## Communication in Rabenu Gershom's Ordinances

Menahem  $Blondheim^1$ 

<sup>1</sup>Affiliation not available

August 12, 2019

## Abstract

This article proposes a common denominator among the various medieval ordinances attributed to Rabbi Gershom of Mainz (960-1028?). This organizing principle is the regulation–international public law style–of communications throughout the Jewish Diaspora. Setting clear rules with regard to travel, hosting, and supra-local social relations could encourage and promote contact between and across communities in the Jewish Diaspora.

The Ordinances Attributed to Rabbi Gershom of Mainz as Regulations of Diasporic Communications: A Proposition

Menahem Blondheim

The Hebrew University of Jerusalem

A series of medieval ordinances (takanot), attributed to Rabbi Gershom son of Judah of Mainz (ca. 960-1028),11This dating, proposed in Avraham Grossman, The Early Sages of Ashkenaz: their Lives, Leadership and Works (900-1096) (Jerusalem: Magnes Press, 2001), pp. 109-111, is widely accepted. has proved of enduring importance. These ordinances came to be considered legally binding by Jews of Northwestern Europe, and the best known among them – a ban on polygamy, and its "twin ordinance" a ban on divorcing a woman against her will – became fundamental to Jewish personal status law, and hence to Israeli law.22An exhaustive summary of the impact of these ordinances in subsequent halakhic discourse and ruling is provided in the Talmudic Encyclopedia, vol. XVII, "Cherem d'Rabenu Gershom," pp. 378-454. These medieval ordinances thus resonate in courts of law in contemporary Israel a full millennium after their enactment.

Given their relevance, and with the increased awareness of gender issues in the study of Jewish law and Jewish history, these bans have been receiving considerable attention from legal scholars and social historians.33Works that focus on these takanot include: Ze'ev Falk, Marriage and Divorce: Ordinances in Laws of the Family in German and French Jewry (Jerusalem: Hebrew University Faculty of Law, 1961), pp. 14-31; Avraham Grossman, "The Historical Background to the Ordinances on Family Affairs Attributed to Rabbenu Gershom Me'or ha-Gola ('The Light of the Exile'), in: Jewish History: Essays in Honour of Chimen Abramsky, eds. Ada Rapoport-Albert and Steven J. Zipperstein (London: Peter Halban, 1988), pp. 3-23; \*Avraham N. Z. Roth, "On the History of Monogamy Among the Jews," in: Jewish Studies in Memory of Yehiel Michal Guttman, ed., Samuel Loewinger (Budapest: 1946), pp. 114-36; Elimelech Westreich, Traditions in the Legal Status of the Wife in Jewish Law: A Journey Among Traditions (Jerusalem: The Hebrew University Magnes Press, 2002), pp. 62-96; S. Z. Havlin, "The Ordinances of Rabbi Gershom the Light of the Exile in Family Affairs in Spain and Provance," Shnaton ha-Mishpat ha-Ivri 2 (1975): 200-258; Mordeccai Akiva Friedman, Polygamy Among the Jews: New Sources from the Cairo Geniza (Jerusalem: Mosad Bialik, 1986), pp. 19-25, 268; Peretz Tishbi, "Was the Takana not to Marry Two Wives Issued by Rabbi Gershom?" Tarbitz, 34 (1965), 49-55. Yet this lively interest has tended to focus on the two gender-related bans, in isolation from the rest of the ordinances attributed in subsequent generations to Rabbi Gershom. This article redirects attention from specific bans to the group of ordinances as a whole,

and it adds communications history to social and legal history as a relevant context for understanding them. Further, it proposes a common substantive denominator to most of the ordinances identified with Rabbi Gershom, who became known (quite significantly, *vide infra*), as the "Light of the Exile."

Over the ages, scholars have grappled with a variety of aspects of the takanot, one major issue being the correctness of their attribution to the venerable Rabbi Gershom. In addition, versions of the takanot in the various sources which have survived are inconsistent: they provide conflicting enumerations of the takanot, and present glaring differences in phrasing.44See Finkelstein's discussion of the 17 sources he used: Louis Finkelstein, Jewish Self-Government in the Middle Ages New York: Philipp Feldheim, Inc., 1964), pp. 111-118. For a comprehensive list of references and versions of the takanot from before 1492 see Appendix to Talmudic Encyclopedia, vol. XVII, pp. 757-72. Finally, doubt pervades our current understanding of the process through which the takanot were enacted and adopted by Franco-German communities. The literature on these textual and historical issues is, in the words of an embattled contemporary scholar, "infinite." 55Simha Goldin, Uniqueness and Togetherness: The Enigma of the Survival of the Jews in the Middle Ages (Tel Aviv: Hakibbutz hameuchad, 1997), p. 75.

Nevertheless, from the Middle Ages to modernity, a core of specific takanot was consistently and persistently attributed to Rabbi Gershom by authoritative sources. While many scholars accept their authenticity, very little effort has been devoted to making sense of them as a whole—to find how they cohere. Historians have traditionally seen the takanot as the foremost legal expression of the dramatic medieval departure in Jewish social and religious organization: the emergence of the community (kehillah) as an autonomous entity and its becoming the fundamental political unit of diasporic Judaism.66The literature on the takanot as an element of Jewish communal organization is vast. See, e.g., H. H. Ben-Sasson: On Jewish History in the Middle Ages (Tel Aviv: Am Oved, 1977), pp. 84-121; id., ed., A History of the Jewish People (Cambridge: Harvard University Press, 1976), pp. 421-38; Finkelstein, JSG, pp. 1-19; Mordechai Breuer, The Rabbinate in Ashkenaz During the Middle Ages (Jerusalem: Merkaz Shazar, 1976), pp. 9-16 Thus, the leading authority on Ashkenazi religious leadership in the middle ages, Avraham Grossman, has suggested that the takanot , taken together, addressed "the ways of organization of the communities (kehillot) and the nature of the relationship between them and the individual." 77"...mtrtn hyth lqbv' hsdrym vhnhgvt brbym mshtkhy hkhyym, vbmyvkhd bdrky rgvnn shl hqhylvt vbtyb hykhsym bynn vbyn hykhyd." khkmy shknz, 'm' 132. Simha Goldin, in a subsequet study of the social implications of the takanot, similarly highlighted their role in community building and internal organization, focusing on their tendency to buttress solidarity and maintain social control within the local communities.88Goldin, Uniqueness and Togetherness, pp. 74-80.

This paradigm works well for a few of the *takanot*, but most of them—the ban on polygamy and non-consenual divorce are prominent examples—do not fit this rationale of framing communal law and regulating public-private relations. This chapter proposes an alternative rationale for the *takanot* as a whole, and it takes its clue from a pioneering study, published three generations ago by Louis Finkelstein, that highlighted the institutional enactment of the ordinances. One and all were special, Finkelstein argued, in that they were apparently legislated for, and adopted by, many communities outside of Mainz, in the Northwestern European diaspora. He found it remarkable that Rabbi Gershom, a scholar from 'a little town in Germany', could generate and launch, possibly even mastermind and engineer, what became a pan-European consensus.99Finkelstein, JSG, pp. 20-22.

Indeed, it is precisely this supposed supra-local authority of the *takanot*, pointed out and celebrated by Finkelstein, that is relevant to a major substantive thrust of the corpus, surprisingly overlooked in the "infinite" and erudite extant scholarship. We propose that the *takanot* were widely accepted by numerous local communities precisely because they addressed legal issues that were not confined within the boundaries and jurisdictions of these communities. A major substantive theme in the cluster of *takanot*, we submit, is the regulation of the interface of the local community and that which is external to it. In other words, they pertain to the interaction of Jews from different communities in Northwestern Europe (and even beyond it, as we shall see). In this view, a considerable share of the *takanot* attributed to Rabbi Gershom are primarily ordinances regulating communications—broadly construed to include travel, letter, text, and rumor—between,

and to an extent within, the Jewish communities of Western Europe. 1010 This aspect of Medieval Jewish life has recently been receiving some of the attention it deserves. "Channels, Means, Boundaries: Communications in Germany and France in the 10<sup>th</sup>-12<sup>th</sup> Centuries According to the Responsa Literature," an extensive unpublished paper is available from this author upon request. Sophia Menache, "Communication in the Jewish Diaspora: A Survey," in: Id., ed., Communication in the Jewish Diaspora: The Pre-Modern World (Leiden: Brill, 1996), pp. 15-57, provides an excellent introduction; and other articles in that volume provide more detailed analysis. Among them, Avraham Grossman, "Communication among Jewish Centers during the Tenth to the Twelfth Centuries," ibid., pp. 107-125, is of particular importance to the problems addressed in the text. A valuable early study which provides considerable detail on communication related aspects of Medieval Jewish life is Irving A. Agus, Urban Civilization in Pre-Crusade Europe (New York: 1965), 2 vols. This suggestion is based on a review of the 16takanot Grossman has identified as contemporary with Rabbi Gershom's age, and two other takanot that appear to have a strong claim to authenticity.1111These takanot, the first of which Grossman too appears to accept as authentic (Ashkenaz , p. 136, n. 112, p. 144), forbid the editing of books and cutting their margins. Ben Zion Dinur, Israel in Exile vol. 1, book 3 (Tel Aviv: Dvir, 1961), p. 273; Shlomo Eidelberg, "Gershom the Legislator, Author of Responsa, and Poet," Sinai 36 (1956), p. 60..

Of this group, four takanot relate directly to travel between communities, and at least two others appear to have been occasioned by the consequences of such travel. This group includes the obligation of Jews from the hinterland sojourning in larger communities for the Day of Atonement to deposit their candles in the host community's place of prayer. Another takana dictates that pledges made in synagogue by a visitor are to be donated to the community where they were pledged, not to the visitor's home community. Similarly, a third takanaestablishes that travelers in the Purim season must give their obligatory Purim donations to the poor of the localities along their route, not of the community in which the traveler resides. A fourth takana, of considerable significance to legal procedure, also responds to the contingency of inter-communal travel. It establishes the local court as the proper jurisdiction for conducting suits brought by local community members against visitors, in apparent contradiction of traditional Talmudic legal procedure.

Travel between Jewish communities thus launched four of the lesser-celebrated takanot. Recent scholarship, however, has pointed to inter-diasporic communications as the circumstance giving rise to the two most famous ones. Polygamy was apparently exceedingly rare, if practiced at all, within Ashkenazi communities of the 11<sup>th</sup> century. Why then would Rabbi Gershom or subsequent leaders go to the trouble, and daring, of legislating to ban it? The answer, according to Grossman, lay far beyond the Rhineland, in the Jewish communities of Muslim Spain and North Africa, where polygamy was condoned by both Jews and gentiles.1212Grossman, "Ordinances on Family Affairs." While Rhineland Jewish males did not usually cohabit with more than one wife, when they engaged in long distance trade-related travel to, and extended sojourns in, Muslim lands, some married men wedded local woman, to have sex and create a home away from home. 1313Roth cites, with disapproval, a parallel, but opposite, solution: the takana was supposed to regulate bigamy by traders from Muslim countries sojourning in Ashkenaz: "Monogamy," p. 124. A charming literary rendering of such a scenario is provided in A.B. Yehoshua, Massa el Tom ha-Elef. But as trade routes and fortunes changed, the practice created problems of aginut that vexed the Jewish communities in Muslim lands, and threatened the smooth intercourse between them and sojourners from Christian Europe. The solution was to ban polygamy and also a potential loophole: seriatim, divorce without consent.1414Westreich is critical of Grossman's suggestion due to the lack of contemporary supporting sources. This reservation is strange: Westreich appears to accept the attribution of the bigamy takana to Rabbi Gershom, although no sources for the enactment of the takana survived. He thus expects that sources for the rationale of takana should survive when the takana itself didn't. Westreich, Status of the Wife, pp. 69-70. Hence the two most famous ordinances of Rabbi Gershom.

That the personal-status ordinances were understood at their time, or not long after their issuance, as an element of the inter-communal regulation of marriage is supported by the stipulations which developed for their relaxation in particular cases. When unusual circumstances recommended parallel marriage (such as a first wife's insanity or conversion), only the consent of 100 Jews (or rabbis) from at least three "countries" or

"states" could effect a relaxation of the ban.1515Grossman, Ashkenaz, pp. The necessity to generate what amounted to an international consensus for overruling the ordinance would suggest that its raison d'etre concerned the regulation of marriage practices across Jewish communities. At the same time, it reflected a pan-European, rather than communal, vision of rabbinical authority, and more concretely the feasibility of communicating with numerous rabbis over long distance.

Beyond face-to-face communications between individuals from different places, the takanot also address mediated communications. Legal issues concerning the flow of information, as distinct from individual travel, are represented, most conspicuously, in legislating the inviolability of mail. The takana forbidding the reading of letters by anyone but the sender or addressee had the power to enhance the exchange of letters between Jews of different communities by guaranteeing confidentiality and hence the efficacy of communication by written messages. At the same time, the legislation of the ordinance would appear to indicate that communication by written messages between Jewish communities was widespread. In fact, it has recently been argued that the takanot themselves were diffused among the communities of Ashkenaz and Northern France and adopted by them through their conveyance from one community to the next in writing, rather than in conference or synod.1616Goldin, Uniqueness and Togetherness, pp. 77-80.

The takanot also address less tangible flows of information. Most notably, they take issue with the spread of information and rumors from place to place. Two takanot stand out in this respect: the obligation to provide information about lost or stolen property, and the ban on disclosing information about past apostasy of individuals (later understood to include family members as well). Legal cases emerging under these two takanot demonstrate that at issue was information at a distance: individuals who had lost merchandise along trade routes attempted to enforce the disclosure of information about it from members of congregations located along the route by applying the takana. Similarly, cases invoking the ban on disclosing information about apostasy indicate that at issue was family reputation, particularly in cases of marriage between families in different communities. The latter ban was thus intended to curtail the flow of damaging gossip between communities, just as the former worked to encourage the spreading of useful information from place to place.

Three takanot focus on the handling and preservation of texts. The thrust of these ordinances is to promote not only the diffusion of a uniform heritage in space, but also its preservation through time. One of them, forbidding the "proofing" of traditional texts (hagaha) was apparently intended to prevent the corruption of the classical texts and the compromising of their authenticity. Irresponsible editing could introduce local variance to traditions of learning and observance in Jewish space, as well as disrupt the chain of transmitting the canon over time.1717Yaakov Shmuel Spiegel, Chapters in the History of the Jewish Book: Scholars and their Annotations (Ramat Gan: Bar Ilan University Press, 1996), pp. 101-115. Cf. Aryeh Grabois, "The Use of Letters as a Communication Media," in Menache, ed., Communication in the Jewish Diaspora, p. 102.

A further takana 1818Included by Dinur in the list of R. Gershom's ordinances on the authority of Tshuvot Maharam, 113/a: Yisra'el ba-Gola, vol. I book 3 (Tel Aviv: Dvir, 1961), p. 273. forbidding the cutting of margins of pages, even for the purpose of their secondary use, apparently reflected the same rationale: by eliminating the margins, readers' comments and corrections would have to be made in the text itself, potentially corrupting it, and ultimately causing a multiplicity of local traditions. Further afield, atakana of a distinct commercial law nature forbids retaining books, received for safekeeping, as collateral against any outstanding claims on their owner. Here too, the rationale appears to have been the negative effect of such a practice on the diffusion of knowledge. Indeed, an exception to the takana (considered by some authorities to constitute a separate one) was made in the case of teachers holding texts for safekeeping, and using them for teaching while in their possession. In such cases, allowing the teacher to keep the books in his possession as collateral is seen to serve the cause of disseminating knowledge. It was therefore permitted.

Finally, the *takanot* also appear to address problems relating to potential or actual migration to and from established communities. One of the *takanot* forbids the renting of a real estate property occupied by another Jew, or one that a Jew had occupied within the preceding year. The *takana* was apparently intended to prevent landowners (usually gentiles) from leveraging demand for their properties to raise rents and evict

tenants who could not afford the higher rates. It is quite plausible that the circumstance for legislating this takana was increased demand for urban property due to migratory pressures, at a time when the Jewish communities of the Rhineland were in the process of growth. On the other hand, the takana forbidding the owner of a property which serves as the communal synagogue from preventing an enemy from attending prayers on his property could serve to check forced migration out of the community: after all, preventing a Jew from public prayer was tantamount to forcing him out of the community and joining another.1919Grossman convincingly demonstrates that until the late  $11^{\rm th}$  century Mainz and other Rhineland communities could not sustain more than a single synagogue. Ashkenaz, p. 146 n. 141.

According to the foregoing, most of the ordinances attributed to Rabbi Gershom could be construed as legislation addressing inter-communal issues and shaping inter-diasporic communications. In this analysis, all but three of 18 takanot here considered to be part of the corpus could have communicative rationales—some more obvious than others. In contrast, the prevailing understanding of the thrust of the takanot as the solidifying of intra-communal arrangements and regulating the relations between the community and its individual members can explain, at best, 8 of the 18 takanot comprising the corpus.2020Numbers 2, 3, 5, 7, 11, and at a stretch also 1, 4, 15 in Grossman's list (Ashkenaz, pp. 134-35). The two takanot we added, the ban on altering texts and cutting their margins, do not fit the category.

## II.

A few general considerations would tend to buttress the foregoing proposition's power to explain and to be explained. To begin with the former: should the organizing principle of the *takanot* attributed to Rabbi Gershom indeed be the regulation of communications, that principle may be productively seized on in an attempt to better interpret or re-interpret specific *takanot*. A case in point would be the second *takana* in the compilations considered by Finkelstein to be our best sources for the corpus. It is one of the few *takanot* that does not appear to square with the foregoing proposition.

This takana regulates the right of plaintiffs to interrupt synagogue services in a plea to have their case come to court. While prima facie a purely intra-communal procedure, addressing, in Finkelstein's view, freedom of speech, it is listed immediately after the opening takana upholding the local court as the proper jurisdiction for the prosecution of visitors. A plausible explanation for the proximity of these first two takanot is that the second complements the first: it spells out the visitor's procedural privileges in bringing a suit against local community members, complementing the first takana 's legislation of the local court's jurisdiction in suits brought against visitors. Indeed, there are both examples and explicit statements demonstrating that the takana was invoked in cases of stopping prayers by visitors to the community. In fact, in one of our best sources, the issues of suing visitors and interrupting prayer to sue a local community member appear as two clauses linked by an "and" ( $-vav\ ha-xibur$ ). More speculative is to assume that the next ban (no. 3 in the lists preferred by Finkelstein), which forbids the owner of a house of prayer to prevent an adversary from praying there, relates to the case of a visitor to town who intends to interrupt prayer and petition the community for legal redress against the owner. Nevertheless, the subsequent takana (no. 4), once again relates to the case of a petition to the community, most probably by a visitor.

Be that as it may, the second takana just discussed concerning the interruption of prayer, which has heretofore been understood as an element of communal public law, can plausibly be re-understood as a precursor of "international" private law, thus falling in line with the other, supra-local takanot. Future students may find ways to creatively re-interpret the remaining few ordinances that have traditionally been understood as regulating merely intra-communal affairs, so that they too fit the inter-communal mold.

In pursuing such a course, scholars would not be straying far from what is known to have been the prevailing legislative trend and social process of Northwestern Jewry of the  $11^{\rm th}$  and  $12^{\rm th}$  centuries. By the time of Rabbi Gershom, historians tell us, Ashkenazi Jewry was well on its course of lodging religious authority in communal institutions, rather than looking to religious authority lodged in distant institutions, dynasties, and individuals. By the  $11^{\rm th}$  century cherem Beit Din , cherem hayishuv , and other institutions which established the authority of the local community were well established, as were institutions regulating the

relations of the individual and his community, such as interrupting prayers. Synods of communal leaders or other arrangements for reaching a pan-communal consensus on the legitimacy of the community wielding power over its own affairs, and regulating the duties and rights of community-members, were no longer necessary. Nor would the great prestige of Rabbi Gershom of Mainz be necessary to legitimize these firmly established practices.

Synods or other processes for engineering inter-communal consensus, and the prestige of Rabbi Gershom, were, however, necessary for launching a new departure and engineering a further project. This project was extending the authority of the community beyond its own boundaries, or rather, arranging the diaspora as a lateral coalition of communities, in place of the previous vision of the diaspora as a hierarchical field subject to the supremacy of a distant authority. Through such a project, the legal sphere outside of the local communities was to be adjusted, filling, as it were, the legal void between them. As proposed above, this is precisely what most of the ordinances attributed to Rabbi Gershom dealt with. In the process, a few intra-communal issues may have also been addressed.

The realities of social life pointed to this departure as both necessary and proper. In the first place, the assumption of internal authority by the kehillot reflected the gradual demise of authority exercised from the Near-Eastern centers of Jewish leadership. Not only were the Exilarchs, the Yeshivot, and their Geonim in a process of decline, but thoroughgoing change in patterns of Jewish demographics, commerce, and communication made the potential exercise of authority from afar unrealistic. As more and more Jews moved into the Northern European regions, patterns of travel and trade were shifting from the long-haul to the inter-regional and the intra-regional loop. Commercial and civic interaction was rapidly increasing between the emerging cities of Northwestern Europe, with many more Jews, as well as gentiles, moving in competition along the thickening web of routes and destinations in Christian Western Europe. As the intensity of mid-range travel and communication was increasing, traffic on the long-distance trade routes to the Near and Far East, to North Africa, and even to Muslim Spain, was in decline.2121For the erstwhile long-haul see Avraham Grossman, "Communication Among Jewish Centers During the Tenth to the Twelfth Centuries," in: Sophia Menache, ed., Communication in the Jewish Diaspora: The Pre-Modern World (Leiden: Brill, 1996), pp. 107-126. The increasing activity and interaction between Jews of Northwestern Europe challenged the internal workings of the kehillot and highlighted the realm of contact between themthe spheres of communication, interaction, and interdependence. 2222 Kenneth R. Stow, Alienated Minority: the Jews of Medieval Latin Europe (Jerusalem: Merkaz Shazar, 1997), pp. 208-210; Ben Sasson, On Jewish History, pp. 61-66; Mark R. Cohen, Under Crescent and Cross: The Jews in the Middle Ages (Lod: Zmora Bitan, 2001), pp. 188-92.

It was to this challenge of vastly increased social and business communication between Northwestern European Jews that communal leaders of the  $11^{\rm th}$  and  $12^{\rm th}$  centuries found it necessary to respond. They did so by framing a layer of ordinances regulating the consequences of increased travel, migration, and communication between their communities. This was the core of the cluster of takanot that emerged in the  $11^{\rm th}$  century.

Responding to these circumstances, the *takanot*, over time, were compiled into a single list. Precisely what was compiled, and precisely when, therefore represents an interesting, but only secondary, matter of historical detail. Nor is the problem of the attribution of any, some, many, or all of the inter-communal *takanot* to Rabbi Gershom a very significant one. The new departure of establishing a body of law regulating inter-communal affairs required a modicum of legitimacy. The splendid reputation of Rabbi Gershom as scholar and leader could provide that legitimacy.

Indeed, Rabbi Gershom's real or imagined personal authority could be construed as a bridge between the universal authority of the tana 'im and amora'im, later exilarchs, rashey yeshiva and geonim, whose authority supposedly covered ecumenical Jewish space, and the new era of the communal self-rule. In such a construction, Rabbi Gershom, who rose to prominence after the communities had seized authority over their own affairs, could launch a second step. It was up to him to exercise his potential authority over Jewish space not controlled by the kehillot, and he could do it by way of conferring that potential authority to a coalition of the kehillot. Hence the persistent attribution of the cluster of inter-communal takanot to Rabbi

## Gershom.

And in fact, to a greater or lesser extent Rabbi Gershom appears to have been among the initiators of this novel legislative thrust, or identified with it from early on. His role as the authority that legitimized the extension of the communal authority over great expanses was subsequently highlighted and celebrated. Like the Sun [hama'or hagadol] 2323Sidur Rashi, p. 106., which shines over the entire ecumene, the project attributed to him was extending the light of Jewish law beyond the confines of the community and over the entire Jewish space. As "legislator for the entire diaspora," if not for the internal affairs of its communal enclaves, Rabbi Gershom was styled "the light of the exile."