Irving Agus,
Urban Civilization in
Pre-Crusade Europe
v. 2

CHAPTER EIGHT

COMMUNITY

CXLIII (TGK. no. 122)

A Responsum of R. Meshullam b. Kalonymus.

Q. When A was critically ill the [members of the] community (*Kahal*) came to visit him. They asked him to forgive them for the sins they perpetrated against him. He replied: "May all Israelites be forgiven for the sins they perpetrated against me." After his death his children produced testimony of witnesses to the effect that B had struck and injured their father A. They demanded that B pay them the appropriate fine.

A. Even though B was not present at A's sickbed and his name was not mentioned at the time of the above-described visit, he was nevertheless included in the term "all Israelites" used by A in his general forgiveness of all sins perpetrated against him. A's children, therefore, can no longer sue B for an injury done to their father, since the latter forgave B for that injury.

a) While A was lying on his death-bed the members of the community came to visit him. They did not come as individuals, as neighbors, but seem to have clustered around him as a group (*Kahal*). Thus he was asked for forgiveness by the group and made a single and all-inclusive statement to the group. The term *Kahal* as used at this time, had the following three distinct meanings: 1. Many members of a community informally gathered together; 2. the members of the community assembled as a legislative, judiciary or religious body. 3. the ruling council of a community. Although it is difficult to determine in what sense the term *Kahal* was used here, the gathering around the critically ill person did apparently possess the characteristics of a formal body discharging an official duty. At such a time rights in property

(in accordance with Jewish law) would be created by the mere word of the ill person; and the obligations and responsibilities of the community toward the orphans would then become clarified. It became customary, therefore, for the members of the community to be present, at the sick-bed of a critically ill person, as a formally organized body; thus stemming at the source the causes of future litigations and disputes and ensuring the full legal protection of minors, absentees and defenceless persons whose interests were about to be affected by the death of the ill person. The members of the community were at A's bedside in accordance with a general custom prevalent in the community of this period. The magnanimity and nobility of A's reply was partly due to the formal atmosphere pervading the sickroom.

b) The members of the community asked A for forgiveness. Although such a request was often made as a pious formality, the fact that A had been beaten by B within a short period of his fatal illness (A apparently had no chance to sue B for the injury done him; cf. however, no. CXLV, below) lends serious overtones to that request. Apparently some of the visitors, and perhaps the community as an organized body, were involved in the serious dispute during which B struck A. The latter's fatal illness was not directly caused by the dispute —it certainly was not caused by the beating he received, or the community would have taken a much graver view of the situation—but might have been indirectly a result of such dispute. Thus life in the community did not always run smoothly. Sometimes tempers flared up, serious quarrels erupted and physical violence was resorted to. Though the Jewish communities of this period were probably small, isolated and lonely, their problems of human organization, social control and inner discipline were as grave as those of any national state. Every community, no matter how small, required a strong and efficient political organization that carried all the burdens and discharged all the obligations and functions of a fully developed government.

c) A's children demanded that B pay the appropriate fine

for striking their father. This fine was unrelated to the "five payments" imposed by Scriptural law on a person who struck his neighbor. These "five payments" were exacted by an authoritative court only, a court at least one member of which had received full ordination in the land of Israel. Since such "full ordination" was long extinct, and no one in Western Europe claimed to have received such distinction or to possess the plenipotentiary powers conferred thereby, the above-mentioned Scriptural fines were not collectible in the European communities. The fine referred to, therefore, was a local fine that had at one time been enacted by the members of that community at a legislative assembly and thus became part of the law governing the inhabitants of that community (see next no.). Thus the Jews of our period created new legislative acts designed to enforce peace and orderliness. They imposed special fines on those who dared strike their neighbors.

CXLIV (TGK. no. 125)

A Responsum of R. Meshullam b. Kalonymus.

Q. A inflicted a bodily injury on B. He violently tore his beard rendering it grotesque and ugly. When the leaders of the community saw the enormity of his evil act, they increased the customary fine [levied on a person who struck his neighbor] (by) [to] one hundred *solidi*. They then assessed the value of the part of the house inherited by A, at one hundred *solidi* and transferred title to that part of the house to B (lit. "they wrote, signed, and handed over to B"). Subsequently A lodged a complaint against the above-mentioned leaders claiming that since the customary fine had been fixed at twenty *solidi*, they had no right to increase it to one hundred *solidi*; that he and his wife had no other dwelling place, but the afore-mentioned part of the house that was assessed and transferred to B; [hence his wife, deprived of a dwelling place, would be made to suffer for his sins]; and, furthermore, that this parcel of real property was mortgaged to his wife's *Ketubah* and thus could not be alienated.

A. It is true that power is vested in authoritative leaders to confiscate property [under certain conditions]. However, they may confiscate the property belonging exclusively to the person who committed the crime, but cannot thus alienate property mortgaged to other persons. It is true that A committed a grave sin; but why should we punish his wife, who is guiltless? The leaders of the community, therefore, can not confiscate the above-mentioned property; for A's wife has a previous lien on it. They may, however, inflict corporal punishment on A, or penalize him in other ways.

a) Although the tremendous social pressures within the community forced each individual to act with restraint and decorum, occasionally these civilizing forces would prove insufficient to control the eruption of violent disputes and even fistfights. The fact that communities enacted legislation which imposed extraordinarily heavy fines on persons guilty of raising their hand against their neighbors, proves that such acts of violence were not very rare. On the other hand, the fact that the leaders of A's community found it necessary to increase his fine fivefold, to confiscate his domicile, and to transfer it to the injured party, for having torn the latter's face—proves that even on those occasions when fistfighting was resorted to, the contending parties were satisfied with but a slap or two (cf. *infra*, no. CXLVII)

b) A violently tore B's beard "rendering it grotesque and ugly." Apparently he tore out some of the hair. The face itself was probably not seriously scarred and no blood was drawn; otherwise the fact would be mentioned. Thus the people of this period were careful about their personal appearance. A partly plucked beard was a serious blemish.

c) The fine was fixed at twenty *solidi*, or a pound of silver (cf. Finkelstein, *op. cit.* pp. 177 and 194). This was indeed a large sum of money. Thus the part of the house that was inherited by A and which constituted his sole domicile, was assessed at five pounds of silver. Note, however, that in the charter granted by Henry IV to the Jews of Speier the fine

imposed on a non-Jew for wounding a Jew, was a pound of gold (Aronius, *op. cit.* no. 170, sec. 13), which was equivalent to ten or twelve pounds of silver. In view of the fact that a fine of five pounds of silver was imposed on A, the fine imposed by Henry IV for wounding a Jew does not seem excessive.

d) A lodged a complaint against the leaders of his community and even won his case against them. Thus the leaders of a community were subject to Jewish law and were not the sole arbiters of that law. A humble member of the community could appeal their decision and even protest against a fine imposed by them. Thus the Jews were ruled by law rather than by men.

e) R. Meshullam upheld the right of the authoritative leaders of the community not only to impose the regular, fixed fines of the community, but even to increase those fines when the need arose. He quoted the talmudic ruling: "Confiscation by an authoritative court is valid," as well as the Biblical passages on which the Talmud bases that ruling (Yeb. 89b; cf. *infra*, no. CLX). Thus R. Meshullam ruled that the leaders of a community constituted an authoritative court—in relation to the members of that community—and were thus vested with the power to impose fines on individuals under their jurisdiction. These powers to confiscate property and to impose fines, however, were not to be used arbitrarily. They were strictly limited by the exacting qualification that any such acts—whether enacted by a national state, an authoritative court, or leaders of the community—must be clearly and demonstrably for one or both of the following two purposes: 1. To uphold religion and enhance proper religious observance. 2. To strengthen the community in the struggle for existence. Since A committed a religious wrong and disturbed the peace of the community, a penal act on the part of the leaders of the community would be legal and binding; for it would thus be an enactment in accordance with either of the afore-mentioned purposes.

f) The part of the house inherited by A was worth about

one hundred *solidi*. The *Ketubah* of his wife was a lien on the entire value of that parcel of real property. Since the highest evaluation of the two hundred *zuzim* of the talmudic *Ketubah* was no more than forty-five *solidi* (cf. my article, *Horeb V*, 148-152), the *Ketubah* of A's wife must have contained additional clauses, providing for a return of the dowry and an additional jointure, characteristic of the Ashkenazic *Ketubah* (see *ibid*). Note also that the *Ketubah* was not a mere formality, but a legal document of great economic significance. Thus a person's real property could neither be alienated nor sold except with the wife's consent.

g) "They may, however, inflict corporeal punishment on A, or penalize him in other ways." Thus the courts of this period sometimes resorted to corporeal punishment. In a Responsum of the thirteenth century (RMP. no. 383) a community custom of punishing an offender with lashes is cited. In the latter case too the offender raised his hand against his neighbor. It is therefore possible that this mode of punishment was restricted to particular crimes (cf. I. Agus, *R. Meir of Rothenburg*, nos. 86, 174, 183, 184, 297, 301, 383 and 386). Moreover the added clause, "or penalize him in other ways," seems to indicate that the leaders of the communities were reluctant to use corporeal punishment, preferring other penalties.

CXLV (TGK. no. 135; *Shaarei Zedek*, p. 31a, no. 16)

A fragment of a Responsum of R. Meshullam.

If A struck B and the court imposed a fine on the former, wrote its decision, signed it and handed it over to B, who subsequently died—the latter's heirs have a right to collect the fine from A. If, however, A died first, he (B, or his heirs?) could not collect the fine from A's heirs.

Although this ruling was probably part of a Responsum, the question may have been an academic one. It may also be a quotation from a community statute. Since a person who struck his neighbor was punished not in accordance with talmudic law, but by a fine imposed by a community enactment,

such fine was subject to all restrictions and regulations imposed by such enactment. The communities apparently imposed fines on the offenders only, but not on their heirs. The fine was considered a deterrent, and not a monetary compensation for the victim's suffering. Cf., however, no. CXLIII above.

CXLVI (TGK. 142; G.S. p. 212; Mueller II, no. 218)

A fragment of a Responsum of R. Meshullam.

Q. The *parnas* of the town and another man testify as to the version of the statement of the overlord. The two, however, are related to one another by marriage. Is their testimony acceptable [in court]?

A. If they are married to two sisters, [or] are brothers-in-law, they may not testify together. If, however, they are married to cousins, they may testify for one another, [and therefore may testify together, and their testimony shall count as that of two independent witnesses].

a) Thus the chief administrator of the community sometimes bore the title: "*parnas* of the town." The community is here synonymous with "the town." Since the non-Jews of the town were not as yet organized into a corporate municipality, which would preempt the designation "town," the Jews were not careful to distinguish between the "community" and "the town."

b) The *parnas* dealt with the overlord of the town, and therefore was in a position to testify as to the exact wording of the latter's statement. Another man, present at the conversation, could also give such testimony. The statement of the overlord apparently defined the rights and obligations of the community or of the Jewish inhabitants of the town and was part of an official parley with the representatives of the community. Only two men represented the community and these two were related to one another. Apparently, therefore, the community was small and its leaders were members of the most important family in town. The oligarchical tendencies in small communities are apparent here.

CXLVII (G.S. p. 274, no. IV)

A Responsum of R. Meshullam.

Q. A appeared [in court] bearing on his neck five marks of injury. These marks of injury were on the side of the neck where B struck him, apparently made by the five fingers of the latter's hand. Since it was written in the [record of the] ordinance of the community that a person who struck another should be made to pay a fine of ten *solidi* for each mark of injury, the court ruled that B pay A a fine of fifty *solidi*. Thus the court disregarded the fact that the five marks of injury were inflicted by a single blow administered by the hand.

A. The judgment of the court was correct. If B's blow had inflicted but a single mark of injury on A, he would have been fined ten *solidi*; having inflicted five such marks, he must pay a fine of fifty *solidi*.

R. Meshullam adds: "The witnesses who restified in court, once they completed giving their testimony, can no longer change it . . . . The ruling of Samuel (*Sanh.* 3a) to the effect that the judicial acts of a court consisting of but two judges, are valid—is accepted as law."

a) Again we have a case of a person who struck his neighbor. B, however, did not strike back. Thus a person sometimes lost his temper and struck out at his friend. The incident, did not develop into an uncontrolled fistfight (cf. *supra*, no. CXLIV, a). Although B had marks of injury on his neck, he had been struck but once. Thus although a disproportionate number of R. Meshullam's Responsa (about five percent) deal with a person striking another, the comparative mildness of the injuries inflicted, as well as the severe fines imposed on the attackers, tend to prove that serious and widespread fistfighting was a very rare occurrence in the Jewish communities.

b) One of the functions of the community organization was to enforce peace and orderliness. A's community, therefore, had enacted an ordinance which provided for a fine of ten *solidi* for every mark of injury, to be imposed on the attacker. This ordinance was recorded in a book. Apparently the community had an official register wherein its secretary recorded all ordinances enacted by it.

c) The additional remarks of R. Meshullam may have nothing to do with our case. They were probably intended as answers to additional questions included in the written query by the questioners.

CXLVIII (Commentary of R. Gershom to B.B. 21b)

The commentary to Baba Batra ascribed to R. Gershom (printed in the Rom edition, Vilna, 1886), but probably edited in its present form by one of his students, or by a student of such student, contains explanations that were traditionally transmitted in the school of R. Gershom and thus stemmed from earlier generations of scholars. We quote here one such traditional explanation:

> Talmud: The residents of an alley may force one another not to permit that a tailor, or a tanner . . . settle among them.
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> Commentary: This means that they (the residents) may not allow that craftsmen, who previously dwelled outside their alley, settle in their alley, unless it meets with the approval of all the residents of the alley.
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> An inhabitant of the alley, however, may not restrain his neighbor [another resident of the same alley] from practicing his craft; for the latter may answer him: You practice [whatever trade you want] on your premises, and I will do the same on mine."

This is probably the earliest mention, in Western Europe, of the idea that an individual has inalienable rights that cannot be encroached upon by the legislative power of the majority. Thus in Jewish public law the residents of a town constitute a town government, in the sense that they have the right to enact, by majority vote, certain rules and regulations intended to promote the welfare of the town residents. The

residents of an alley similarly constitute such a government, but the rules and regulations that they enact are binding on the residents of that alley only. In short: any group that has common interests may assemble as a governmental body and legislate, by majority vote, for the welfare of that body. Moreover, the legislative powers of all groups—residents of a country, a city, or an alley, farmers whose fields lie in the same valley, or members of a trade, a guild or an association—are exactly alike, and are subject to the same limitations. The limit set to the legislative power of the residents of an alley, applies equally to the legislative power of the community. We, therefore, learn from the commentary quoted above that in the opinion of the scholars of the eleventh (and probably also of the earlier) century, the principle "majority rules" in community government, had certain limitations; and that whenever the private rights of the individual were concerned the community could enact legislation only through the unanimous approval by all of its members.

The Tannaitic source quoted by the Talmud, lends itself to two interpretations: a) The inhabitants of an alley may not permit a craftsman to settle among them and to practice his craft in their midst, if one resident of that alley objects to it due to the noise, increased traffic, or other nuisances that usually accompany the practice of such craft. b) The residents of an alley may not override the objections of a single resident who practices the same craft as the prospective settler, since that resident was bound to suffer by the increased competition. This source, however, is quoted in the Talmud in connection with a case dealing with competition and thus in accordance with the second interpretation. The commentator, however, paid little heed to its context, and interpreted the ruling in a more general way to mean that for certain legislative acts unanimous agreement by all the members of the group was absolutely necessary. His expression "of all the inhabitants," must be taken literally (otherwise he would be guilty of misinterpreting the pertinent talmudic discussion that deals with competition), and thus the idea that some legislative acts required for their enactment unanimous agreement, was well known to the scholars of the Rhineland of the pre-crusade period.

CXLIX (Mueller II. no. 205)

A Responsum of an unidentified scholar whose name was R. Nathan. (cf. RML no. 193 that speaks of a R. Nathan of Africa; cf. also L. Ginzberg, *Genoica*, vol. I, p. 29f). The Responsum was written at the beginning of the eleventh century, perhaps even earlier. Cf. Hoffmann, no. 24.

Q. In our town there are some who own no vineyards, but who buy grapes from the non-Jews and fill storerooms and vats with such fruit. These men are subject to our tax. There are others who hail from *Ketzaot Rota* (Rouen?; cf. Mueller's note *ad. loc.*), who never before participated with us in the payment of our taxes, but who are now settled among us. They married local women and thus acquired real property through their wives, or through purchase. Both the former and the latter residents, however, refuse to help us [in the payment of the present special tax]; but rely on the protection of the overlord.

A. The law (i.e. Jewish law) requires that you appoint three persons who are specialists in taxation matters, and that these appointees levy the tax on each [resident of your town] in exact proportion to his wealth. Whoever possesses land, the value of that land shall be taken into account. Whoever possesses no vineyards and no real property, but has money with which he trades or buys grapes from the non-Jews, that money shall be taken into account [and shall be subject to the tax]. These appointees, however, must follow strictly the custom of your place, i.e. the custom of your forefathers, to levy a certain amount on a person who owned one-hundred-gulden-worth of real property, and a certain [different] amount on a person who owned one-hundred-gulden-worth of merchandise. They (the appointees) cannot change the custom of the early settlers [of your town]; for the sages have ruled that a custom has legal validity.

Should the dealers in merchandise claim that the owners

of houses or of land have hidden money, [or] that they trade with merchandise the value of which is unknown, in contrast to themselves who deal in merchandise the value of which is well known—the law requires that a ban *(herem)* be pronounced against anyone who has any hidden assets, such as coins, merchandise, silver, gold, or vessels, [and does not declare them]. In this manner the above-mentioned three appointees, called *Messiliers* (cf. Mueller's note *ad. loc*), will discover the exact value of the assets owned by each individual. The appointees will then levy the tax in proportion to the amount each person will thus admit to own.

Should the above-mentioned residents fail to act in this manner, and should they persist in relying on the protection of the overlord—as they do according to your letter—they would be guilty of actually retaining robbed money in their possession. To them applies the Scriptural verse: "The spoil of the poor is in your houses (Isaiah, 3, 14.)." They are to be compared to those who withhold a hired man's wages or who defer payment of such wages; for such practices are tantamount to actual robbery. Thus it is stated [in the Talmud, Succot, 29b]: "People eventually lose their possessions for committing the following four wrongs: for withholding a hired man's wages, for deferring payment of such wages, for removing the yoke [of taxation] from their own necks and placing it on the necks of their neighbors, and for rude haughtiness which is the worst of all." Nothing, however, is more serious than robbery. Thus our sages said: "The doom of the generation of the flood was not sealed until they committed robbery (*Sanh.* 108a)." They also stated: "He who robs a pennyworth from his friend is as guilty as if he took his life, for Scripture states: 'He taketh away the life of the owners thereof.' (B.K. 119a)." Note, therefore, how severe is the punishment for this crime.

R. Nathan adds: Those who settled among you and own a dwelling place in your place, are free to sell their wine [even to local customers] and you cannot restrain them from doing so.

a) The question is only partially preserved, and thus we

are faced with an almost insoluble puzzle. For it is very difficult to understand on what ground the two types of residents mentioned in our query, refused to contribute their share to the taxes of the community. Moreover, we must assume that the responder was apprized of all the facts in the case, and that his answer was sober and logical. In our reconstruction of the facts of the case, therefore, we must seriously consider the information contained in the answer. Thus we might at first assume that the Jews of our community heretofore levied their taxes on owners of land only, in exact proportion to the value, or perhaps even the size, of the land owned by each individual. The land was vinous, the members of the community were all owners of vineyards as well as vintners, and the community taxes were originally levied on these members in the exact proportion to the value, or size of their vineyards. Eventually there appeared residents, however, who owned no vineyards, but bought grapes from the non-Jews, manufactured wine, and competed with their fellow residents. Since they owned no vineyards, however, they were free from paying taxes. When the competition from these landless vintners began to adversely affect the interests of the owners of vineyards, a cry arose that they contribute an equitable share to the community taxes.

However, this reconstruction of the case is untenable, for two reasons: 1. It does not explain why the overlord upheld the cause of the landless vintners; unless, of course, they were willing to pay him special taxes in addition to those paid by the community. 2. The responder seems to support the view of the regular members of the community, but nevertheless insists that the three tax-experts follow strictly the local custom of apportioning taxes. If heretofore the taxes were levied on landowners only, and none on owners of merchandise —no changes could be introduced in the form of taxation that would shift part of the burden to the latter. Why then the impassioned appeal for justice? R. Nathan rules that "custom has legal validity"; thus upholding custom is just and proper! Apparently owners of merchandise did pay their share of the taxes. They either paid the same amount for one-hundred-

gulden-worth of merchandise as for one-hundred-gulden-worth of land, or perhaps even twice or three times the latter amount. It is true that the clause, "these men are subject to our tax," does not necessarily mean that the landless vintners did heretofore pay their share of the taxes. R. Nathan's answer would be absolutely meaningless unless we assumed that they did pay taxes. Why, then, did they refuse to pay their appropriate share of the present tax? The new settlers who married local women and acquired landed property, why did they refuse to pay their share of the taxes? Why did the overlord uphold their cause?

It seems quite probable that the dispute raged in regard to a special ground tax that was imposed on the landowners of the community. The nature of this special ground tax is unknown; but it may have been the result of a negotiated compromise between the Jewish owners of vineyards and the overlord, intended to offset their economic advantage over the non-Jewish vintners, due to the fact that the former did not pay any feudal levies, nor the tithe of the Church. Thus we learn from a Responsum of R. Joseph Tob-Elem (eleventh century; RMP. no. 941) that "the masters of the land come yearly [to the vineyard] and take their share [of the fruit]." The new settlers who hailed from *Ketzaot Rota*, continued to pay their taxes to the community they came from—a community probably under the control of the same overlord, but had a better tax-arrangement with that overlord—and therefore refused to assume the burdens of the local community. The landless vintners who bought their grapes from the non-Jews, claimed that all the costs attending the growing of grapes, such as the land taxes and the Church-tithe, were already included in the price they paid for the grapes delivered to them. The overlord believed that both groups had a legitimate claim, and therefore upheld their causes.

The members of the community, however, claimed that in Jewish law all residents of a place automatically constitute a politically organized group responsible for all the public expenses of that group; that all taxes levied on individual residents or on particular classes of residents are to be considered as the common, fiscal obligation of all the residents; and that imposing a tax on a special type of property was a mere device used to increase the general taxes, and therefore was not an obligation that rested exclusively on the owners of such property. They insisted that the political organization of the Jews was completely independent of the wishes, desires, opinions, or political prerogatives of the overlords or even of the King; and that the manner of distributing the burden of all taxes, exactions, special levies, and arbitrary impositions among the members of a community was not to be determined by the law of the land or the caprice of its rulers, but solely and exclusively by Jewish law. (Cf. I. Agus, *op. cit.* vol. II, nos. 550, 551, 578, 589, and 594.) The new settlers who hailed from *Ketzaot Rota*, could not remain outside the community organization in the face of the talmudic ruling (B.B. 7b): "A person who dwells in a town for twelve months is to be considered a resident of the town, [he possesses all the rights and obligations of such a resident]; but if he buys a dwelling-place in that town, he is immediately considered such a resident." The regular members of the community demanded therefore that all the residents of their place participate fully in the payment of all taxes, special as well as regular, imposed on any class of residents of that place. The responder upheld their claim in the name of justice.

b) We thus see here an attempt made by the ruling authorities to divide the Jews into factions, to deal with individual Jews on a direct personal basis and to consider taxation as a personal obligation, as a feudal servitude. The feudal lords were thus attempting to divide the Jews, tie them to themselves by personal servile bands and eventually to enslave them. Jewish law, on the other hand, did not permit the Jews to form personal, servile relationships with their overlords. The law united all the residents of a locality, made them responsible for one another and thus transformed them into a tight political organization. This organization, the community, removed the shackles of personal enslavement from the individual Jew and made him a free person in a world enslaved by feudal servitudes. The king, the duke, the bishop, or the

baron, could deal with the community only; in the view of Jewish law he had no authority over the individual Jew. The latter was a member of his own government, the community. He was governed by his own law and carried that share of the community's burden, imposed upon him by that law. Although the regular members of our community were seeking "a more perfect union" of all the residents of their place mostly for selfish reasons, (and for such reason rich Jews in later centuries broke away from the community, see RMP. no. 331; RML. no. 108); the great benefits resulting from the pressure to unite into a well-integrated community redounded to the benefit of all.

c) "These appointees, however, must follow strictly the custom of your place . . . . They can not change the custom of the early settlers, for the sages have ruled that a custom has legal validity." Thus R. Nathan too gave expression to the principle of Jewish public law to the effect that an individual possessed certain inalienable rights which could not be abrogated or encroached upon by legislation enacted by majority vote. (See *supra*, no. CXLVIII). Community legislation that changed the method of allocating taxes, did not belong to the category of legislation designated as *lemigdar miltha vetakantha* (i.e. legislation the purpose of which is to enhance religious observance or to strengthen the community in the struggle for existence; see *Infra*, no. CLI, a); for its main purpose was to lessen the burden of taxation on one group of community members at the expense of another group of members. Consequently, such legislation could be enacted only by the unanimous agreement of all the members of the community. The basic property rights of the minority were thus protected against any arbitrary, confiscatory attempts by a tyranous majority (cf. author's *R. Meir of Rothenburg*, vol. I, pp. 119-124).

d) "The law requires that you appoint three persons who are specialists in taxation matters." The purpose of these specialists was to evaluate the taxable possessions of each individual in order to determine the exact amount of tax money

he should be charged with. The tax-experts knew what type of property was taxable, and the type that was not; they knew the business of each individual, could estimate the size of his capital, ascertain the value of his merchandise, appraise the market-price of his liquid assets and thus determine the total worth of his taxable property. (A ban would usually be pronounced against anyone failing to disclose his hidden assets or trying to mislead the tax-experts.) They were thus in a position to estimate the total value of the taxable assets of all the members of the community; and were able to calculate what the percentage of the amount they needed to raise as taxes, was of such total value. They would then order each individual to pay that percentage of the total worth of his taxable property previously determined by them.

e) In many communities there was a difference in the percentage paid out of liquid assets and landed property. Thus the Jews of this period clearly felt that the most equitable manner of allocating taxes was on the basis of income. Although they were bound by the talmudic law which taxed property rather than income, they modified that law to a large extent and made it conform more closely to an income-oriented law. Thus a person's dwelling, household goods, clothing and jewelry, as well as other such non-income producing assets, were not taxed at all. Since the income from real property was much smaller than that from merchandise or money, the custom prevailed in many communities to tax the former type of property at one half, one third, or one quarter of its actual value. (In the twelfth and thirteenth centuries real property was not taxed at all; cf. I. Agus, *op. cit.* vol. II, nos. 579-581). R. Nathan, therefore, ruled: "These appointees . . . must follow strictly the custom of your place . .. to levy a certain amount on a person who owned one-hundred-gulden-worth of real property, and a certain [different] amount on a person who owned one-hundred-gulden-worth of merchandise."

f) The members of the community were owners of vineyards. They probably derived most of their income from the

production and sale of wine. Some members of the community decided to save themselves the trouble of growing the grapes, harvesting and paying taxes on them. They began buying wagon-loads of grapes from non-Jewish growers, fill their storerooms or vats with such grapes and produce wine with a minimum of trouble, effort and risk. Our Responsum probably describes the beginning of a process— the abandonment of agricultural pursuits by the Jews. At the beginning of our period we still find the Jews engaged in an advanced form of farming; namely, the cultivation of the vine. Little by little they discovered more lucrative avenues of trade and began to abandon their plantations. Thus the Jews were not forced out of agriculture. They gave it up on their own initiative as an occupation producing a very low profit margin (cf. *infra*, no. CL, especially the arguments of Leah).

g) The responder makes a strong appeal to the conscience of the dissident groups. He appeals to their religious sensitivity and to their natural abhorrance of injustice and robbery. He is addressing himself to a very religious group to whom "fear of Heaven" was a powerful force. Nevertheless, the effectiveness of the responder's appeal was not wholly dependent on the religiosity of the addressees. Very powerful social and economic forces exercised strong pressures on each individual, forcing him to exert himself to the utmost in order to appear completely blameless in the eyes of his fellows. In the prevailing "system of trustfulness" (cf. *supra*, no. CXI, d), a person could not afford to have the slightest shadow of suspicion besmirch his reputation as a scrupulously honest and righteous Jew.

CL (RMP. no. 941; Mord. B.B. no. 481)

A Responsum of R. Joseph b. Samuel Tob-Elem (Bonfils), of the end of the tenth and the beginning of the eleventh centuries, to the community of Troyes; cf. author's *R. Meir of Rothenburg* vol. I, p. 87 f.

Q. In order to collect the king's tax, the townspeople levied on every man and woman, while under the ban, a

fixed amount per pound of value of his or her money, merchandise, and other saleable possessions, in accordance with their estimation [of the value of such possessions] and depending on the exigencies of the moment. L(eah) possessed [several] vineyards. She was requested by the townspeople to pay the fixed amount upon every pound of value of her vineyards, her harvested grapes, and her other possessions; as they similarly requested from one another, since the vineyard was worth money independently of the grapes. They claimed that vineyards were in the same category as the capital of a loan, while the harvested crop was equivalent to the interest. One derived no benefit from the vineyard itself, nor from the capital of the loan, during the first half year or year of its investment Since they paid taxes from both the capital and the interest of their money investments, from their merchandise as well as from its profit, they held that L should do likewise. L, on her part pointed out that a vineyard could not be compared to the capital of a loan, nor even to merchandise; for a vineyard required a heavy yearly investment in money and effort as well as a great deal of expensive labor in upkeep and in harvesting its crop. In a vineyard a person invested a great deal of labor and money, but was rarely sure of his profit. Moreover the lords of the land came every year and carried away their fat portions. Sometimes the crop was completely burnt and the cultivator received no return whatever for all his invested money and labor. Money lent at interest, on the other hand, or invested in merchandise, constituted a much safer and more convenient [enterprise]. The creditor held on to his pledges, while his capital constantly increased with the passing of time. He reaped his profit without investing labor and expense and without [the danger attending] display [of wealth]. Whenever he needed his money, he could make use of it. Thus they argued back and forth.

A. In view of the written statement of the facts, it seems to me that L's claims are valid. For her occupation is not as convenient as merchandizing, nor is its profit as

easily available or as little troublesome as money lent at interest. These are self-evident facts. Moreover the usurers make a mockery of Moses and of his Law. They say: "Had Moses known that there was profit in usury, he would not have forbidden it." All merchandizing is convenient and profitable; for the merchant always holds securely in hand either his money or the merchandise he bought for that money. He even dispenses with an agent, since his money attracts his customers. A cultivator of the soil, on the other hand, is not so fortunate; for he must depend on an *aris* (a share-cropper) who receives half of the fruit; and his crop is exposed to many dangers. Sometimes the weather is too hot, sometimes too cold. Sometimes there is too much rain, at other times too little; and sometimes the plants are struck by hail or consumed by several kinds of locust. He can not hide his trees nor protect them as effectively as he can other kinds of merchandise .... How, then, can one compare a toilsome and wearying occupation that produces little profit, with a comfortable, secure and highly profitable type of business. If we uphold the view of the townspeople and allow them to take away the painfully acquired small profit and to tax even the land itself—they would thus consume the capital as well as the income and the owner of the land would be left with nothing. Heaven forfend! Such [an injustice] shall not be practiced in Israel! For this is a practice typical of Esau: He imposes the annona on Israel; before the latter succeeds in paying it, he is confronted with the poll-tax; and before that is paid, the burghers come with their oppressive demands. That is not the Jewish way. The Jews carefully consider their actions and equitably allocate all costs on themselves in accordance with the individual's ability to pay. One should not seek clever arguments and press shrewd claims that would result in divesting a person of his capital; one should act in accordance with the principle: "Love thy neighbor as thyself."

The following is proper Jewish behavior, as well as the accepted custom of the communities: Prudent men are selected [as tax-assessors]; men who carefully examine each

case, and, in strict honesty and justice, levy the tax on each individual in accordance with his labor and his expenses. They consider the interests of their brothers as if they were their own interests—in accordance with the principle: "Whatever is hateful to you, you should not do to your friend." [It is not fair] to levy the same tax on a pound-worth of merchandise as on a pound-worth of land, since the income from the latter is so such smaller than from the former. The following is the usual practice of the wise men of the communities—they estimate how light the tax on land must be, and [often] completely free it from taxation. For were they to tax both the land and its produce, its owner would lose his livelihood .... The claim of the townspeople that even immediately after the harvest the vineyard still has a certain market value, the value of the vineyard being independent of its crop and should, therefore, be taxable—is not valid. For that value stems from the vineyard's potential to produce a crop. The vineyard is to be compared to the tools and equipment acquired by a person to produce his income. Are these tools and equipment taxable? Such is not the case! People usually prepare their work abroad. They roam the streets and highways in search of some income; and when they earn their living they pay their share of the taxes according to [the success of] their business. But that individuals be singled out for oppression and attack! I have never heard [of such behavior on the part of townspeople]!

a) By the turn of the eleventh century the neglect of agriculture in the community of Troyes, and the preference for more lucrative forms of business (cf. *supra*, no. CXLIX, e) was well-nigh universal. The only member of the community who owned and operated vineyards, was a woman, L. The fact that she was alone in her complaint against the taxation policies of her community proves that no other Jew of Troyes received the major part of his income from viticulture. The clause: "as they similarly requested from one another," does not mean that they (the townspeople) also owned vineyards, but that they paid taxes on both capital and interest and

requested that L, similarly, pay on the value of the vineyard, as her capital, and on the value of her crop, as her interest. Since no other defendant is mentioned, L must have been the only owner of extensive vineyards in Troyes. (Thus the picture drawn by S. Baron, *Rashi Anniversary Volume* pp. 47-59, of the community of Troyes in Rashi's childhood days as predominently rural, is all wrong; for no one but L derived his living from agriculture. Incidentally, L was probably an ancestress of Rashi, who eventually inherited these same vineyards and continued to work them and process their grapes.) We are confronted here with a very serious problem. Why did this dispute on taxation-policy arise suddenly? How were L's vineyards taxed the previous year, and the years before that? Why do neither L nor the townspeople cite the long-established custom of the community of Troyes on the manner of taxing vineyards? It is unlikely that all the Jews of Troyes suddenly sold out their vineyards and became merchants—all except L—and that this radical change brought about a large increase in the tax-rate and with it a complaint by the only surviving viticulturist. If such a sudden economic metastasis were not accompanied by an appreciable raise of the tax-rate, the townspeople would cite a long-established custom; if it were accompanied by such a raise, L would be sure to mention it. We are therefore left with but two alternatives: either the community of Troyes was but recently established (i.e. either the Jews settled in Troyes but recently; or previously every member of the community paid his taxes directly to the overlord; and only recently they united into an organized community and began to pay their taxes to the overlord in one lump sum; cf. Agus, *R. Meir of Rothenburg*, vol. II, nos. 530, 550-3); or that L but recently began to engage in viticulture on a large scale. It is indeed possible that L came from a place where the Jews derived their living from the cultivation of the vine (cf. *supra* no. CXLIX), and therefore was well acquainted with that branch of agriculture as a source of earning a livelihood. When her husband died leaving her his money, she turned to the trade she knew best. Perhaps she had earlier been impressed with the fact that the land and

the climate of Troyes were excellently suited for successful viticulture and when an opportunity arose she decided to venture her capital on the experiment. Moreover, it is possible that L's husband lent money to a non-Jew and received these vineyards as pledges; after his death they were forfeited to L. It is also possible that her husband had been a rich merchant who derived most of his income from commercial pursuits. After his death L was forced into making viticulture the main source of her livelihood. Finally there is the possibility that the Jews of Troyes changed their system of tax allocation (cf. CLIII, a).

b) "The lords of the land came every year and carried away their fat portions." It is difficult to determine whether L was citing a general practice or her personal experience. She owned the vineyards as alods (the members of the community claimed that her land was her capital!), and thus owed no feudal dues on them. Moreover, she was a member of the community and paid her taxes to the overlords through the community (cf. *supra*, no. CII, e). What, then, were these "fat portions?" Apparently they were not given in payment of a legal obligation, but were exacted as a forced gratuity, typical of medieval lawlessness.

c) "A cultivator of the soil . . . must depend on an *aris* (a share-cropper) who receives half of the fruit." Did R. Joseph Bonfils refer specifically to L or was this a description of the general practice of the Jews who engaged in agriculture? Was L alone dependent on an *aris* or were most Jews working their vineyards through the help of share-croppers? The general tone of R. Joseph's answer (I translated most of the answer as faithfully as possible) seems to indicate that he was dealing with the problems of viticulturists in general and not specifically with L's situation. His remarks seem to be based on the common practices of his day. Apparently the Jews did not personally oversee the actual labor connected with the upkeep of a large vineyard and the gathering of its fruit, but followed the custom of the feudal nobility and employed share-croppers, or general managers who took half

of the harvested fruit. The work of these general managers required close supervision. In addition, a great deal of effort was expended on the pressing of the grapes and the production of the wine. Thus even with the help of general managers a viticulturist was a very busy person.

d) "In order to collect the King's tax." The term "King's tax," is not necessarily to be taken literally. The Jews of Troyes may have paid their taxes exclusively to the dukes of Champagne.

e) "While under the ban." This was one of the methods employed in determining the exact amount each member of the community was to pay toward the tax. A *herem*, or ban, was pronounced against anyone who failed to declare all his taxable assets to a committee of tax-experts. The latter would then determine the value of these assets and tell the individual how much he was obligated to pay. This method of relying on the declaration of the individual member was used in a community where the righteousness and religiosity of any one of its members were not doubted. The community yearly had to raise a certain fixed amount through taxation. Whatever amount a person was able to withhold through a false declaration had to be made up by the other members. No one likes to pay someone else's taxes. The fact that many communities employed the above-described method of levying the tax, proves that very few persons were suspected of making false declarations while under the ban.

f) "The creditor held on to his pledges." L's description of the advantages of money-lending and business as means of earning a livelihood, is extremely important; for she thus reveals to us the real reasons for the abandonment of agriculture by the Jews. The main consideration apparently was security. One could keep his ready money, pledges or merchandise in a secure place—far away from the prying eyes of strangers, thus obviating "the dangers attending display." A large and prosperous vineyard attracted attention and aroused envy. The responder also emphasizes that fact: "the merchant always holds securely in hand either his money or the merchandise he bought for that money." Money or valuables well hidden in an underground cache offered greater security. Moreover, a person was more independent; he was not rooted to the town nor to its overlord; he could remove to a distant place taking his valuables with him. Thus the Jews were driven from agriculture by the degeneration of the state of security more than by any other factor.

g) "Moreover, the usurers make a mockery out of Moses and out of his Law." Thus at the beginning of the eleventh century the great talmudic authorities of Central Europe were bitterly opposed to money-lending. The incidental remark of R. Joseph, entirely unnecessary in its present context, proves that the great sage often lashed out against the evils of money-lending. Apparently the Jews only recently began to engage in money-lending.

h) "Heaven forfend! Such [an injustice] shall not be practiced in Israel!" In a community where tremendous social pressure was exerted on every individual to act in such a way as to appear in the eyes of his brethren as an upright, honest and pious person, R. Joseph's passionate appeal to national pride in the justice of its practices was very effective. His criticism of the attitude of the townspeople of Troyes, was very biting: "For this is a practice typical of Esau!" His statement: "Prudent men are selected [as tax-assessors];" "the following is the usual practice of the wise-men;" "the wise-men of the communities"—were also sharp criticisms intended to hurt the pride of the people of Toyes. On several occasions R. Joseph bitterly criticized the tax-policies of the latter (cf. author's *Teshubot Baalei Hatosaphot*, p. 40). We do not read of such harsh language used against the Jews in other communities. Apparently the Jews of Troyes were exceptionally difficult and overbearing.

i) "They estimate how light the tax on land must be, and [often] completely free it from taxation." It seems, therefore, that even at this period the communities would free even income-producing land from taxation (cf. *supra*, no. CXLIX, d). Apparently few Jews were engaged in agriculture. Profit

from business was so much larger than from agriculture that in many communities no taxes were levied on the value of the land employed in agriculture, but only on its produce.

j) Note that neither the questioners nor the responder discussed the right of the majority of the members of the community to enact tax legislation regardless of the opposition of the minority. Even the questioners did not claim the community had such a right. Community leaders of the period knew very well that the method of levying a tax was not subject to the law "majority rules" (cf. author's *R. Meir of Rothenburg*, vol. I, pp. 119-24; also *supra*, no. CXLIX, c).

CLI (*Kol Bo*, no. 142; S. D. Luzzatto, *Meged Jerahim*, pp. 8-10)

A Responsum addressed to the community of Troyes, by R. Judah b. Meir haCohen, and R. Eliezer b. Judah. Although these men cannot be identified with absolute certainty (cf. J.Q.R. XLIII, 1952, p. 160 f), there is no doubt that this Responsum was written at the same time as R. Joseph b. Samuel Tob-Elem wrote his Responsum translated above, no. LII (see *ibid.*). Although the question was translated and the answer discussed in author's *Rabbi Meir of Rothenberg*, pp. 76-83, we repeat it here for the sake of completeness.

Q. In the synagogue in the presence of the congregation, A complained that B's non-Jewish maidservant had come to his house the previous day, and had reviled and cursed him. He reminded the congregation that this maidservant was a habitual vilifier and had showered abuse upon many of them. Several individuals confirmed A's statement and stated that she had indeed abused them on a number of occasions. One man said that she hit him with a stick; another said that she called his wife a harlot; and a third that she called him a cuckold. Whereupon A asked the congregation to decree, as a disciplinary measure, that for half a year the aforesaid maidservant derive no benefit from any Jew. A volunteered to pronounce the decree himself. The community empowered him to pronounce the

specified decree, and A did so. B, however, protested against the decree and stated that he would never abide by it. He claimed that the decree was not binding, since it was enacted by a person hostile to him. The community averred that the decree had been enacted by the congregation and not by an individual; than A had merely acted as its deputy, and that the decree had been enacted against the maidservant because of her abuse of several members of the community, other than A. B declared that he was not bound by the decree because many of those who participated in its enactment were friendly to A and hostile to himself. The members of the community vigorously protested against this imputation of partiality on their part. They said: "Far be it from us to enact a decree because of our friendliness toward one man; for as we love that one man, so do we love all Israel the remnant of Israel shall not do iniquity (*Zeph.* 3, 13)." They warned B and his followers on several occasions not to transgress the decree. B and his friends, however, remained stubborn; whereupon the members of the community separated themselves from B and from his supporters and treated them as excommunicates. Since, however, the members of the community feared that B and his friends, living so near the synagogue, would remove the Scrolls of the Law and other community articles, and that no one would be able to stop them from taking these articles, they (the members of the community?) transgressed the ban on several occasions—all on B's instructions.

May our teachers, therefore, instruct us on the following: Are the people of a town permitted to enact decrees directed against some of their members? Do they have the right to coerce these members, force them to participate in the enactment of community, legislative acts, and restrain them from separating themselves from the congregation? Is B justified in his contention (lit. are B's legal pronouncements valid)? It is obvious that if B's claims are just, every man or woman is in a position to put forth similar claims and thus free himself, or herself, from community

obligations. Another question arose: are the inhabitants of one town competent to enact decrees binding upon the inhabitants of another town, pronounce the ban against them and thus coerce them to some action in the latter's own town —when the two towns are many miles distant from one another? Or are the latter in a position to say: "We are independent of you, we exercise authority among ourselves as you do among yourselves and we shall not heed your decrees, your bans, or your oaths"?

Please instruct us also on the following: We are a small community. The humble members among us have always abided by the leadership of our eminent (lit. great) members, dutifully obeyed their decrees, and never protested against their ordinances. Now, when we are about to enact a decree, must we ask each individual member whether or not he is in agreement with it? In the event we enacted a decree by tacit agreement without asking a certain individual to express his consent, while that individual kept silent and did not protest against the enactment of the decree, might a person then claim that the decree had not been enacted with the cooperation and consent of the abovementioned individual, even though the latter protested neither at the time of the enactment of the decree, nor after it was enacted?

A. All Israelites must compel one another to live in accordance with truth, justice and the laws and commandments of the Almighty. This principle is expressed in the Pentateuch, the Prophets, and the Hagiographa .... A person may not help his relative to weaken the power of a court of law, lest he expose himself to severe punishment by Heaven, as expressed in the verses .... If, on the other hand, he augments the power of the court, and weakens the power of his relatives, his reward is great, as expressed in the verses .... Therefore, if the members of the community all agree to pass a decree that will serve to uphold the *Torah* and form a fence around the Law, an individual may not withdraw himself from the community, and annul the words (i.e. the legislative acts) of the many by saying that

he did not agree to the enactment. The voice of the [dissenting] individual is voided by the fact that he is a minority; while the many are empowered to adjure, prohibit, redeem, confiscate property, and enact any restrictive decree that would form a fence [around the Law]. We find support for this legal principle in many authoritative sources. Where do we find [a ruling] in the Pentateuch [to the effect] that a person may not exclude himself from the group? Thus it says (Deut. 29, 13-20): "Neither with you only do I make this covenant and this oath, but with him that standeth here ... and also with him that is not here .... Lest there should be among you men or women ... and it came to pass when he heareth the words of this curse ...." [Where do we find this ruling] in the Prophets? Thus it is written (Joshua, 6, 17): "And the city shall be *herem* ...." Thus the city did indeed become anathema, even though Joshua declared it *herem* in opposition to the will of the Almighty; as it is written (*ibid.* 7, 10): "Get thee up; wherefore, now, art thou fallen upon thy face?" which words, according to the Talmud (*Sanh.* 44a), contain the implication: "thou alone hast been the cause of their calamity." Thus the Almighty agreed that whatever was declared anathema by Joshua and Israel [even though it was done against His Will], was anathema nevertheless. Thus it is written (Joshua 7, 13): "There is *herem* in the midst of thee, O Israel;" also (*ibid.* 7, 12): "I will not be with you anymore, except ye destroy the *herem* from among you." If, however, B's arguments were valid, Achan could have claimed that he did not originally agree to the enactment of the *herem*. Apparently, therefore, the *herem* was valid and was binding on Achan, even if it was originally enacted against his will. We also note in the case of King Saul (Samuel I, 14, 24): "Saul adjured the people, saying: "Cursed be the man that eateth any food ...." And it is written (*ibid.* 14, 27): "But Jonathan heard not when his father charged the people with the oath"; it is also written (*ibid.* 14, 44): "thou shalt surely die, Jonathan." Had the people not redeemed Jonathan, he would have been executed; as it is written (*ibid.*

14, 45): "So the people redeemed Jonathan, and he did not die." We also note that the inhabitants of Jabesh-Gilead were deserving the death penalty for having failed to heed the decree enacted by their brothers; as it is written (Judges, 21, 10): "Go and smite the inhabitants of Jabesh-Gilead with the edge of the sword."

How do we know that an individual may not restrain the many members of the group from enacting a decree of excommunication? Thus it is written (Judges, 5, 23): "Curse ye Meroz"; and the Talmud (M.K. 16a) explains: "Barak excommunicated [the inhabitants of] Meroz, with four hundred blasts of the *shofar*." We also note that R. Eliezer [b. Hyrcanus] did not question the authority of his fellows when they excommunicated him, but conducted himself as a person legally excommunicated. Thus we learn (B.M. 59b): "On that day they declared unclean all the matters that had been ruled 'clean' by R. Eliezer [. . . he tore his garments, sat down on the ground . . .]". Thus, if a person of the caliber of R. Eliezer—who was a great sage among the sages and an outstanding authority among those who were great authorities, and even a voice from Heaven supported his views—submitted to the decree enacted by his fellows, and did not question their authority to enact a decree directed against him, an ordinary man must surely act similarly.

How do we know that [a community is empowered] to confiscate money [even in the face of opposition on the part of an individual]? Thus it is written (Ezra, 10, 8): "that whosoever came not within three days, according to the counsel of the princes and the elders, all his substance should be forfeited . . . ." It is also written (Joshua, 19, 51): "These are the inheritances, which Eleazar the priest, and Joshua the son of Nun, and the heads of the father's houses of the tribes . . ." on which verse the Talmud (Yeb. 89b) asks: "What relationship is there between the "heads" and the "fathers"? The Talmud (*ibid.*) answers: "This comes to teach you that just as the father possesses a legal right to bestow on his child any inheritance he wishes, even

so do the leaders have the right to bestow on the people any inheritance they wish." An individual, therefore, can not separate himself from his community.

Moreover, the inability of the individual to nullify the decrees enacted by the group, or to exclude himself from such decrees, that inability is not limited to enactments the purpose of which is to form a fence around the law, but even extends to such secular matters as taxes and other items of legislation that a community enacts for itself. Thus we learned (B.B. 8b): "The townspeople are permitted to fix (lit. to lay down conditions for) weights and measures, prices and wages, and to fix penalties for the infringement of their rules (the last phrase could also be interpreted thus: 'to force the minority')." A person, therefore, should never entertain the idea [that a community can not enact a decree directed against an individual, unless that individual agrees to it].

As to your decree forcing B to discharge his hired servant, if it is as you say that the community agreed [to enact the decree], it had a right to do so, as we explained above. For a person is not permitted to harbor a public nuisance in his house. Thus we learned (B.K. 15b): "How do we know that a person is not permitted to raise a vicious dog in his house? Thus it is written (Deut. 29, 8): 'that thou bring not blood upon thy house' ". If, however, B's version of the story is the correct one—that, as we have heard, she is not seriously nor habitually vicious, and that the community did not reach an agreement in the matter, but that B's enemies alone enacted the decree, with the help of B's litigant—we do not think that B should be forced to discharge his hireling or his maidservant. One should not be forced to discharge a servant due to the fact that the latter vilified and abused certain persons—not even if the servant raised his hand against such persons—for we learned (*Mishnah*, B.K. 8, 4): "Coming in hostile contact with a slave or a woman, is bad . . . ." But, if the members of the community did, indeed, agree to enact the above-described decree, B may not disqualify them on the ground that they were hostile to

him; for hostility toward a litigant disqualified a person from being a judge in the litigant's case, [but did not deprive him of his vote as a member of the community].

As to your question whether the inhabitants of one town are competent to enact decrees binding on the inhabitants of another town, and to coerce the latter inhabitants while they are in their own town, the following ruling seems proper to us: If the decree that they are enacting deals with the needs of their place, such as taxation, weights, measures, and wages—in all such matters the inhabitants of one town are not competent to legislate for the inhabitants of another town. Thus we quoted above the talmudic ruling: "The townspeople are permitted," which means that only the people of the town are competent to legislate in such matters but not outsiders. If, however, the inhabitants of a town transgressed a law of the *Torah*, committed a wrong, or decided a point of law or of ritual, not in accordance with the accepted usage—the inhabitants of another town might coerce them, and even pronounce the *herem* against them, in order to force them to mend their ways. In that case, the inhabitants of the former town may not say to the latter: "we are independent of you, we exercise authority among ourselves, as you do among yourselves." For all Israel is then enjoined to force them [to mend their ways]; as we find in the case of the "rebellious sage," or "the condemned city," that the Sanhedrin coerces them and judges them.

You write that in your place the humble [members of the community] were accustomed to obey [the decrees of] the eminent [members] and have never protested against their actions. This practice is indeed in accordance with the law that requires the humble [members of the community] to obey the restrictive decrees of the eminent [members of the community]. Moreover, not only are the former bound by the decrees of the latter if they failed to protest against such decrees at the time of their enactment, but they are bound by these decrees even if they protested most vigorously at the time of their enactment—for the eminent [members

of the community] are more numerous than the humble [members]. Should you say that [in your community] the humble [members] were more numerous than the eminent [members], and that the former refused to obey the latter—since they were silent, showed no disapproval, and did not protest, at the time the decree was enacted, they could no longer [do so now]. Although the humble [members] are more numerous than the eminent [members], the law requires that the former listen to their elders and to their prominent men. Thus we find in many authoritative sources that the Almighty honored the elders and the prominent men; as it is written (Isaiah, 24, 23): "And before His elders shall be Glory." Happy is the generation whose humble [members] obey the eminent [members]; for "the tearing down of elders, is [in reality] building up (Nedarim 40a)," as we see in the case of Rehoboam the son of King Solomon (Kings I, 12,7) . . . . Signed: Judah Cohen son of R. Meir; Eliezer son of R. Judah.

a) This lengthy and detailed Responsum is extremely important to a full understanding of the political ideas held by the leaders of German and French Jewry at the turn of the eleventh century; it also contains the earliest formulation of the principle "the majority rules" in Catholic Europe, and we must therefore examine it minutely. We must preface our analysis, however, with an outline of the fundamental principles of Jewish public law as they were understood and clearly formulated in the twelfth (R. Jacob Tam) and thirteenth (R. Meir of Rothenburg, see author's book, vol. I, pp. 92-124) centuries, before we try to see whether or not these principles were also clearly understood at the turn of the eleventh century. The greatest authorities of the later centuries divided community legislation into four distinct categories: 1) When an individual was threatened with injury to his person, his business, or his property, he could compel the community to enact a decree that would obviate that threat. 2) All community legislative acts, the purpose of which was to strengthen religion ("build a fence around the Law") or to fortify the group in its struggle for existence (cf. *ibid.* p. 119f),

became legal, and were binding upon all the members of the community, if they were enacted with the approval of a majority of these members. 3) Legislative acts that did not affect religious practice, did not tend to strengthen the community, but merely served to regulate the relationship of the members toward one another, helped some of the members at the expense of the others, or shifted the burden of community responsibilities from one group to another—such acts did not become law unless they were unanimously approved by all the members of the community. 4) Restrictive ritual law could not be amended even with the approval of all the members of the community.

It is obvious, therefore, that R. Judah haCohen and R. Eliezer deal here with the first three categories of legislation, (for their version of the fourth category, see section e below). A and several other Jews were insulted by B's habitually vicious maidservant. She was a threat to the peace of several members of the community, who demanded that she be disciplined. Thus arose the following legal problems: Were A, and his few supporters, in a position to force the community to enact a restrictive decree on their behalf? The answer of the responders was in the negative. Their decision they based on the ruling of the *Misnah* (B.K. 8, 4): "Coming in hostile contact with a slave or a woman is bad; for he who injures them is made responsible, whereas if they injure you, they cannot be made responsible." Since the injured person thus had no legal action either against the owner of the vicious slave or the slave himself, and certainly not against the employer of a servant, he could not force the community to take disciplinary action against such employer. (Note that the responders equate the servant and the slave). Should, however, the majority of the members of the community voluntarily decide to enact the decree sought by the injured party, they would be competent to do so in spite of the protests of the minority, for they would thereby enforce proper religious conduct. Thus the Talmud (B.K. 15b) ruled that a person was not permitted to harbor a nuisance in his house. Since the restrictive measure sought by A would be in the spirit of

religion, it would therefore fall within "category two" described above, and would become legally binding if enacted by a vote of the majority. It is quite clear, therefore, that the responders considered two elements of the case as being of paramount importance, namely: the habitual viciousness of the servant, and the vote of the majority. If the servant was indeed very vicious, as well as habitually obnoxious, the minority could force the community to take disciplinary action; and even if the original decree was not enacted by a clear majority vote, A could now force the community to enact a new decree in the proper manner. If, however, the servant was not very vicious, even though she was occasionally obnoxious, the minority could not force the majority to take disciplinary measures. In the latter case, therefore, if the community had had a clear majority when it enacted the original decree—that decree was legally binding, since it belonged to "category two" and was subject to the principle "the majority rules." If, however, those who enacted the original decree did not constitute a clear majority, the decree was null and void. Moreover, if the servant was not habitually vicious, even a vote of the majority would not suffice to render the decree legal; since in that case the decree would fall within "category three" described above and would require unanimous agreement on the part of all the members of the community before it became law. It is for this reason that the responders declared that the legality of the decree depended on the presence of both elements namely: the servant was habitually though mildly vicious, and a majority of the members of the community voted for it.

We, therefore, have here a clear indication that R. Judah haCohen and R. Eliezer, were cognizant of the fact that the principle "the majority rules," as applied in community government, had definite limitations; and that certain decrees required unanimous agreement on the part of all the members of the community, before they became law. Moreover we have further proof of the fact that our respondes were well aware of the principle underling the above-described, "category three" legislation. Thus they ruled: "Should you

say that [in your community] the humble [members] were more numerous than the eminent [members], and that the former refused to obey the latter—since they were silent, showed no disapproval, and did not protest, at the time the decree was enacted, they could no longer [do so now]." The clause "the former refused to obey the latter," meant that the majority of the Jews of Troyes were allegedly opposed to the decree at the time the question was written. Why, then, could not that majority now annul the original decree? The responders were aware of the principle enunciated in the Talmud (Beza 5b): "a prohibiting decree enacted through a certain number [of voters], requires the same number [of voters] for its abrogation," (Cf. *supra*, no. LII). If the majority of the Jews of Troyes were actively opposed to the decree, why could they not annul it? Apparently the answer is that the responder clearly understood the principle underlying legislation belonging to "category three." Since the annulment of the decree would not serve to strengthen religion, nor benefit the community, its enactment would require the unanimous approval of all the members of the community, including A and his followers.

It is true that the abrogation of the decree by a subsequent vote would not erase the stigma from B and his supporters, of having transgressed a ban; and that the main purpose of A was to brand them as excommunicates, even if for a short time. Since, however, B and his supporters did not attempt to seek the approval of the majority for a countermove before the question was written, and the complaint came from A's supporters—the inability of the majority to annul a ban, when such annulment was not dictated by sufficient reason, was probably well known to the members of the community of Troyes. (Note also that in the synagogue the community first ascertained that the servant was vicious, before it allowed A to pronounce the ban.) The next statement of the responders: "Although the humble [members] are more numerous than the eminent [members], the law requires that the former listen to their elders . . .," is a mere attempt to reaffirm the validity of the decree for which the humble members did not

actually indicate their approval, but also failed to voice their disapproval. The responders thus reaffirmed the fact that since the decree was valid, it could no longer be abrogated; for such abrogation would require a unanimous vote.

Moreover, the fact that the responders amassed so many sources in order to prove that the principal "the majority rules" was applicable to many instances of community legislation, proves that the other principle—that some legislative acts required the unanimous approval of all the members of the community—was well known at this time. There is no doubt, therefore, that the outstanding scholars at the turn of the eleventh century held substantially the same opinion on the above-described four categories of community legislation as those of the twelfth and thirteenth centuries.

b) We are, therefore, faced with the following grave problem: Why did the responders labor so valiantly to prove that in Jewish law the principle "the majority rules" was valid in some categories of community legislation? There were many communities in Italy, Germany and France. The members of these communities often met in legislative assemblies; and often enacted decrees and regulations. Is it possible that many of their leaders were nevertheless ignorant of the validity of the principle "the majority rules" and required a learned dissertation on the subject? It is impossible to assume that this principle was not known at this time and that it was being first introduced by R. Judah haCohen and R. Eliezer; for the leaders of the community of Troyes were surely acquainted with it and therefore asserted that the decree they had enacted was valid. They were not sure whether active and vocal approval on the part of the voters was required, or lack of protest signified assent; but they were of the opinion that the majority could enact a restrictive measure that would be binding on the dissenting minority. Even B and his fellows seem to concede this point, but seek to deprive outspoken enemies of their right to vote. Thus the Jews of this period were acquainted with the principle "the majority rules." Why, then, the long dissertation of our responders? We are forced to conclude that this principle was not often used in

the communities of our period. The communities were small and their members were closely interrelated. The scholarly members of the community were highly regarded, and they respected one another. Most legislative acts of the communities were, therefore, adopted by unanimous consent. The rights and financial interests of each individual were respected, and rarely was the minority forced by a legislative act to accept an arbitrary decision on the part of the majority. Whenever there was a clash of interests between groups, talmudic law was cited, persuasion was used, the opinion of the outstanding scholars of the age was invoked, and a compromise acceptable to all parties was patiently sought. The tyranical practice of resorting to coercion—raising the hands or counting the ballots, in order to determine which group constitutes the majority, clearly nothing but a show of force—was rarely used; and the overwhelming majority of all legislative acts were adopted unanimously. (Note that the "humble members" of the community of Troyes were accustomed to acquiesce in anything decreed by the "eminent members." Apparently, then, these decrees were unanimously agreed to by the latter and were, therefore, never put to a vote.) Moreover, the delicately balanced life of the Jews of this period, could easily be upset by a single individual who harbored hate or resentment against the community or against one of its members. An enormous effort was made in order to maintain the peace, goodwill, love, and the devotion of every member of the community toward every one of his neighbors. This attitude and procedure was so widespread and so generally practiced, that the actual force of the principle "the majority rules" was not clearly understood by many a community member. Everybody knew that some decrees could be enacted by majority vote; they also knew that in Jewish law this principle had serious limitations; but only the outstanding scholars were acquainted with the theoretical basis of the principle and the details of its applicability.

c) The views of R. Judah haCohen and R. Eliezer on the theoretical basis of Jewish public law, we discussed elsewhere (*op. cit.* pp. 79-83). The most important element of their view

is their equating the members of the community with the people of Israel in solemn assembly, and their ascribing the same validity to a *herem* pronounced by the former alone, as to one pronounced by the latter under the leadership of the Sanhedrin of Joshua, son of Nun, or of King Saul. The responders, therefore, held the opinion that the power of the *herem* flowed directly from the people; that the authority of Joshua son of Nun, the great Sanhedrin, King Saul, and of any other ruling body, was derived exclusively from the people; and that no other source of authority existed (see *ibid.*). This is the earliest formulation of the idea that the right to govern came exclusively from the governed (see also sec. f, below).

d) Although the responders elaborate upon and expound the sources they quote in proof of their views on the legislative power of the community, they leave one of their sources unexplained. The source (Deut. 29, 13-20) reads: "Neither with you only do I make this covenant and this oath; but with him that standeth here with us this day before the Lord, and also with him that is not here with us this day . . . lest there should be among you man, or woman, or family, or tribe, whose heart turneth away this day from the Lord . . . and it came to pass when he heareth the words of this curse, that he bless himself in his heart, saying: 'I shall have peace, though I walk in the stubbornness of my heart . . . the Lord will not be willing to pardon him . . . ." This source is quoted as proof that "a person may not exclude himself from the group." This proof may be derived from the last part of the statement (verses 17-19) which could be construed to mean that if, while the whole people of Israel was thus standing in the presence of the Almighty and concluding a covenant with Him, a small group decided not to be bound by that covenant and not to subject itself to the curses and anathemas pronounced against future dissenters; that group would be bound by that covenant nonetheless, subject to all the curses and anathemas thus pronounced, since it constituted but a minority of the people of Israel thus assembled. For a minority cannot separate itself from the majority, but is bound by

the latter's, legislative acts, if the purpose of such acts is to strengthen religious behaviour. The problem arises, however, as to the reason for quoting the first part of this statement (verses 13-14): "Neither with you only do I make this covenant . . . ." These verses do not seem to be relevant to our subject, unless the responders sought to derive from them the law that a group may legislate against a minority of its members even when such members are absent at the time the legislation is enacted. (The responders clearly do derive that law from the fact that Jonathan was bound by the decree enacted in his absence by King Saul, his father.) In accordance with this view the Almighty is thus stating that His covenant is binding not only on the persons standing before Him on that day, but also on future generations. How could a covenant adopted by one generation be binding on future generations? The answer is that every day a certain number of persons reach the "age of consent"; but on the day on which they reach that age, they constitute but a tiny minority of the Jewish people and become bound by all covenants, rules and regulations to which the entire people is bound (cf. *op. cit.* p. 115, note 212). This seems to be the intent of the responders and their purpose in citing the above-mentioned verses (although there are no clear indications that they were in any way troubled by the problem of the legal foundation of the binding power of the Law on the generations that lived after the general acceptance of that Law).

e) "If, however, the inhabitants of a town transgressed a law of the *Torah*, committed a wrong . . . the inhabitants of another town might coerce them, and even pronounce the *herem* against them, in order to force them to mend their ways." The inhabitants of the first town committed a wrong, or transgressed a law of the *Torah*, and were therefore liable to punishment. They may not claim to have amended the Law of Moses by unanimous agreement, since such an amendment would fall within the above described "category four" of community legislation, within the sphere of which even unanimous agreement is of no avail. For restrictive ritual law

could not be amended even with the approval of all the members of the community.

f) "For all Israel is, then, enjoined to force them [to mend their ways] . . . the Sanhedrin coerces them and judges them." Again we see that the responders equated the Sanhedrin with all Israel, thus presupposing that the rights and the powers of the former stem exclusively from the latter, and therefore can not exceed the prerogatives of the latter. Furthermore the community is a miniature Israel and thus possesses not only the rights and the powers of all Israel, but also its obligations.

g) "For the eminent [members of the community] are more numerous than the humble [members]." This statement is extremely important; for it sheds light on the cultural level of the majority of the members of an average community of the period. The fact that the statement was made by the responders rather than by the questioners, adds enormously to its evidential value. Thus if the statement were made by the questioners, we would merely know that the majority of the Jews of Troyes were talmudic scholars; but we would know little of the cultural level of the members of the other communities of Germany and France. For the community of Troyes might have been exceptionally cultured—a veritable "congregation of scholars." The responders, however, were not well acquainted with the numerical strength of the scholars of Troyes; they made a generalized statement based on their knowledge of several average communities. They knew that in the average community the eminent members of the community surely outnumbered the humble ones. We have here the judgment of two outstanding men as to the very high cultural level of the majority of the Jews of their country.

Moreover, the responders were certain that these "eminent members" had attained a high degree of talmudic scholarship and were worthy of great respect. Thus they compare these "eminent members" to the elders of Israel who were honored by the Almighty Himself; and apply to them the Biblical

verse (Isaiah 24, 23): "And before His elders shall be glory." Apparently, therefore, the level of talmudic scholarship of the Jews of this period was very high indeed; and the proportion of persons of great scholarship to that of the rest of the population, was probably the highest of any period in Jewish history, either before or after the high Middle Ages.

h) "In the synagogue, in the presence of the congregation, A complained . . . ." We have here a clear description of the procedure followed in community legislation. A man came before the congregation with a complaint about a wrong done to him. He points out the fact that the community has an obligation to act in this matter. He proposes the enactment of a decree that may remedy the situation. The community investigates this matter, finds the plaintiff has sufficient cause for complaint, and proceeds to enact the decree. A person is asked to stand up before the congregation and pronounce the ban against anyone who will transgress the decree thus agreed upon. The designated person pronounces the ban and the members of the congregation say amen. Note that A offered personally to pronounce the ban. Apparently the community of Troyes did not have a professional Rabbi, nor a *hazzan*, and the functions of such professionals were carried out by the members of the community. Why did A offer personally to pronounce the ban? Many a member, apparently, was reluctant to do so. The quarrel between A and B was probably well known, and no one wanted actively to participate in the quarrel, and overtly to perform a hostile act against the latter. Moreover, some of the members of the community may have had religious scruples against personally uttering the curses that accompanied the pronouncement of a ban (see *Kol Bo*, no. 139).

i) Did the humble members of the community say amen when A pronounced the ban? Apparently they did not; otherwise they would be considered as having actively participated in the enactment of the decree against B's maidservant. Why, then, did they fail to say amen? Were they so humble in their own estimation as not to consider their participation of any consequence whatever; or was their silence caused by bitterness over their low social status? Their silence seems to have been the result of long established habit, otherwise it would be questioned at the time. Apparently they were used to being completely ignored by the "eminent members," and to being excluded, at least mentally, from the latter's deliberations, discussions and public acts. Do we have here the rumblings of a social strife? (It is possible, however, that pious individuals did not say amen after curses.)

j) "Whereupon A asked the congregation to decree . . . that for half a year the aforesaid maidservant should derive no benefit from any Jew." This decree was exactly parallel to all other security measures, employed by the Jews of this period. Its purpose was to use economic pressures as a means of controlling the arbitrary, oppressive and violent acts of a non-Jew. The "law of *Maarufia*" was designed to shut off a non-Jewish client from the world of merchants and force him to do business with a particular person (of his own choice, originally) only, in order that he be obliged to deal fairly and justly with that person. The *herem hayyishuv* was designed to force the overlord to deal justly with the Jews of his territory; otherwise that territory would become a commercial wilderness. Thus the Jews used monopolistic practices as a means of forcing the non-Jews to behave in a civilized manner toward them; the above-described decree of the community of Troyes was but another instance of such a practice.

k) B was violently opposed to the decree. Was his opposition based solely on his enmity toward A? Or was it very difficult to obtain a maid? There is no doubt that B's maid was an obnoxious person; B nevertheless employed her. Apparently it was difficult to obtain the services of a maid. Whether it was the strong opposition of the Church to Jews employing Christians in servile positions, the personal ties of each serf to his feudal lord, or the many opportunities for gainful employment in the fertile fields and vineyards of Troyes—the high economic standing of the Jews created a strong demand for maids, and the supply was very limited.

l) "Since, however, the members of the community feared that B and his friends, living so near the synagogue, would remove the Scrolls of the Law, and other community articles, therefrom . . . ." B and his friends were warned repeatedly not to transgress against the community decree. Since, however, they paid no heed to such warnings, the members of the community separated themselves from B and his friends and treated them as excommunicates. This device of social pressure, however, was fraught with difficulty and danger, and the community was finally forced to abrogate it (cf. *infra*, CLXII, *i*). This is very strange indeed! For the entire system of community control and community government rested on the effective power of the ban. But if a ban is unenforceable in practice, how can it be the foundation of effective government? Thus any excommunicate could enter the synagogue—whereupon the other congregants would walk away from him and would not stand within four cubits of his person —he could thus take away unhindered the Scrolls of the Law, and other religious articles and walk away with them. How, then, could the ban, or the *herem*, serve as an effective basis for community government? The answer is that the ban contained three deterrent forces: 1. The terrifying curses that accompanied the promulgation of the ban inspired fear in the heart of the religious. 2. The tremendous social pressures within the community, that created the "system of trustfulness" (*supra*, no. CXI, d), forced each individual to exert all his efforts in order to appear just, righteous, and pious in the eyes of his neighbors 3. The actual social ostracism described above. The first two deterrents were so powerful and so effective, the communities rarely had to resort to the third. In the rare case, however, when actual enforcement of social ostracism had to be resorted to, the community was completely at a loss as to the details of its enforcement.

CLII (*Mahzor Vitry*, p. 25, no. 45; *Sefer haOrah* p. 220; no. 130)

An anonymous ruling, included in several of the books of the school of Rashi, but stemming from an earlier age.

A transgressor, [i.e. a person] who transgressed a community, restrictive ordinance, but who was not directly and personally put under the ban by the community—is included in a quorum for public prayer, and is obligated to observe all the commandments [as a Jew in the full sense of the word]. Thus it is written in regard to Achan (Joshua 7, 11): "Israel hath sinned," which phrase is interpreted in the Talmud (*Sanh.* 44a): "Even though he has sinned, he is still Israel." Thus the abovementioned transgressor retained his former status and remained a member of the Jewish people; except that he became suspect of swearing falsely. If, however, he will be personally declared excommunicate, [he will become inelligible to be included in a quorum for prayer], for if you do include him [in such a quorum], wherein is their curse effective, and what did they accomplish by their (ordinance) [ban]? [No!] He cannot be so included, since they have separated him from their union!

Thus community control over the individual was exercised through two forms of legislation—general and personal. All community ordinances, after having been approved by the membership, were proclaimed in solemn assembly as rules binding upon all the members of the congregation. This proclamation was accompanied by the following general pronouncements: "Anyone who transgresses any of these ordinances shall become banned, shall be an excommunicate, and shall be separated from the community of Israel. On his head shall fall all the curses enumerated in the Pentateuch. He shall be cursed as . . . ." Although this formula clearly and emphatically implied that anyone who transgressed such ordinance would automatically become banned, the very deep religious feelings of the people, as well as the requirements of Jewish law, did not allow such an interpretation. For if a person automatically became an excommunicate, a pious Jew could never participate in public prayer, lest one of the congregants secretly transgressed a community ordinance and thus was an excommunicate in whose company no public prayers were permitted. A transgressor of a community ordinance was, therefore, not considered an excommunicate