Ri had insisted. Just as Rabbenu Tam's position that unanimous agreement was necessary to enact many communal policies and provisions was largely rejected by the end of the thirteenth century in Ashkenaz,[50] his approach to adjudicating fines was also not so well-accepted by then either. And as we have seen, there were German Tosafists who did not embrace Rabbenu Tam's approach with regard to the collection of fines even before that.

The power and prerogatives of rabbinic scholars in running the communities in Ashkenaz were diminished beginning in the fifteenth century (as was the image of the *qahal* as a *beit din*), when the elected leaders (including the *tuvei ha-'ir*) emerged as the more dominant force within the realm of communal government. Communal rules and ordinances were enacted not

pay a hefty sum. There is a spate of responsa from this period concerning one who called another a *mamzer*, to which both the rabbinic courts and the *tuvei ha-'ir* responded. See, e.g., *Teshuvot Maharam defus Lvov,* ed. Rabinowitz, #491-92 (and see also Emanuel, *Fragments of the Tablets*, 214, n. 116); *Sefer Mordekhai 'al Massekhet Bava Qamma*, sec. 105–6, ed. Halpern, 128–29; *Responsa of Rabbi Meir of Rothenburg and His Colleagues*, ed. Emanuel, 328 (sec. 71), 641 (sec. 308), 797–98 (sec. 714).

49 See *Arba'ah Turim*, *Ḥoshen Mishpat*, sec. 1, which lists all the fines that cannot be adjudicated in the Diaspora. Like Rosh, *Arba'ah Turim* concludes that one who strikes another cannot be placed under a ban by the rabbinic court nor can his assets be seized for payment (as Rif had maintained), because these tactics are akin to the direct collection of fines. In *Ḥoshen Mishpat* sec. 2, *Arba'ah Turim* notes that fines for maintaining order can be collected in the Diaspora nowadays if they are meant to prevent decadent behavior, as Rav Naḥman did. However, only a *gadol ha-dor* like Rav Naḥman (who was appointed by the *Nasi*), or the *tuvei ha-'ir* whose authority was accepted by the many can do so; regular judges, however, cannot do so, precisely as Rosh had indicated.

50 See Kaplan, "Qabbalot Hakhra'ot ba-Qehillah ha-Yehudit le-Da'at Rabbenu Tam," 292–330; and my "Development and Diffusion," 26–35.

by halakhic authorities but rather by the lay leadership, which controlled the communities. Indeed, rabbis were largely excluded from the leadership of Jewish communal self-government in Poland during the sixteenth century; they served only as religious authorities for the communities.[51]

These developments are the most plausible explanation for the near complete reversal of the Ashkenazic rabbinic consensus during the early modern period (in both Germany and Poland) concerning the adjudication of fines, including those meted out as a response to physical attacks. The rabbinic court is once again identified as central to this process (as opposed to the *tuvei ha-'ir*), and the approach of Rabbenu Tam, that a leading *beit din* is necessary, is ultimately elevated to an even higher level of prominence. Solomon Luria (Maharshal, d. 1574) held in accordance with Asher b. Yeḥi'el (who followed the approach of Barukh of Mainz before him) that a local rabbinic court could collect fines that had been prescribed by leading rabbinic scholars without any difficulty. At the same time, Maharshal does not accept the ruling of Isaac of Evreux (which appears in the same passage of the *Sefer ha-Mordekhai* to tractate *Gittin* as the ruling of R. Barukh) that *tuvei ha-'ir* can collect all fines in the Diaspora that are not prescribed in the Torah.[52] Maharshal elsewhere writes that "matters on which the rabbinic scholars themselves sought to levy fines by can be allowed because of *migdar milta*, and these fines can be collected nowadays."[53]

Maharshal adopts the formulation of Isaac of Corbeil in his *Sefer Mitsvot Qatan*, that even with regard to a fine that is hard to adjudicate in *beit din* since the real loss to the injured party is difficult to evaluate, rabbinic scholars should find a way in which the offender can compensate his victim, "for he has done him wrong (*ki lo tov 'asah 'immo*)."[54] Furthermore, Maharshal presents the words of Alfasi regarding the custom of the two Geonic *yeshivot* (along with additional geonic material, as was also brought by Rosh). Maharshal rules that the attacker who does not wish to compensate his victim should

51 See Mordecahi Breuer, "The Position of the Rabbinate in the Leadership of the Jewish Communities in the Sixteenth Century," *Zion* 41 (1976): 47–54, 61–66 (Hebrew); Edward Fram, *Ideals Face Reality: Jewish Law and Life in Poland, 1550–1655* (Cincinnati: Hebrew Union College Press, 1997), 38–41.

52 See Maharshal, *Yam shel Shelomoh*, *Gittin* 4:64, fols. 33b–c.

53 See *Yam shel Shelomoh, Bava Qamma,* 8:4, fol. 73c.

54 *Yam shel Shelomoh,* ibid., 8:60, fol. 84a; cf. above, n. 42.

be banned, against the conclusion of Rosh that the position of the Geonim in this matter does not accord with the final ruling of talmudic law.[55]

Maharshal agrees with Rosh that leading scholars such as Rav Naḥman, who was appointed by and related to the *Nasi*, can actively hand down fines. However, whereas Rosh adds that this can also be done by the "*tuvei ha-'ir*, whom the many accepted over them," Maharshal puts forward an important qualification: the *tuvei ha-'ir* must agree to invite a singular scholar and decisor (*mumḥeh ve-gadol be-hora'ah*) to promulgate this legislation, and they join him in this case (*ve-yoshevim 'immo ba-din*). Without the presence (and leadership) of this leading scholar, however, the *tuvei ha-'ir* cannot themselves establish any fines, although Maharshal hastens to add that a regular judge does not have the ability to be involved in such an effort either (*be-yad ha-dayyan leika le-miqnas 'ela mumḥeh ve-gadol be-hora'ah*). Although Maharshal does not mention Rabbenu Tam by name in this instance, Maharshal has clearly gone back to his position, that a *beit din ḥashuv* (as defined by its leading rabbinic figure) must be involved in the establishing of fines nowadays. The *tuvei ha-'ir* cannot do so by themselves, while a standard judge cannot do so at all.[56]

Moses Isserles (d. 1572) follows a similar path in his *Darkhei Mosheh* glosses to the *Arba'ah Turim*. He cites a passage from *Sefer Mordekhai* to *Bava Batra*, that "*tuvei ha-'ir* in their locale are considered to be like great scholars who can extract money via *hefqer beit din hefqer*, and can ordain and improve whatever they would like for their city."[57] However, he also cites a responsum by Joseph Colon (Mahariq, d. 1480)[58] and a ruling by Israel Isserlein (d. 1460) in his *Terumat ha-Deshen* (citing several of his teachers and predecessors)[59] that if the issue before the *tuvei ha-'ir* concerns money that is not needed by the community (for example, the money is not associated with tax payments or other economic commitments), or the goal is to otherwise take money away from a member of the community without his knowing and agreeing to it in advance, this cannot be done by the heads of the community (*rashei*

55 See *Yam shel Shelomoh,* ibid., 8:6, fols. 73d–74b; and see also ibid., 1:43, fols. 9a–b.

56 See *Yam shel Shelomoh,* ibid., 9:7, fol. 58b.

57 See *Darkhei Mosheh, Ḥoshen Mishpat,* 2:2, ed. Machon Yerushalayim, fol. 3a. This part of the *Mordekhai* passage, found in *Bava Batra,* sec. 480, is associated with R. Meir of Rothenburg; see above, n. 43.

58 See *Teshuvot Mahariq* (Jerusalem, 1988), responsum #1, sec. 1. See also responsum #14; and #180–81.

59 See *Terumat ha-Deshen*, *pesaqim*, sec. 253, ed. S. Abbitan, 439.

ha-qahal). Rather, an exceptionally great and prominent scholar, a *gadol ha-dor*, is required. *Terumat ha-Deshen* stresses that we are not talking here about a scholar who is greater than anyone else in his city or area (*ve-lo qa'amar gadol she-'ein be-'iro 'o bi-gevulo kemoto*), but rather that he is indeed the greatest and most qualified in his generation (*de-davka be-gadol she-'ein be-doro kemoto 'alim koḥo...'ela be-'inan she-'ein be-khol ha-dor kemoto*), and he associates this requirement with Rabbenu Tam. Although we have noted that Rabbenu Tam himself vacillated about the definition of a *beit din ḥashuv* and ultimately seems to have allowed well-qualified courts to be involved in the collection of fines (even if they did not have the greatest scholar of the day as a member), Rabbenu Tam, at least at one point, considered his own court (and his singular presence) to be uniquely qualified to make these enactments and determinations. It is that 'strict definition' of *beit din ḥashuv* which becomes the standard in Germany and Poland during the early modern period.

Darkhei Mosheh rules in accordance with the view of Rosh (and against the Geonim) that a rabbinic court may not place a ban on an attacker until he financially or otherwise appeases his victim. Isserles cites from *Sefer Mordekhai* to tractate *Gittin* not only the ruling by R. Barukh of Mainz that it is possible for a regular court nowadays to collect fines (albeit not to initiate them) but also the approach of Isaac of Evreux that non-Torah fines can be adjudicated by the *tuvei ha-'ir* (as he received this from his teachers),[60] although Isserles also refers his readers to two later comments, including the one just described about the need for a *gadol ha-dor* to impose fines. This suggests that Isserles did not fully support the approach which gives the *tuvei ha-'ir* the power to freely assign or even collect fines.[61] However, while Maharshal bases his positions here directly upon medieval authorities (*rishonim*), Isserles relies (as was his wont) upon formulations of the later authorities, the *batra'ei*, such as

60 *Darkhei Mosheh ha-Shalem, Ḥoshen Mishpat*, 1:7, ed. Machon Yerushalayim, 2-3. See above, nn. 37, 41; and see also above, n. 1.

61 See also *Darkhei Mosheh ha-Shalem, Ḥoshen Mishpat*, 2:2, ed. Machon Yerushalayim, fols. 3b–4a; the lofty status of those who have been appointed to lead the community, according to Rashba, allows the leadership to promulgate *taqqanot* on behalf of the community. Once again, however, Isserles refers his reader at the end of this passage to another of his comments (*Yoreh De'ah* sec. 228:25), where it is clear that the community is to be placed under the guidance of a *beit din* with regard to the *taqqanot ha-qahal*. Isserles deals with property seizure in *Darkhei Mosheh ha-Shalem, Ḥoshen Mishpat* 1:6, ed. Machon Yerushalayim, fol. 2a, and presents a limiting position that jibes with the approach of Rabbenu Tam (above, n. 21).

Teshuvot Mahariq and *Terumat ha-Deshen*. Joseph Colon also cites and explicitly rejects an approach which holds that three *hedyotot* (akin to *tuvei ha-'ir*) can undertake to do what Rav Naḥman did with regard to the veteran thief.[62]

Isserles also refers to a responsum written by R. Jacob Weil (d. c. 1450) to two rabbinic judges in Cologne about the range of punishments beyond fines that ought to be meted out for acts of violence.[63] Weil was asked about the case of one who had struck another on the forehead, drawing a significant amount of blood. He notes that he had in his possession a responsum attributed to Ḥayyim b. Isaac *Or Zaru'a* about an incident in which someone grabbed the throat of another and raised a sword to him, threatening to sever his head. R. Ḥayyim ruled that even the threat of this act of heinous violence is such that "had it occurred in our locale (*bimqomenu*), lashes would have been given."[64] Weil then cites the prescription of R. Judah *he-Ḥasid*, that one who strikes his friend must seek forgiveness from him and receive lashes.[65] Regarding the case before him, Weil concludes that the aggressor must ascend the *bimah* after the Torah is read, confess his sin in detail, and ask his victim for forgiveness. He should then be given lashes in the synagogue at the end of that day, just before the evening prayer, and he must also pay a sum of money.[66]

Weil writes that he did not receive a clear tradition about the amount that should be paid, noting only that the great authority, R. Yakil *me-Igra*, once required an aggressor who struck another to give the victim "a third of his possessions."[67] Weil notes that he did not know anything about the details of this particular case and therefore could not follow its specific ruling.

62 See *Teshuvot Mahariq*, #188.

63 See *She'elot u-Teshuvot Mahari Weil*, #28, ed. Y. S. Domb (Jerusalem, 2001), 37–39.

64 As noted by Domb (38, n. 8), although some texts indeed assign this responsum to Ḥayyim *Or Zaru'a*, others attribute it to Ḥayyim b. Yeḥi'el *Ḥefets Zahav* of Cologne. See also *Teshuvot Maharam defus Prague*, #383; and above, n. 48.

65 See *Sefer Ḥasidim* (Parma), sec. 631 (above n. 29). *Yam shel Shelomoh le-Bava Qamma*, 8:63, suggests that the lashes prescribed by Judah *he-Ḥasid* should be considered as a *qenas mide-rabbanan* since according to Torah law, the proper recourse is to pay for these damages.

66 Weil cites a ruling of Meir of Rothenburg in the case of one who called another a *mamzer*, that he must repent and fast, receive lashes, and part with some money; see *Mordekhai Bava Qamma*, sec. 105–6; and above, n. 48.

67 On R. Yakil *me-Igra*, see I. J. Yuval, *Scholars in Their Time* (Jerusalem: Magnes, 1989), 59–60, 69–72 (Hebrew).

Instead, he fixed a significant amount of money as a fine (*zaquq kesef*) if the aggressor was not so wealthy—and an additional *zaquq* if he is wealthy, which should be given to dedicated Torah scholars—and he also cites in this regard R. Abraham b. Elijah Katz, another leading rabbinic figure in whose jurisdiction the case apparently occurred.[68] Weil also cites a responsum of R. Isaac b. Ḥayyim (perhaps the grandson of Isaac *Or Zaru'a*), in the case of one who pulled out the beard of another, who was also made to pay a silver *zaquq*.

Once the aggressor has done all of this and made financial restitution, he is able to again serve as a witness and take an oath. With regard to the amount of the payment, Weil writes to his questioners that his ruling should only be applied if there is no "*minhag* in your *medinah* to deal with aggressors who strike others (*ba'alei zero'a ha-makkim ḥavreihem*). But if you have a prescribed custom in your locale (about how much to pay), it should be followed." Isserles concludes that much of what Weil required was a *hora'at sha'ah*, specially designed for this specific instance and measured according to the sins of this particular attacker. There is no obligation in such cases according to the letter of the law (*mi-dina*) to receive lashes (and to pay overly large sums of money), but only to compensate the victim for his losses (and there is also no indication that any of these monies should be given to Torah students).[69]

Nonetheless, the control of the rabbinic leadership (and the rabbinic courts) over this process as reflected in all of these instances (and texts) from the fifteenth and sixteenth centuries is quite evident. On the passage in *Arba'ah Turim, Ḥoshen Mishpat* (sec. 2), that fines for violent acts may be levied according to what a judge sees fit and the needs of the hour, Yo'el Sirkus (d. 1640) writes in his *Bayyit Ḥadash* (*Baḥ*) commentary that a rabbinic court is

68 See ibid., 167–71. On the jurisdiction issue, see Y. S. Domb, op. cit, 37, n. 2.

69 See *Darkhei Mosheh ha-Shalem le-Ḥoshen Mishpat*, 420:7, ed. Machon Yerushalayim, fol. 331. Isserles also mentions another responsum of Jacob Weil (sec. 87) which deals with the obligations on someone who struck another and killed him. *Nimmuqei R. Menaḥem Merseberg* (sec. 57) refers to the passage by R. Ḥayyim noted above (n. 64). In this same work (sec. 54), it is also noted that fines for personal harm and embarrassment against a young child are overseen by the rabbinic court, although the *tuvei ha-'ir* collect the payment and spend it in a way that will benefit the child, such as acquiring a *siddur* for him. On all of the fifteenth-century sources presented here, see also Eric Zimmer, *Harmony and Discord: An Analysis of the Decline of Jewish Self-Government in 15th Century Central Europe* (New York: Yeshiva University Press, 1970), 100–2, 215–16.

able to impose these fines as Rav Naḥman did, to deter sinful behavior. He also notes, however, that *tuvei ha-ʿir* cannot fine someone in these kinds of situations (*she-lo ke-din Torah ʾafilu be-milei di-shmaya*) adding in the name of Rabbenu Tam that *tuvei ha-ʿir*, even when they are appointed and accepted by the entire city (*she-himḥim rabbim aleihem*) cannot take money away or cause one to lose while another gains. They can only require the community to pay for monetary matters and arrangements that were in vogue from before, or that are now necessary for the welfare of the entire community. Since for Rabbenu Tam, a great Torah scholar of unparalleled standing (*gadol she-ein ba-dor ka-mohu*) is more powerful than the *tuvei ha-ʿir*, *Bayit Ḥadash* rules that such a figure can impose new policies that penalize and require monetary payments from individuals, under the principle of *hefqer beit din hefqer*. If, however, he is the greatest scholar (only) in his city or area (*be-ʿiro o bi-gevulo*), he does not have this power unless he was accepted initially by the community to lead them in this way.[70]

Although there were decisors in the early modern period, and in Eastern Europe during the sixteenth century and beyond, who supported the *tuvei ha-ʿir*'s prerogatives to apply and collect fines,[71] an impressive array of these authorities returned to support the approach of Rabbenu Tam, that adjudicating fines to maintain communal decorum is essentially the purview of a *beit din ḥashuv*, if not of a singular *gadol ha-dor*. It is worthwhile noting the following passage from a responsum by Ḥayyim *Or Zaruʿa* (c. 1300): "We have concluded nonetheless that if the seven *tovei ha-ʿir* do something that is in accord with an existing *taqqanat ha-ʿir* and its well-being, their ordinance remains in force. No member of the community can back out at a later time, even if there are people in the town like them, who are as good

70 See *Bayit Ḥadash* (*Baḥ*), *Ḥoshen Mishpat*, sec. 2 (ed. Machon Yerushalayim), fols. 25–26. On *Ḥoshen Mishpat* sec. 1 (ed. Machon Yerushalayim), fol. 18, where *Arbaʿah Turim* cites Alfasi and the custom of the two (geonic) academies that a rabbinic court can place a ban on the attacker to compel him to pay (along with the demurral of Rosh), *Bayit Ḥadash* cites the passages from *Semag* (in the name of Ri; above, n. 25) and *Haggahot Maimuniyyot* (in the name of Rabbenu Tam; above, n. 17), that such an approach amounts *de facto* to the *beit din* directly judging the case which they are constrained from doing.

71 See *Sheʾelot u-Teshuvot Mahari Bruna*, #123; and see also #268, 274. In these passages, Israel Bruna (d. 1480) essentially seeks to harmonize the positions of Rabbenu Tam and Maharam: only *gedolei ha-dor* can take away money through the power of *hefqer beit din*, but the *tuvei ha-ʿir* essentially possessed this status in their own cities.

as they are (*va-'afilu 'im yesh ba-'ir tovim ka-'elu*). However, to take money away (*le-hafqir mamon*), I do not believe that they can do this if they are not a properly constituted *beit din*."[72]

This passage serves as a kind of fulcrum around which the range of positions and their historical development that have been traced in this study can be arrayed. To be sure, the movement of Ashkenazic Jewry to Eastern Europe, and especially to Poland, meant that this Jewry now had to deal with the phenomenon of rabbis appointed by the government, and indeed with the larger question of whether the Polish king or the noblemen were fundamentally in charge of dealing with the Jewish community and the laity.[73] Whether because of these reasons or for more internal considerations, leading Ashkenazic rabbinic authorities saw the need to ensure that the most important judicial tools for maintaining discipline within the communities should be firmly in their hands once again.

72 See *Teshuvot Maharaḥ Or Zaru'a*, #65, ed. S. Abbitan, 58.

73 See, e.g., Adam Teller, "Telling the Difference: Some Comparative Perspectives on the Jews' Legal Status in the Polish-Lithuanian Commonwealth and the Holy Roman Empire," *Polin* 22 (2010): 114–28; Dean Bell, *Jews in the Early Modern World* (Lanham: Rowman & Littlefield, 2008), 102; and David Ruderman, *Early Modern Jewry: A New Cultural History* (Princeton: Princeton University Press, 2010), 87–89.

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Editors
Suzanne Last Stone, Arye Edrei, Shai Wozner

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Buchmann Faculty of Law
Tel Aviv University

Benjamin N. Cardozo
School of Law
Yeshiva University

Goldstein-Goren
International Center for Jewish Thought