

Rabbenu Tam's Ordinance for the Return of the Dowry: Between Talmudic Exegesis and an Ordinance that Contradicts the Talmud*

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I. Introduction

Rabbi Jacob ben Meir (France, 1100–1171), Rashi's maternal grandson, is the rabbinic sage best known as Rabbenu Tam.¹ Rabbenu Tam is known to students of the Talmud as a Tosafist. He is cited some 2,700 times in the *Tosafot* that are printed alongside the Talmud itself in traditional printings; this fact, on its own, attests to his interpretive power and his great renown among Talmud students throughout history.² Rabbenu Tam's commentary addresses various

* This article is part of a comprehensive study of the work and intellectual world of Rabbenu Tam. I am grateful to Elli Fischer, who translated this article from the Hebrew.

1 This moniker alludes to Gen 25:27, which states that the biblical Jacob was a "mild man" ("ish tam") who dwelled in tents, and to a midrashic interpretation that understands the "tents" as places of Torah study (see, for example, *Midrash Tanhuma*, ed. Buber [Vilna: Romm, 1883], *Toledot* 1:1, p. 124). See, however, n. 52 below.

2 Ephraim E. Urbach's classic work, *The Tosafists* (Jerusalem: Magnes, 1980) (Hebrew), is the foundational text for becoming familiar with the Tosafist project. In this book, a lengthy central chapter is devoted to Rabbenu Tam and his method, and additional chapters are devoted to his pupils, who came from far and wide to study with him. See: Urbach, *Tosafists*, 60–113; 114–64; 165–226. See also Haym Soloveitchik, *Collected Essays*, vol. I (Oxford: Oxford University Press, 2014), 13–15; Avraham (Rami) Reiner, "From Rabbenu Tam to Rabbi Isaac of Vienna: The Hegemony of the French Talmudic School in the Twelfth-Century," in *The Jews of Europe in the Middle Ages (Tenth to Fifteenth Centuries)*, ed. Christoph Cluse (Turnhout: Brepols, 2004), 273–81; idem, "Bible and Politics: A Correspondence

aspects of the Talmud. Sometimes he scrutinizes the text of the Talmud, at other times he offers a running commentary on the passage he is discussing, and frequently he seeks to harmonize two distinct passages.³ Rabbenu Tam's various methods of interpretation yielded a significant number of innovative readings, which in turn produced novel halakhic rulings, some of which are even called by the name of the commentator-halakhist. Among the latter are his rulings about the proper order of the passages placed within phylacteries ("Rabbenu Tam *tefillin*")⁴ and his determinations vis-à-vis the beginning and end of the Sabbath ("Rabbenu Tam times").⁵

In addition to his interpretive activities, Rabbenu Tam also wrote numerous halakhic responsa.⁶ These responsa focus primarily, though not

between Rabbenu Tam and the Authorities of Champagne," in *Entangled Histories: Knowledge, Authority, and Jewish Culture in the Thirteenth Century*, ed. E. Baumgarten, R. M. Karras, and K. Mesler (Philadelphia: University of Pennsylvania Press, 2016), 59–72.

- 3 On this interpretive method, see Solomon Luria, *Yam Shel Shelomo* (Bnei Brak: Va'ad le-hotsa'at sefarim nehutsim le-lomde Torah], 1959), second introduction to Tractate *Hullin*:

Let us return to the origins, to the Talmud with which we engage and whose waters we drink. If not for the French sages, the Tosafists, who made it as one sphere—and of them it is said that the words of sages are like spurs—turning it over and rolling it from one place to another that seems like a dream, without interpretation and without foundation, rather, one passage says one thing, and another passage says another, and one has nothing to do with the other. Yet, we find that the Talmud is thus harmonized and bound together. All of its opacity is resolved, and the content of its rulings confirmed.

- 4 *Tosafot to Menahot* 34b, s.v. "*ve-hakorei*"; on this history of Rabbenu Tam's view, see Yaakov Gertner, *Gilgulei Minhag Be-sifrut Ha-halakhah* [*Development of Custom in Halakhic Literature*] (Jerusalem: Magnes, 1995), 134–70.
- 5 *Tosafot to Shabbat* 35b, s.v. "*trei*"; *Tosafot to Pesahim* 94a, s.v. "R. Judah."
- 6 Some of the responsa appear in *Sefer Ha-yashar, Responsa*, ed. Shraga Rosenthal (Berlin: Defus Tsevi Hirsh b.r. Yitshak Ittskovski, 1898). Others are scattered in contemporary European halakhic writing, such as *Sefer Ra'avayah*, ed. Avigdor Aptowitz (Jerusalem: Mekize Nirdamim, 1938); *Shibbolei Ha-leket*, vol. 1 (*Shibbolei Ha-leket Ha-shalem by Rabbenu Zedekiah ben R. Abraham Harofe*), ed. S. Buber (Vilna, 1887); *Shibbolei Ha-leket*, vol. 2 (*Shibbolei Ha-leket: Helek Shenit*), ed. M. Z. Hasidah (Jerusalem, 1969), *Or Zaru'a* (Isaac ben Moses of Vienna, *Or Zaru'a* [Jerusalem: Mekhon Yerushalayim, 2010]); *Responsa Maharam Mi-Rothenburg*, ed. S. Emanuel (Jerusalem: Ha-Iggud ha-Olami le-Madda'e ha-Yahadut, Keren ha-Rav David Mosheh ve-Amalyah Rozen, 2012); and *Sefer Mordekhai*.

exclusively, on halakhic rulings. In the process of rendering such rulings, Rabbenu Tam had to interpret the relevant talmudic discussions, and these interpretations appear in the Tosafist works on the Talmud; usually, there is no indication in this literature that Rabbenu Tam's interpretation originated in a responsum.⁷ In other words, Tosafists who were generally interested in Talmud commentary "peeled away" the fact that the interpretation they cite was in a responsum, and thus they did not mention the name of the addressee, the question asked, the introductory matter in the letters, or the direct halakhic conclusions that emerge from the interpretation.

Rabbenu Tam did not write only commentaries and responsa. On occasion, he made ordinances ("*takanot*") whose purpose was to change *halakhah*. Very few Jewish sages made ordinances; the short list includes Tanna'im Hillel and Rabban Yoḥanan ben Zakkai and medieval sages Rabbenu Gershom Me'or Ha-golah and Rabbenu Tam. This simple fact can teach us something about Rabbenu Tam's self-consciousness: He considered himself authorized to impose ordinances, for, as noted, such ordinances change *halakhah* and do not interpret it.⁸

In the present article, I will address one of Rabbenu Tam's ordinances: The return of the dowry to the father of a woman who died right after her wedding (*nissu'in*).⁹ According to talmudic law, when a wedded woman

7 Thus, "Rabbenu Tam's isolating measures" ("*harḥakot de-Rabbenu Tam*"), whose purpose is to persuade a husband to divorce his wife, originate in a responsum that appears in *Sefer Ha-yashar, Responsa*, §24, pp. 39–42. To arrive at his position, Rabbenu Tam offered a new interpretation of the talmudic discussion of the "rebellious wife" (*b. Ketub.* 63a–b). His interpretation appears in *Tosafot ad loc.*, s.v. "*aval*." One who reads the interpretation on the standard page of Talmud would not know that the interpretation originates in an assertive halakhic responsum and that it is likely that halakhic necessity caused him to interpret the passage how he did.

8 On Rabbenu Tam's ordinances, see Louis Finkelstein, *Jewish Self-Government in the Middle Ages* (New York: P. Feldheim, 1964), 150–215. For a discussion of Rabbenu Tam's ordinance about appealing the validity of a writ of divorce, see R. Reiner, "Regulation, Law and Everything in Between: The Laws of Gittin as a Depiction of Society," *Tarbiz* 82 (2014): 139–63 (Hebrew).

9 To avoid confusion, throughout this article, "wedding" and related terms will refer specifically to *nissu'in*, the second stage of the halakhic marriage process, when the wife moves into the husband's home. "Betrothal" refers to "*erusin*." Terms like "marriage" and "matrimony" refer to the legal status that obtains even after betrothal.

(“*nesu'ah*”) dies, her husband inherits her. This applies even where the woman dies on her wedding day or a few days after her wedding. In such a case, the halakhic outcome is that the newlywed and newly-widowed husband inherits whatever her father gave her to bring into her new household. The bereft father, on the other hand, has not only lost his daughter but also the assets that he gave his daughter in anticipation of her wedding.

The first part of this article will include a presentation of the talmudic discussion in *b. Ketubbot* 47a alongside the commentaries of Rashi and his grandson, Rabbenu Tam. I will attempt to demonstrate that Rabbenu Tam’s interpretation is completely unreasonable from the perspective of the discussion’s straightforward meaning. The interpretation is thus directed not only at understanding the unfolding of the discussion but also at attaining the aforementioned result: returning the father’s money to its original owner.

In the second part of the article, I will present Rabbenu Tam’s ordinance and claim that Rabbenu Tam sensed that his interpretation of the discussion is not plausible, and he therefore instituted a Talmud-circumventing ordinance whose purpose is to prevent the husband from inheriting his wife when she died suddenly soon after her wedding.

II. Presentation of the Problem

In the calamitous portending of Leviticus: “Your strength shall be spent to no purpose. Your land shall not yield its produce, nor shall the trees of the land yield their fruit” (Lev 26:20). Already in the halakhic *midrash* on this book, the sages disagree about the meaning of the expression, “your strength shall be spent to no purpose”:

“Your strength shall be spent to no purpose”—Rebbi says: This refers to a vineyard. Others say: This refers to flax. Still others say: This is their strength (itself). Alternatively: This refers to one who married off his daughter and gave her a lot of money, but before the seven days of rejoicing are completed his daughter dies. Thus he buries his daughter and loses his money. (*Sifra Beḥukkotai* 2:5)

Of interest is the interpretation cited “alternatively.” According to this interpretation, the biblical curse, “Your strength shall be spent to no purpose,” comes to fruition when a man’s newlywed daughter dies within seven days

after her wedding, while the festivities are still ongoing. However, the death itself is not enough. For the curse to reach its complete fulfillment, another component is necessary: he "gave her a lot of money." Only then, when he loses his daughter as well as the money he had allocated for her dowry, does the scriptural curse, "Your strength shall be spent to no purpose," manifest in full.

This terrible curse is comprised of two components of distinct character. The first component is the sudden death of the daughter right after her wedding. This is an immutable act of God. In contrast, the second component, the loss of money, is a result of the law, particularly of *halakhah*, which ordained that when a *nesu'ah* dies, her husband, who may have been living with her only a few days before her death, inherits the entire sum of the dowry that the father had set aside for his dead daughter. In this, the second aspect of the curse differs from the first part, which is, as mentioned, an act of God. Among the Jewish sages throughout history, there were several who attempted to come to terms with this law, whose implication is the father's loss of property as a result of his loss of his daughter.¹⁰ This article will examine Rabbenu Tam's activities in this regard.

III. The Discussion in *b. Ketubbot* 47a and Rashi's Commentary on It

The following *baraita* that deals with the laws of a husband's inheritance of his deceased wife appears in *b. Ketubbot* 47a:¹¹

If he wrote for her [Rashi: If **the father** set aside for her, **as her dowry** ... and he wrote them for her **while she was betrothed**] usufruct, clothing, and implements that would come with her from her father's house to her husband's house, and she died [Rashi: **while betrothed**]**—**the husband is not entitled to these

10 For a survey of various ordinances on this matter, see Aharon Shweka, "The Controversy about the Marriage Statute (Taqqanat Ha-Nissu'in) of Toledo," *Tarbiz* 68 (1998): 88 nn. 5–6 (Hebrew).

11 The law that a husband inherits his wife is not taught explicitly anywhere in the Mishnah. However, several *mishnayot* are predicated on it. See, for example, *m. Ketub.* 4:10; *m. Bek.* 8:10. Regarding the status of the law of the husband's inheritance in the Talmud, see *b. Ketub.* 84a; *b. B. Bat.* 109b; *b. Bek.* 52b.

things. They said in the name of Rabbi Nathan: The husband is entitled to these things.

Rashi posits that this *baraita* deals with a case in which the woman died while betrothed, before *nissu'in*. Rashi uses the term "*erusin*" ("betrothal"), which means that the matrimonial bond between the couple has already been legally effected, though they have not yet begun to live together. According to scriptural law and rabbinic *halakhah* alike, a betrothed woman ("*arusah*") and a *nesu'ah* are both considered to be married women (with respect to the prohibition of adultery, for instance), even though, with respect to other areas of *halakhah*, there are differences between an *arusah* and a *nesu'ah*.

Rashi thus explained the *baraita* as relating to an *arusah* who died before *nissu'in*. In such a case, the anonymous first Tanna asserts that the husband does not inherit his wife, whereas Rabbi Nathan maintains that, "The husband is entitled to these things." According to this interpretation, the *baraita* does not address a case where the woman died after *nissu'in*, when her status is that of a *nesu'ah* in every respect. It is almost certain that, according to Rashi, in such a case, the husband is entitled to "these things" even according to the first Tanna; after all, she is a *nesu'ah* in every respect.

After quoting the aforementioned *baraita*, the Talmud compares a case in which the woman dies—the case of the *baraita*—to a case in which the husband dies—the case addressed in the first *mishnah* of the fifth chapter of *Ketubbot*. The *mishnah* states:

If she was widowed or divorced, whether from *erusin* or *nissu'in*, she collects the entire amount. Rabbi Elazar ben Azariah says: If she is a *nesu'ah*, she collects the entire amount, but if she was [only] an *arusah*—a virgin collects two hundred and a widow one hundred. (*m. Ketub. 5:1; b. Ketub. 54b*)

According to this *mishnah*, a woman who became widowed after *nissu'in* is entitled, according to all opinions, to the entire sum that the husband committed to her in her *ketubbah*. In contrast, if the husband dies between *erusin* and *nissu'in*, according to Rabbi Elazar ben Azariah she is entitled only to the minimal value of a *ketubbah* as determined by the Sages, whereas according to the anonymous first Tanna, the law pertaining to the *arusah* is the same as the law pertaining to the *nesu'ah*: both collect the entire amount of the *ketubbah* to which the deceased husband had committed for her.

As mentioned, Rashi posits that the tannaitic dispute in the *baraita* cited above concerns a state of *erusin*; according to Rabbi Nathan, the husband is entitled to everything the deceased *arusah's* father committed for her dowry. Rabbi Nathan's view aligns well, according to the Talmud's proposal, with the view of the anonymous first Tanna of the *mishnah*, who asserts a woman is entitled to the full value of her *ketubbah* upon the death of her betrothed ("*arus*"). *Erusin*, according to this position in the Talmud, entitles and obligates both parties to whatever is designated for them had the *nissu'in* taken place. In contradistinction to this view is the opinion that does not consider *erusin* a factor that generates the full obligation. Thus, according to the anonymous first Tanna of the *baraita*, the *arus* is not entitled to the dowry of his deceased *arusah*, and, correspondingly, according to Rabbi Elazar ben Azariah, the *arusah* is not entitled to the additional sum that the dead *arus* promised in her *ketubbah*.

The Talmud rejects the equation and alignment of the opinions in the *mishnah* and *baraita* (i.e., that the first Tanna of the *baraita* agrees with Rabbi Elazar ben Azariah, and Rabbi Nathan with the first Tanna of the *mishnah*). According to this line of reasoning, both opinions in the *baraita* regarding a man's inheriting his dead *arusah* (the anonymous first Tanna and Rabbi Nathan) hold, in accordance with the opinion of Rabbi Elazar ben Azariah, that an *arusah*, upon the death of her *arus*, receives only the main part of her *ketubbah*, but none of the additional sum. It goes without saying that there is no need to explain how the first Tanna of the *baraita*, which maintains that the husband is not entitled to the dowry upon the death of his *arusah*, is compatible with the view of Rabbi Elazar ben Azariah. A more complicated explanation is needed in order to square Rabbi Nathan, who asserts in the *baraita* that "the husband is entitled to these things" even upon *erusin* (i.e., *erusin* grants the full entitlements of marriage), with the opinion of Rabbi Elazar ben Azariah, who maintains that the death of the husband does not entitle the *erusin* to the additional sum of her *ketubbah* (i.e., *erusin* does not grant the full entitlements of marriage). To make these two views compatible, the Talmud suggests that, according to Rabbi Nathan:

Rabbi Elazar ben Azariah only goes as far as to state [that the *ketubbah* is not fully in effect until marriage] with regard to [a bestowal from] him to her, for he only wrote [the additional sum] on condition that they would be wedded. However, with regard to [the dowry, which is given] by her to him, even Rabbi

Elazar ben Azariah concedes [that the husband is entitled to the dowry money], for [the father gives the money] so that they are joined in matrimony (“*iḥatunei*”)—and she married (“*iḥatnei*”) him [already, through *erusin*].

That is, if the husband dies while they are still betrothed, his estate is not required to provide the additional sums promised in the *ketubbah*, for he added this sum on the presumption that they would consummate the betrothal by bringing her into his home. Since they were unable to do so, he has no obligation. In contrast, the *arusah*'s father's obligations are linked to matrimony (“*iḥatunei*”), that is, to the father's joy upon his daughter's marriage. This joy is present even at the time of *erusin*, and by virtue of this fact, the father grants his son-in-law the dowry from that moment.¹²

In his interpretation, Rashi posits that the dispute in the *baraita* between the first Tanna and Rabbi Nathan relates to the liminal time period between *erusin* and *nissu'in*. The implication is that if the *nissu'in* took place and the woman died as a bona fide *nesu'ah*, the first Tanna would agree that her husband inherits the dowry in full.¹³ In addition, Rashi's interpretation requires that the term “*iḥatunei*” be linked to *erusin*. A third point is that, according to Rashi, the passage's inclination to aver that Rabbi Nathan can agree with the opinion of Rabbi Elazar ben Azariah stems from the fact that a passage in *b. Ketubbot* 56b rules explicitly in accordance with Rabbi Elazar ben Azariah. Therefore, the present passage wished to understand Rabbi Nathan's view in accordance with settled law, at least according to Rashi.¹⁴

12 Rashi does not comment on the word (“*iḥatunei*”); see, however, *Ḥiddushei Ha-Ritva al Ketubbot*, ed. Moshe Goldstein (Jerusalem: Mosad ha-Rav Kook, 1982), 384.

13 This is also the conclusion of *Tosafot* to *b. Ketub. 47a*, s.v. “*kataḅ lah*” and *Tosafot Sens* to *Ketubbot*, ed. A. Liss (Jerusalem: Yad ha-Rav Hertsog, 1973), 47a, s.v. “*kataḅ*.” This is also the conclusion of Rabbenu Ḥananel in his commentary—see *Shitah Mekubbetset*, ed. Z. Metzger (Jerusalem: Mekhon Tiferet ha-Torah, 1996), *Ketubbot* 3, 47a, p. 60, citing Ritva (= *Otsar Ha-ge'onim al Masekhet Ketubbot*, “*Leket Peirush Rabbenu Ḥananel*”, ed. B. M. Levin, photo offset (Jerusalem, 1984), p. 38): “Nevertheless, the eminent Rabbenu Ḥananel and all the other eminent sages, of blessed memory, explained [this *baraita*] as referring to an *arusah*, in accordance with the plain meaning of the passage. However, with respect to a *nesu'ah*, all agree that the husband is entitled immediately upon her entry into the wedding canopy, even though her *ketubbah* is in her father's house.”

14 *B. Ketubbot* 47a; Rashi *ad loc.*, s.v. “*kulei alma ke-Rabbi Elazar ben Azariah*.”

IV. The Discussion in *b. Ketubbot* 47a and Rabbenu Tam's Interpretation of it

Rabbenu Tam's interpretation of the passage appears in his own words in *Sefer Ha-yashar* and in paraphrases thereof in the Tosafist literature on tractate *Ketubbot*.¹⁵ Here are Rabbenu Tam's own words in *Sefer Ha-yashar*:

"If he wrote for her usufruct, clothing, and implements, etc." ...
and she wed, and then she died, even though they were transacted orally and in writing to be collected after *nissu'in*... the husband is not entitled to these things, because he did not manage to collect them before her death...for he only wrote for her **on condition that he would bring her into his house**. And since she died or was divorced, the transaction is voided.

Rabbenu Tam disputes Rashi on one central point: He understands the disagreement in the *baraita* between the first Tanna and Rabbi Nathan as concerning a woman who died after *nissu'in*, but whose husband did not manage to collect the entire dowry from her father or other relatives.¹⁶ Recall that Rashi understood the disagreement as concerning a woman who died while an *arusah*. The rationale behind Rashi's interpretation is that given the Talmud's comparison of the *baraita* to the *mishnah* that records a dispute between Rabbi Elazar ben Azariah and an anonymous first Tanna, and given that the dispute in the *mishnah* is explicitly about a couple that underwent *erusin* but not *nissu'in*, it stands to reason that the *baraita* compared to the *mishnah* should be understood as relating to a similar state of affairs, namely, a case wherein the woman died between *erusin* and *nissu'in*.¹⁷ As

15 *Sefer Ha-yashar, Novellae*, ed. Shimon Shlomo Schlesinger (Jerusalem: Kiryat Sefer, 1959), §34, p. 35. Also cited from there in *Tosafot Ri Ha-lavan to Ketubbot*, ed. Pinhas Yaakov Cohen (London: ha-Madpis, 1954), p. 49. See also *Tosafot Sens* and *Tosafot* on the printed page (*loc. cit.* in n. 7 above); *Sefer Ra'avayah*, §912, p. 66.

16 It emerges from Rabbenu Tam's words that if the husband received the entire dowry, there is no disagreement that he is entitled to all of the dowry property.

17 There is another bit of evidence that supports Rashi's explanation. In *b. Ketubbot* 48b, the Talmud quotes a *baraita* that states: "If the father gave it over to the husband's agents, or the father's agents gave it over to the husband's agents, or if he had a courtyard on the way, and she entered it with him for the purpose of *nissu'in*, then even if her *ketubbah* is at her father's house, if she dies, her husband inherits her." The "handing over" in question in this source is the transfer of

stated, Rabbenu Tam asserted that the dispute between the first Tanna and Rabbi Nathan in the *baraita* applies specifically after *nissu'in*, in a case where the dowry promised to the husband had not yet reached his hands. What motivated Rabbenu Tam to explain the passage as he did, despite the clear difficulties with this explanation?

In *Sefer Ha-yashar*, and even more clearly in the Tosafist literature, Rabbenu Tam offers three reasons for his preferences. These reasons are presented as questions:

- a. The dispute between the first Tanna and Rabbi Nathan revolves around a case in which “[the father] wrote for her usufruct, clothing, and implements that would come with her from her father’s house to her husband’s house.” Entering into the husband’s house is a description of *nissu'in*; it is only at the time of *nissu'in* that the wife moves from her father’s house to her husband’s house. This being the case, Rabbenu Tam claimed, according to Rashi, the view of Rabbi Nathan, who maintains that “the husband is entitled to these things,” makes no logical sense. According to Rashi’s explanation, it emerges that Rabbi Nathan asserts that the widower is entitled to these things even before his wife moves into his house, before the father is obligated in anything! The obligation takes effect only when the woman moves from her father’s house to her husband’s house!
- b. The *baraita* in question is attached to the *mishnah* that appears in *b. Ketubbot* 46b, which states: “A father is entitled to his daughter’s betrothal money...items she has found, and her earnings.... If she wed (*'nis'eit'*), the husband exceeds [the father] in that he consumes the produce [of her property] in her lifetime, he is obligated to maintain her, to redeem her [if she is captured], and her burial.” According to Rabbenu Tam, it stands to reason that the *baraita* was brought because it corresponds to the situation that the *mishnah* discusses

custody of the wife from the father and his agents to the husband. If the transfer takes effect, then it is explicit that the husband inherits the *ketubbah* even if it is still at her father’s house. On this support for Rashi’s interpretation, see *Tosafot Sens* at the beginning of the passage.

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as well, namely, where she was a *nesu'ah*, not an *arusah*, as Rashi explained.¹⁸

- c. As mentioned, at the end of the discussion, the Talmud avers that Rabbi Nathan's view is compatible with the view of Rabbi Elazar ben Azariah because the factor termed "*iḥatunei*" causes the obligation of the bride and her father to take effect more rapidly. According to Rabbenu Tam, the concept of "*iḥatunei*" is related to *nissu'in*, not *erusin*. Therefore, the *baraita* in question, in which the dispute between the first Tanna and Rabbi Nathan is central, addresses the case of a woman who died after *nissu'in*, not, as Rashi explained, after *erusin*.

IV. Difficulties with Rabbenu Tam's Explanation¹⁹

Rabbenu Tam's third question on Rashi's explanation is predicated on the context of the term "*iḥatunei*"; according to Rabbenu Tam, this term is used specifically in connection with *nissu'in* and not, as it emerges from Rashi's comments, with *erusin*.²⁰ It seems to me that this question is instructive not only about itself. Rabbenu Tam's question is one that the Tosafists themselves dismissed indirectly. Like its counterparts, this question has weaknesses that clearly indicate that Rabbenu Tam was attempting to reject Rashi's explanation at all costs. Thus, right next to Rabbenu Tam's claim about the correct context indicated by the word "*iḥatunei*", the Tosafists write:

Even though in the chapter "*Ha-nose*" (*b. Ketub.* 102a–b), in context of [the passage about prenuptial financial negotiations, i.e.,] "How much will you give your daughter? Etc.", which is talking about *erusin*, [the Talmud] states: "With the enjoyment that they marry (*de-iḥatnei*) one another, they complete the

18 I present this question as it emerges from *Tosafot* on the printed page, where it appears as the first question. In *Sefer Ha-yashar* (*loc. cit.*) the question is formulated in a more complicated way and with slightly different emphases.

19 These are in addition to the inherent difficulties presented at n. 17.

20 In the formulation of *Tosafot ad loc.*: "Moreover, it concludes that in this case it is 'so that they are joined in matrimony (*iḥatunei*)'; and if this refers to *erusin* – *erusin* is not called 'matrimony' (*ḥittun*), only affinity (*ikruvei da'ata*), as below."

transaction with [mere] words [which poses a problem for Rabbenu Tam, as here the term “*iḥatunei*” is used in context of *erusin*, not *nissu'in*];

One can answer [for Rabbenu Tam] that this is what [the passage on 102b] means: With the enjoyment that they will ultimately be married by means of *nissu'in*, they complete the transaction with one another even at the time of *erusin*.²¹

That is, the Tosafists found another talmudic source, in Tractate *Ketubbot* (102a–b), where the term “*iḥatunei*” clearly and unambiguously relates to *erusin* and not *nissu'in*. They are forced to offer their contrived explanation in order to keep Rabbenu Tam’s question/claim in place. However, this very fact demands an explanation: Rabbenu Tam made an unproven linguistic assertion and challenged Rashi on its basis. However, it would seem that his assertion is completely disproven by another fundamental text later in the same tractate. Anyone familiar with the teachings of Rabbenu Tam would be astonished that such an error appears in his words.²² It is not surprising that his disciple, Rabbi Isaac ben Rabbi Jacob of Bohemia (“*Ri Ha-lavan*”), copied this passage of *Sefer Ha-yashar* into his *Tosafot* to *Ketubbot*²³ and commented on Rabbenu Tam’s assertion about the meaning of the term “*iḥatunei*”: “This is not so, for later, in the chapter ‘*Ha-nose*’ ... it is *erusin*. Therefore, on this matter alone I was unable to understand the opinion of our master [Rabbenu Tam].”

It seems to me that Rabbenu Tam’s other two questions on Rashi’s explanation likewise have fundamental weaknesses. In his second question (in their order of appearance in *Tosafot*), Rabbenu Tam notes that the *baraita* under debate is placed within the flow of the talmudic discussion as an expansion of a *mishnah* that states: “If she wed (*‘nis’eit*’), the husband exceeds [the father].” According to Rabbenu Tam, the *baraita* that the Talmud brought to expand the *mishnah* should also address a case where both *erusin* and *nissu'in* had taken place.

21 *Tosafot* (*loc. cit.* in n. 12 above; the question also appears in *Tosafot Sens ad loc.*, p. 111).

22 In *Sefer Ha-yashar, Novellae* (*loc. cit.* in n. 15 above), Rabbenu Tam does not mention the passage in *b. Ketub. 102a–b*. It is therefore clear that it eluded him when he wrote his question.

23 *Tosafot Ri Ha-lavan* to *Ketubbot* (above, n. 15), p. 51.

This presumption of Rabbenu Tam is problematic for three reasons. Firstly, the Talmud broadens the boundaries of numerous *mishnayot* by bringing sources with varying degrees and types of similarity to the mishnaic text. This fact is known to every student of the Talmud, and it is no wonder that the medieval sages, including Rabbenu Tam, gave minimal attention to questions about the connection between a *mishnah* and the talmudic passages appended to it. Rabbenu Tam's question is therefore highly unusual.

Secondly, according to Rashi, the dispute between the first Tanna and Rabbi Nathan revolves around *erusin*, which clearly implies that after *nissu'in* there is no dispute: the husband is entitled to everything the woman brought into the marriage. This logical conclusion is spelled out explicitly by the Tosafists.²⁴ It therefore stands to reason, even if we accept Rabbenu Tam's assumption, that the Talmud brought this *baraita* to teach something new about the entitlements of a widower after *nissu'in*. Even though this innovation is indirect, it still emerges clearly from the *baraita*.

Thirdly, Rabbenu Tam interprets the *baraita* as relating to a case where *nissu'in* had taken place. However, as we have seen, the Talmud's discussion compares this *baraita* to a *mishnah* (which appears in *b. Ketub. 56a*) that records a dispute between the first Tanna and Rabbi Eliezer ben Azariah that relates explicitly to a case of *erusin* and not *nissu'in*. The fact that the Talmud compares these cases seems to indicate that the Talmud understood the dispute in the *baraita* as relating to a case of *erusin* as well. Rabbenu Tam justified his novel interpretation with a literary consideration, but it seems that his innovative interpretation creates a new literary difficulty that is no less severe.

V. Proposing an Explanation for Rabbenu Tam's Interpretive Agenda

It is similarly possible to demonstrate the strangeness of Rabbenu Tam's first question,²⁵ but it seems that what has already been shown is sufficient to

24 See above, n. 13.

25 Rabbenu Tam's first question was: How can it be that Rabbi Nathan maintains that the widower of the deceased *arusah* is entitled to whatever she brings with her from her father's house? However, a similar view appears in the *mishnah* brought in the Talmud's discussion; according to the first Tanna, when the husband dies, "whether from *erusin* or *nissu'in*, she collects the entire amount." Moreover, according to Rabbenu Tam's interpretation of the *baraita*, the first

support the contention that, in this case, Rabbenu Tam's explanation exceeds any reasonable "angle of deflection."²⁶ It therefore stands to reason that it was not the inner logic of the interpreted sources that motivated Rabbenu Tam's interpretation, but "something else." It seems that this "something else" can be found in the continuation of the *Tosafot* passage:

Rabbenu Tam and Rabbenu Ḥananel ruled in accordance with the sages against Rabbi Nathan, because we harmonize them with Rabbi Elazar ben Azariah, in accordance with whom the *halakhah* decides in the chapter "*Af Al Pi*." And even though the Talmud rejects and harmonizes all opinions with Rabbi Elazar, this is a mere dodge, and we do not rely on such a dodge.

To his interpretation of this passage, the Tosafists attached Rabbenu Tam's bottom-line ruling, according to which the law accords with the first Tanna (the sages, in Rabbenu Tam's formulation) in his dispute against Rabbi Nathan. Since this ruling relies on his interpretation of the entire passage, it emerges that according to Rabbenu Tam, in a case where the dowry of a *nesu'ah* had not yet been transferred to the husband's house before she

Tanna's opinion is that if the woman wed and then died, the husband inherits whatever she had already brought into his possession as part of the dowry, but not whatever had not yet been transferred to his possession by the father of the deceased woman. This seems completely devoid of any legal logic. For additional difficulties generated by Rabbenu Tam's interpretation, see *Tosafot* (*loc. cit.* in n. 12 above, toward the end); Nahmanides, *Millhamot Hashem* (17b in the Alfasi pages), s.v. "*ve-od ha de-tanya*," who begins his treatment of this issue by saying: "I will now write, in accordance with my impoverished mind, how much greater the interpretation of Rashi and Rif is to the interpretation of Rabbi Jacob [Tam]...."

26 The term "angle of deflection," borrowed from the realm of engineering, was applied by Haym Soloveitchik to exegetical contexts as a yardstick for assessing the degree to which an interpretation is faithful to the source it is interpreting. The less reasonable an interpretation seems vis-à-vis the source it is interpreting, the greater the reason to assume that the interpretation stemmed from some extra-textual constraint, and the greater its historical value. See Haym Soloveitchik, "Can Halakhic Texts Talk History?" *AJSR* 3 (1978): 176. Soloveitchik later returned to address this issue more broadly in response to his critics. See *idem*, *Yeinam* (expanded edition) (Jerusalem: Magnes, 2016), 167–70; *idem*, "Drawing Historical Conclusions from Halakhic Literature: Methods and Constraints," in *Milestones: Essays in Jewish History Dedicated to Zvi (Kuti) Yekutiel*, ed. D. Assaf, I. Etkes, and Y. Kaplan (Jerusalem: Zalman Shazar Center for Jewish History, 2015), 111–14.

dies, the husband does not inherit his wife. In the words of the *baraita*: "The husband is not entitled to these things."

This innovative, if not astonishing, interpretation, accompanied by a halakhic ruling, indicates that the interpretation itself was intended to provide a comfortable basis for the desired ruling. This presumption invites us to consider that Rabbenu Tam strove for a result according to which the husband of a woman who died at the beginning of their marriage (after *nissu'in*) would not inherit her dowry, or at least not in its entirety. To reach this goal, Rabbenu Tam required two things: a) He had to interpret the dispute in the *baraita* as pertaining to a case where there was *nissu'in*; b) he had to rule in accordance with the sages. We have assessed his interpretation of the *baraita* and found it to be innovative, to the extent that Rabbenu Tam is virtually alone in accepting this interpretation.²⁷

The way that Rabbenu Tam arrived at his halakhic ruling also seems worthy of attention. According to *Tosafot*, Rabbenu Tam ruled in accordance with the first Tanna following the Talmud's suggestion that the first Tanna of the *baraita* fits with the view of Rabbi Elazar ben Azariah, in accordance with whom it was established: "The law, in practice, accords with Rabbi Elazar ben Azariah" (*b. Ketub. 56a*). However, as we have already seen,²⁸ the Talmud's proposed linkage between Rabbi Elazar ben Azariah and the first Tanna of the *baraita* is rejected with the claim that "*iḥatunei*" causes the bride's father to have broader obligations than the groom, so therefore even Rabbi Nathan can rule in accordance with Rabbi Elazar ben Azariah. In other words, Rabbenu Tam's halakhic ruling relies on a proposal that the Talmud itself rejects! It is true that, as Rabbenu Tam wrote, Rabbenu Ḥananel had already ruled according to the sages, and it is plausible that he explained his ruling in the same way that Rabbenu Tam adopted. However, Rabbenu Tam did not view Rabbenu Ḥananel—or the Ge'onim who preceded him—as a

27 The only sage who explicitly accepted Rabbenu Tam's explanation was Rabbi Zerahiah Ha-Levi, *Ha-ma'or Ha-gadol* to *Ketubbot*, 17b in the Alfasi pages, s.v. "*ha de-tanya*." On Rabbenu Tam's profound influence on Rabbi Zerahiah, see I. M. Ta-Shma, *Rabbi Zerahiah Ha-Levi U-vene Hugo: Le-toledot Ha-sifrut Ha-rabbanit Be-Provence [Rabbi Zerahiah Ha-Levi and his Circle: Toward a History of Rabbinic Literature in Provence]* (Jerusalem: Magnes, 1992), 106–12.

28 At n. 12.

halakhic jurist whose authority must be sweepingly accepted. Therefore, this ruling of Rabbenu Tam should be viewed as an independent ruling.²⁹

Later in the *Tosafot* passage, it becomes apparent, with scrutiny, that Rabbenu Tam's halakhic ruling did not remain theoretical; he implemented it in practice:

Rabbenu Tam ruled in practice in the case of a groom whose wife died, where the bride's father was in possession of the dowry. He ruled that the husband is not entitled to it, on the basis of the present talmudic discussion.³⁰

In light of our discussion thus far, let us propose that the order of events should be reversed. Rabbenu Tam was confronted with a halakhic dilemma: A man married a woman, and the dowry he was promised did not yet come into his possession, at least not in full. Several days after the wedding, the woman died. However, her death did not stop the husband from claiming the dowry that had been promised to him. The question reached Rabbenu Tam, who sensed the injustice that this *halakhah* could cause. He therefore made an effort to seek and find a way to solve the problem that the deceased wife's family was liable to lose part of its wealth to a man who barely lived with their daughter.

Rabbenu Tam's interpretive process and halakhic ruling appear in *Sefer Ha-yashar* and in the *Tosafot* of his disciples Ri Ha-lavan and Rabbi Samson of Sens.³¹ However, none of these three works inform us that Rabbenu Tam's revolutionary interpretation resulted from a concrete encounter with such a case. Only the *Tosafot* on the printed page of the Talmud indicate that this was no mere academic innovation but the work of a creative halakhic jurist facing human and economic pain. His understanding that the *halakhah*, in some cases, results in a deviation from a natural sense of justice is what led him to interpret the talmudic passage as he did and to "rescue," by means of his interpretation, some of those cases where he felt that the strict letter of the law was incompatible with what ought to be done.

29 Moreover, Rabbenu Hananel explained the entire talmudic passage as Rashi did, namely, that the subject of the *baraita* is an *arusah* who died, and he explicitly states that in the case of a *nesu'ah*, the husband inherits in full. See above, n. 13.

30 *Tosafot*, *loc. cit.* in n. 12 above.

31 *Tosafot Ri Ha-lavan to Ketubbot* (above, n. 15), pp. 49–51; *Tosafot Sens* (n. 12 above), p. 112.

A small addendum that Ri Ha-lavan added after his presentation of Rabbenu Tam's interpretation gives a good sense of his feelings as a disciple:

The meaning of this entire passage is not in accordance with the interpretation of our master [Rabbenu Tam]. Nevertheless, since it came out of his holy mouth, if such a case [occurs], judges are called upon to craft a compromise between them.

Ri Ha-lavan was a loyal disciple, but he nevertheless did not accept his master's interpretation of this passage; "the meaning of this entire passage is not in accordance with the interpretation of our master." On the other hand, he is conscious of the unreasonable results obtained when Rabbenu Tam's interpretation of the passage is not followed. Given this tension, and given his awareness that Rabbenu Tam adopted this interpretation despite its difficulties, Ri Ha-lavan suggested for posterity that Rabbenu Tam's position and its motives be taken into consideration, if only partially; thus, when a similar case arrives in their court, the judges are called upon to create a compromise.³²

Rabbenu Tam's interpretation suffers not only from textual-interpretive difficulties, but logical difficulties as well, as Rashba expressed well in his novellae:

However, the main thrust of his interpretation does not stand to reason. For if you say that we assess [the father's] intention to be that he did not write these things over to [the husband] except in the case that [the daughter/wife] remains with him until the moment in her lifetime that he collects those assets—then consider: A woman wed last night, brought all of the assets with her, and died today—and her husband inherits her!? But a woman who grew old with her husband [but he never collected the dowry in full]—her husband does not inherit her. We have never heard of assessing intentions like these.³³

32 See also *Sefer Ra'avayah* (*loc. cit.* in n.15 above), where these reservations are absent from Ri Ha-lavan's words: "And I, Avi Ha-Ezri, found in the name of Rabbi Isaac Ha-lavan, of blessed memory, that he does not agree with the ruling in *Sefer Ha-yashar* that a groom's dowry that he did not collect prior to the wife's death is not collected even after the wife's death. He dissents and says that they collect everything. The responsum is in my hands."

33 *Hiddushei Ha-Rashba Le-Ketubbot* (ed. Y. D. Ilan [Jerusalem: Mosad ha-Rav Kook, 2010]), p. 405.

Rashba's claim is based on Rabbenu Tam's usage of "assessment of intention" ("omdan da'ata"). For our purposes, of utmost importance is his contention that Rabbenu Tam's solution works only in cases where the inheritance had not yet reached the groom's house, even if a great deal of time has elapsed since the wedding. On the other hand, it offers no solution at all in a case where the dowry was already handed over to the husband in full, and the wife died right after her wedding. As Rashba writes: "A woman wed last night, brought all of the assets with her, and died today."

VI. From Interpretation to Ordinance

I would like to propose that the aforementioned logical difficulty was identified not only by Rashba, the sage of Barcelona who lived more than a century after Rabbenu Tam, but by Rabbenu Tam himself. Rabbenu Tam felt that he had the innovative interpretive ability to solve the concrete and just problem faced by the father of the dead bride whose dowry had not yet reached her husband's possession. His exegesis allayed an acute and painful problem but did not come close to resolving a large number of cases, like those described by Rashba, wherein a woman died soon after her wedding and her dowry, in whole or in part, was already in the husband's hands. This situation, which could not be remedied by his bold and innovative interpretation, he regulated by instituting an ordinance about dowries. A brief mention of this ordinance appears in *Tosafot*: "He further instituted, not on the strength of *halakhah*, that even if the husband is in possession, he must return [the dowry] if she died within a year." The text of the ordinance does not appear in the Tosafist literature, and I wish to present it here based on the text of MS Jerusalem of *Sefer Ha-yashar*:³⁴

34 *Sefer Ha-yashar, Novellae* (n. 15 above), §788, p. 465. Louis Finkelstein, *Jewish Self-Government in the Middle Ages* (New York: Feldheim, 1964), 163–65, presented a slightly reworked version of the text, based primarily on MS British Museum 11639, Margoliouth Catalogue 1056. For a description of the manuscripts he used, see *ibid.*, 160–63. Additional textual witnesses to the ordinance can be found in *Shibbolei Ha-leket*, vol. 2 (n. 6 above), §89, p. 183; MS Montefiore 108, §368, p. 39a; MS Oxford Bodleian 641, p. 101a. For additional partial sources, see Israel Schepansky, *Ha-Takanot Be-Yisrael* (Jerusalem: Mosad Ha-rav Kook, 1993), 133 n. 7.

89* Rabbenu Tam's Ordinance for the Return of the Dowry

By the command of the king and his nobles,³⁵ our rabbis who dwell in Narbonne, whom we have heard and known,³⁶ and from whose elders we draw wisdom.³⁷

And we said: Let there now be an oath between us,³⁸ residents of France, Anjou, and Normandy,

Just as the makers of safeguards, the great sages of Narbonne and around the land, decreed;

They proclaimed a harsh decree, a decree of Joshua bin Nun,³⁹ a decree of the supernal court with Torah scrolls, and a decree of the nether court:⁴⁰

On any man who weds a woman and she then dies within twelve months without viable offspring, until a year has passed

35 Based on Jon 3:7.

36 Based on Ps 78:3.

37 Based on Ps 119:100. Some commentaries and translations understand these words, "*mi-zekeinim etbonan*," to mean, "I will surpass the elders in wisdom." Others understand them to mean, "I will draw wisdom from the elders." The authors of the ordinance seem to be using the latter sense, which is also how it is understood by medieval French exegetes. However, considering that they are trying to correct an injustice in talmudic law, it is intriguing to consider the alternative. See the commentary attributed to Rashbam (Rabbenu Tam's older brother) and the anonymous Northern French commentary *ad loc.*; compare *Metsudat David ad loc.*

38 Based on Gen 26:28.

39 See *Pitron Torah* (ed. E. E. Urbach [Jerusalem: Magnes, 1978]), p. 318; "*Mishpat Ha-herem La-Ramban*" (ed. H. S. Shaanan), in *Hiddushei Ha-Ramban al ha-Shas: Shevu'ot* (ed. M. Herschler [Jerusalem: Mekhon ha-Talmud ha-Yisre eli ha-Shalem, 1976]), p. 297:

Moreover, the ban applies even to future generations if the court proclaimed a ban on the city residents and their offspring. This is the decree of Joshua bin Nun that is mentioned in bans, as it is written: "At that time, Joshua proclaimed a solemn oath, saying, 'Cursed before the Lord is any man who rises up and builds this city, Jericho'" (Joshua 6:26). And his decree was upheld even several generations later.

40 On the source of this expression, see *Midrash Tanhuma* (Warsaw edition [Jerusalem: Ortsel, 1962]), *Parashat Vayeshev* §2, p. 46a. See also *Responsa of the Geonim* (Mussafia edition [Lyck: Mekize Nirdamim, 1864]), §9, p. 8: "The primary custom is that the administrator of the oath says: 'He shall be under a Jewish curse, under a ban of the supernal court and under a ban of the nether court.'"

since the wedding, that he shall return the entire dowry and the wife's jewelry to her heirs or to the providers of the dowry;

Whatever is left in his hands, which was not spent from the dowry and was not consumed, he shall not cunningly consume; rather, from what is extant, he shall undertake her burial, in accordance with her station.⁴¹

Whatever is left he shall return within the court's term of thirty days if they claim it from him; until they claim it from him, the decree shall not apply to him—only if he has not returned it, God forbid, thirty days after the claim.

We have further decreed that [the husband] shall never claim from the father-in-law [those portions of the dowry] that have yet to be collected. Even if she died after a year of *nissu'in*, and even if she gave birth.⁴²

We, the residents of Troyes and Reims, accept this upon ourselves. We have sent it to those who live nearby, within a day's walk, and they rejoiced over it.

We have issued a ban and decreed upon ourselves, all who join us, and our children, as written above. And it is upon the residents of France, Poitou, Anjou, Normandy, and those who live near to these settlements, within a day's or two days' walking—upon them and their descendants—to uphold this decree.

“For who will eat and who will enjoy”—what the father or he who gave the wife over in marriage gave to the groom, after the death of the wife—“other than me?”⁴³ Shall this other [i.e., the widower] eat and rejoice?

41 According to talmudic law, the husband is obligated to pay his wife's funeral expenses because he is her heir. See *b. Ketubbot* 47b. Since the present ordinance nullified the law of the husband's inheritance, the husband, consequently, is not obligated in his wife's funeral expenses. Rather, funeral expenses are limited to sums that are “extant” (“*min ha-nimtsa*”). This clause of the ordinance therefore protects the husband; according to the textual witnesses, it underwent many changes. See Finkelstein, *Self-Government*, 164 nn. 10–12.

42 *Shibbolei Ha-leket*, vol. 2 (loc. cit. in n. 34 above) adds “to a male.” See below.

43 Based on Eccl 2:25. See the commentaries of Rashi and Rashbam *ad loc.*

91* Rabbenu Tam's Ordinance for the Return of the Dowry

We deem one year, and no more, to be fit for this matter, for after a year what one gave is forgotten from the heart and causes no sorrow.⁴⁴

We have signed and sealed what we have decreed.⁴⁵

An analysis of the ordinance and its language indicates that it is primarily devoted to repairing what could not be achieved by means of interpretation. Recall that Rabbenu Tam's interpretation solved the problem faced by a father whose daughter died but who still retained possession of the dowry he promised to his son-in-law. In contrast, the present ordinance relates primarily to a case where the husband already has possession of the dowry, regarding which Rabbenu Tam ordained that when the father and/or provider of the woman's dowry claims the dowry, the husband must return it. It is true that one clause in the text of the ordinance relates to a situation wherein the father is in possession of the dowry at the time of his daughter's death: "We have further decreed that [the husband] shall never claim from the father-in-law"⁴⁶

44 Based on Prov 10:22.

45 The signature is not appended to the version of the ordinance that appears in *Sefer Ha-yashar. Responsa Maharam* (Prague printing, Mekhon Yerushalayim edition [Jerusalem: Mekhon Yerushalayim, 2014]), §934 and MS Oxford Bodleian 641 have only Rabbenu Tam's signature. *Responsa Maharam* (Cremona 1557 printing, Mekhon Yerushalayim edition [Jerusalem: Mekhon Yerushalayim, 2014]), §72 and MS Montefiore 108, §368, p. 39b have, in addition to Rabbenu Tam's, the signatures of Isaac ben Baruch and Menaḥem ben Perets, both of whom were disciples of Rabbenu Tam. On them, see Urbach, *Tosafists*, 146–49 and 152–53. In a marginalium on p. 94a of MS Oxford 672, and on p. 111a of the parallel MS Cambridge 71, is a list of signatories that includes: Samuel ben Meir (=Rashbam, Rabbenu Tam's brother); Isaac ben Meir (Rabbenu Tam's brother?); Matityahu ben Ḥayim (whom I have not identified); Elijah ben Ḥayim (whom I have not identified); Menaḥem ben Avigdor (whom I have not identified, though perhaps he is none other than the Menaḥem ben Perets who signed on the ordinance in the aforementioned manuscripts; see Simcha Emanuel, *Fragments of the Tablets: Lost Books of the Tosaphists* [Jerusalem: Magnes, 2007], 214 n. 116 [Hebrew]); Isaac ben Baruch (the aforementioned disciple of Rabbenu Tam); Isaac ben Samuel (Ri Ha-zaken, the nephew and disciple of Rabbenu Tam); Isaac ben Mordechai (a disciple of Rabbenu Tam; see Urbach, *Tosafists*, 196–99); and Elḥanan ben Isaac (a son and disciple of Ri Ha-zaken; see Urbach, *Tosafists*, 253–60). The presence of the name of Rabbi Isaac ben Meir, the brother and teacher of Rabbenu Tam, on a list comprised of names of Rabbenu Tam's disciples, is puzzling. Perhaps this is also the name of an unknown disciple.

46 Other textual witnesses have: "That the husband shall never demand."

[those portions of the dowry] that have yet to be collected. Even if she died after a year of *nissu'in*, and even if she gave birth."

The placement and relative weight of this clause within the body of the ordinance indicates that Rabbenu Tam's main efforts were dedicated to completing what his revolutionary interpretation did not and apparently could not solve. Moreover, in this one clause, Rabbenu Tam goes beyond the implications of his interpretation of the Talmud; under the ordinance, even after a year of marriage, and even when the woman produced offspring, the husband has no right to claim what remains in the father's possession.

It therefore stands to reason that the chronological development of this issue is as follows. First, a halakhic question was posed to Rabbenu Tam. He felt that the accepted law is problematic, and he attempted to offer a new, innovative interpretation of the relevant talmudic passage. This resolved the difficulty faced by the dead wife's father, but Rabbenu Tam was acutely aware that this is a partial solution.⁴⁷ The purpose of his ordinance was therefore to address situations that his interpretation could not. We may surmise that the one clause in the ordinance that revisits an issue that seems, at first glance, to have been addressed by his interpretation is actually based on that familiar interpretation and adds new halakhic details to it. It also stands to reason that this clause indicates that once Rabbenu Tam decided to proclaim his ordinance, he retreated from his innovative interpretation. Henceforth, the law that the husband is not entitled to uncollected parts of the dowry would not be based on talmudic interpretation but on the ordinance.⁴⁸

47 For reasons similar to those expressed by Rashba, above, at n. 33.

48 The proposed chronology, according to which the interpretation predates the ordinance, fits with other information as well. The dowry ordinance was made not before the early 1150s, as most of its signatories are from the generation of Rabbenu Tam's disciples, as we saw in n. 45. Among the names of the signatories is also Rabbi Elhanan ben Isaac (Ri Ha-zaken), who was the son of a disciple of Rabbenu Tam. Ri Ha-zaken was born around 1110, so his son's signature on the ordinance could not have been before 1150 or even a bit later. On the other hand, Rabbenu Tam's exegesis appears in the novellae portion of *Sefer Ha-yashar*, which was first edited in the early 1140s; see Avraham (Rami) Reiner, "Rabbenu Tam: Rabbotav (Ha-Tzarfati'im) Ve-talmidav Benei Ashkenaz" ["Rabbenu Tam: His (French) Masters and German Pupils"] (master's thesis, Hebrew University of Jerusalem, 1997), 8 (Hebrew). As we have seen, this passage was mentioned by Ri Ha-lavan and by Rabbi Zerahiah Ha-Levy of Provence, author of *Sefer Ha-ma'or*. As shown by Israel M. Ta-Shma, "Tzeror He'arot Le-nusah Sefer Ha-yashar Le-Rabbenu Tam" ["Some Notes on the Text of Rabbenu Tam's *Sefer Ha-yashar*"],

VII. Rabbenu Tam's Encounter with Halakhic *Midrash*

In *Sefer Ha-yashar*, and in several additional manuscripts, the following paragraph appears after the ordinance and signatures:⁴⁹

After the emissaries had gone, Rabbenu Tam sent from Troyes to append to the letter on its way to Anjou:

After this youth left, I recalled what is written in *Torat Kohanim*, and I thanked the Omnipresent that we managed to avoid the curse and to render void its rebukes, rather than being troubled by pursuit of the windborne sound of the rustling of tree-leaves.⁵⁰

For we learned in the portion of the Rebuke (Lev 26:20):⁵¹ “‘Your strength shall be spent to no purpose’— There is a person who married off his daughter and promised her and gave her a lot of money, but before the seven days of rejoicing are completed his daughter dies. Thus he kills his daughter and loses his money. About this it is stated: ‘Your strength shall be spent to no purpose.’”

We are fortunate that we have not endured that curse, and just as we avoided this curse, so shall we avoid all evil decrees, and good news shall be proclaimed to us. Jacob ben Meir.

According to this addendum, Rabbenu Tam recalled the *midrash* with which we began only at a later stage. Instead of being troubled by the fact that he is contradicting and nullifying the economic aspect of a divine curse, he bursts into joyful cheers, declaring: “We are fortunate that we have not endured that

Mehkerei Talmud 2 (1993): 529–30, Rabbi Zeraḥiah used the earliest compendia of *Sefer Ha-yashar*, which were apparently edited by Ri Ha-lavan himself. On this matter, see Reiner, “Rabbenu Tam: His (French) Masters and German Pupils,” 97–98. It is thus clear that the interpretation was produced no later than the 1140s, whereas the ordinance was instituted at least a decade later.

49 *Sefer Ha-yashar, Novellae*, §788, p. 466; *Responsa Maharam*, §934, p. 489; MS Oxford 844, p. 47a; and MS Oxford 641, p. 101a (on which the present transcription is based). See E. Kupfer, *Responsa and Rulings of the Sages of Germany and France* (Jerusalem: Mekize Nirdamim, 1973), 316 (Hebrew).

50 Based on Lev 26:36.

51 See above, pp. 74–75.

curse, and just as we avoided this curse, so shall we avoid all evil decrees, and good news shall be proclaimed to us." Given that the newlywed daughter still lies dead, there is something strange about this celebratory style. It seems that Rabbenu Tam's self-conception and perhaps also his desire for this ordinance to penetrate the communities of France caused him to momentarily forget the fact that the ordinance applies only to tragic cases.⁵²

Yet this is not sufficient. It emerges from the aforementioned *midrash* that according to *halakhah*, when a woman dies right after her wedding, her husband is supposed to inherit her. This assumption conflicts fundamentally with Rabbenu Tam's novel interpretation of the talmudic passage in *b. Ketubbot* 47a and indicates that Rabbenu Tam's bold and innovative explanation is incompatible with the implications of other rabbinic sources. The Tosafists addressed this problem, and they answered:

[*Sifra*] accords with Rabbi Nathan. Alternatively, it accords with the Sages and is talking about when the groom is in possession of [the dowry].⁵³

That is, Rabbi Nathan's position throughout the talmudic passage, was: "The husband is entitled to these things." *Sifra* accords with the view of Rabbi Nathan, not that of the first Tanna, who the *halakhah* follows according to Rabbenu Tam. The Tosafists alternatively suggest that the *midrash* is speaking specifically about a case where the dowry has already been transferred to the husband's home, where even Rabbenu Tam concedes that the dowry remains in the husband's possession.

These attempts to vindicate Rabbenu Tam from the challenge posed by *Sifra* are attributed to the Tosafists even though the mechanics of the suggested solution were proposed by Rabbenu Tam himself in *Sefer Ha-yashar*,⁵⁴ when he preemptively answered another potential challenge to his approach from *b. Ketubbot* 48b. The solution was found, but the question from *Sifra* does

52 Rabbi Jacob David Biderman's *Hagahot Maharid to Sifra Beḥukkotai* 5:3, cited in Urbach, *Tosafists*, 60 n. 1, states: "It was revealed to me in a dream in the month of Iyar, 5614 (=spring, 1854) that Rabbi Jacob Tam was called "Rabbenu Tam" for this reason—that he made the ordinance to return the dowry and negated the curse of 'Your strength shall be spent (*ve-tam*) to no purpose.'" Doubtlessly, Rabbi Biderman also sensed and addressed the celebratory nature of Rabbenu Tam's words. See also above, n. 1.

53 *Tosafot* (*loc. cit.* in n. 12 above), toward the end.

54 Above, n. 15.

not appear in *Sefer Ha-yashar*. When Rabbenu Tam, in his words, "recalled" the *Sifra*, he did not return to connect it to his interpretation of the talmudic passage. Perhaps this, too, indicates that once the ordinance was instituted, he saw it, and not his interpretation of the Talmud, as primary.⁵⁵

VIII. Postscript: On the Context of the Ordinance

To this point, Rabbenu Tam's dowry ordinance has been examined against the background of his interpretation of the talmudic passage, but I would like to go beyond this. Rabbenu Tam began his ordinance with a somewhat opaque sentence: "By the command of the king and his nobles, our rabbis who dwell in Narbonne, whom we have heard and known, and from whose elders we draw wisdom."⁵⁶ The source of the expression "By the command of the king and his nobles" is the proclamation by the king of Nineveh to desist from perpetrating injustice (Jon 3:7). It is thus likely that Rabbenu Tam was alluding to this context.⁵⁷ Yet it seems that there is still more here than meets the eye; it is not clear who this king is and what the sages of Narbonne contributed.

Recently, Simcha Emanuel highlighted a responsum of Rabbi Isaac ben Mordechai, a late-thirteenth and early-fourteenth century Provençal sage,⁵⁸ that documents a Provençal practice that is similar to the one produced by Rabbenu Tam's ordinance. This is what Rabbi Isaac wrote in a responsum about a case where a woman died soon after her wedding:

Certainly if the husband of Simon's daughter made a Christian *ketubbah* for his wife, that if she dies childless, the property will

55 See Kupfer, *Responsa and Rulings* (above, n. 49), 316–17.

56 Thus in *Sefer Ha-yashar, Novellae*; and *Responsa Maharam*, Cremona (n. 45 above), §72. *Responsa Maharam*, Prague (n. 45 above), §934; MS Oxford 641, p. 101a; and MS Oxford 844, p. 47a, have: "By the command of the king, by decree of our rabbis who dwell in Narbonne."

57 I am grateful to my students Shmuel Elikan and Aviad Goldman for illuminating the broader context of this scriptural inset.

58 Simcha Emanuel, "The Struggle for Provençal Halakhic Independence in the Thirteenth Century," *Hispania Judaica Bulletin* 9 (2013): 11–14. On the life of Rabbi Isaac, see Pinchas Roth, "Later Provençal Sages – Jewish Law (Halakhah) and Rabbis in Southern France, 1215–1348" (Ph.D. diss., Hebrew University, 2012), 159–73 (Hebrew).

revert, it stands to reason that the property should revert to whoever mortgaged himself by means of the Christian contract that he made [i.e., to the providers of Shimon's daughter's *ketubbah*, not to the husband—R.R.]... Nevertheless, the man, the husband of the dead woman, gets nothing....

Rabbenu Meshulam of Narbonne wrote further that even if he did not write it, it is as though he had.⁵⁹

The “Christian *ketubbah*” mentioned in this responsum refers to a contract that was used in Christian Provence and adopted by their neighbors, the Jews of Provence. According to this marriage contract, when a woman dies childless, her dowry reverts to whoever provided the dowry. For our purposes, it is significant that the legal results of writing a “Christian *ketubbah*” obtain, according to Rabbenu Meshulam of Narbonne, even if this “Christian *ketubbah*” was not written or signed. As the respondent explains:

Regarding what Rabbenu Meshulam wrote, that even if he did not write it, it is as though he had written it: his reasoning seems to be that in his place, the land of Provence, they usually wrote this, so for them it became like a stipulation of the *ketubbah*. And we say that a stipulation of the *ketubbah*, even if it was not written, it is as though it was written.⁶⁰

It is therefore clear that Rabbi Isaac ben Mordechai viewed Provence as a region where this issue was governed not only by a condition stipulated voluntarily by the husband, but by a quasi-legislated status based on the prevalence of the Christian *ketubbah* among Provençal Jews.⁶¹ This prevalence, according

59 “A Responsum of Rabbi Isaac ben Mordechai of the Provençal Sages,” ed. S. E. Stern, in *Sakkotah Le-roshi: In Memory of Rabbi Elazar Menahem Man Shach*, ed. Y. Bergman (Bene Berak: Mekhon Zikhron Avi Ezri, 2002), 535–37 (Hebrew).

60 *Ibid.*, 539.

61 See also *Sefer Ha-itur* (ed. M. Yona [New York: Hotsa’at ha-Akadeemyah ha-Amerikanit le-madda’e ha-Yahadut, 1956]), letter *kaf* – *ketubbot*, p. 30d, which likewise implies that the practice of returning the dowry was upheld unless otherwise stipulated in the *ketubbah*. However, the rationale provided by *Sefer Ha-itur* is an internal, Jewish one: “A person does not consider his own misfortune.” It therefore stands to reason that the conduit of Rabbenu Tam’s familiarity with the Provençal custom was Rabbenu Meshulam, not the later *Sefer Ha-itur*. On this, see Shalem Yahalom, “The Dowry Return Edict of R. Tam in Medieval Europe,” *European Journal of Jewish Studies* 12 (2018): 140.

to Rabbenu Meshulam, transformed the stipulation into an obligation, so if and when a woman died without children, her widowed husband had to return her dowry to those who provided it, even if it was not stipulated in a "Christian *ketubbah*." The effects were thus similar to those of Rabbenu Tam's ordinance. The similarity between Rabbenu Tam's ordinance and halakhic practice in Narbonne is clear, and it therefore stands to reason that this is what Rabbenu Tam had in mind when he based his ordinance on "our rabbis who dwell in Narbonne."⁶²

Moreover, the expression with which Rabbenu Tam began his ordinance, "By the command of the king," has additional significance as well. As Simcha Emanuel has shown, a clause whose content is identical with that of Rabbenu Tam's ordinance appears in the *Codex Justinianus*, which had a great deal of influence in southern France in this period.⁶³ It seems likely, then, that Rabbenu Tam knew of the Provençal Jewish practice, and of the fact that it was related to the practices of local Christians and anchored in the *Codex Justinianus*,⁶⁴ from his disputant, Rabbenu Meshulam.⁶⁵ It therefore seems

62 The "Rabbi Meshulam of Narbonne" mentioned in the responsum of Rabbi Isaac ben Mordechai seems to be Meshulam ben Nathan of Melun, who was born and spent his early career in Narbonne. See Avraham (Rami) Reiner, "Exegesis and Halakhah: A Reconsideration of the Polemic between Rabbenu Tam and Rabbenu Meshulam," *Shenaton Ha-Mishpat Ha-Ivri* 21 (1998–2000): 207–8 (Hebrew) and nn. *ad loc.* There is support for this contention in *Mordekhai on Ketubbot*, §155; after summarizing the ordinance of Rabbenu Tam, it states: "Even though Rabbenu Meshulam brought proof from the *midrash*—'Your strength shall be spent to no purpose' refers to a sage who marries off his daughter, etc.—Rabbenu Tam answered that this is talking about, for instance, where the groom is already in possession of the money, in which case we do not take it away from him." Rabbenu Meshulam's question cannot be understood as a challenge to Rabbenu Tam's ordinance; presumably it was directed against his talmudic interpretation, as in *Tosafot*. On this, see Kupfer, *Responsa and Rulings*, 316. In any event, Meshulam ben Nathan debated the issue of dowries with Rabbenu Tam, so we can surmise that he is the same person who asserted that the Christian *ketubbah* is not only a stipulation but the law.

63 See Emanuel, "Provençal Halakhic Independence," 12 and n. 16.

64 On the relationship between the *Codex Justinianus* and medieval European law, and Provençal law in particular, see Yahalom, "Dowry," 142 n. 17, and the references listed there.

65 See above, n. 62.

that Rabbenu Tam's reliance on the "edict of the king" and on the Christian *ketubbah* is indeed very instructive.⁶⁶

66 Rabbenu Tam could have relied, in his ordinance, on a tradition from Palestine that traces back to the Yerushalmi (Hebrew Language Academy ed. [Jerusalem, 2001], *y. Ketubbot* 9:1, p. 998; *y. B. Bat.* 8:5, p. 1255), which is attested in various *ketubbot* from Palestine during the Geonic era. See Simcha Assaf, "Various Ordinances and Customs Regarding the Husband's Inheritance of the Wife," *Mada'ei Ha-Yahadut* 1 (1926): 81–83 (Hebrew). By all indications, Rabbenu Tam was familiar with neither this Palestinian tradition nor the aforementioned Yerushalmi that was cited by his contemporaries from Provence. See, for instance, the words of *Sefer Ha-ma'or* and Ra'avad on *Ketubbot* 42a in the Alfasi pages, s.v. "RSB" G". On the scope of Rabbenu Tam's knowledge of the Yerushalmi, see Avraham (Rami) Reiner, "The Palestinian Talmud in Rabbenu Tam's Library," *REJ* (forthcoming).