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Infertility as Ground for Polygamy In Jewish Law in Italy: Interactions among Legal Traditions at the time of the Renaissance

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1. Introduction

The Ban of Rabbenu Gershom forbidding bigamy and divorcing a wife without her consent,² marked a substantial departure from Talmudic law, which had allowed a man to marry more than one woman³ and to divorce his wife against her will.⁴ The Ban originated in Ashkenaz (Franco-Germany), in the 11th century. In the course of time the enactments (*takkanot*) were extended to

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²For a comprehensive study of the Ban's formulation and ascription to Rabbenu Gershom, see Finkelstein, *Self-Government* 139-147. See also the source mentioned in Westreich, *Transitions*, 64, n. 8.

³The Babylonian Talmud, *Yevamot* 55a, records a difference of opinion between Rabbi Ami and Rava. R. Ami held that *whoever marries another woman shall divorce his first wife and pay her Ketubbah*, whereas Rava said, *a man may marry several other women*, provided he can fulfill his obligations to all of them. The Halacha generally followed Rava. On the position of the Babylonian *geonim*, cf. Friedman, 13-16. On the opposition to bigamy in the Land of Israel, cf. *ibid.*, pp. 11-13. Attempts were made to restrict the husband from taking a second wife, but generally this was done by the wife and her family through additional clauses in the *Ketubbah* and not through general legislation.

⁴Mishnah, *Yevamot* 14:1.

the point where they acquired almost equivalent status to that of the Jewish law received by Moses at Mount Sinai.⁵ Rabbinical rulings throughout the Middle Ages dealt extensively with the conflict between the Ban and the Talmud. In Ashkenaz, unbecoming conduct on the part of the wife, as in the case of a rebellious wife or one who had violated the faith, generally constituted causes for waiving the Ban. But in cases of infertility, insanity, madness, abandoning of the husband through no fault of the wife, or the commandment of levirate marriage,⁶ that is, causes not stemming from the wife's conduct, the Ban was upheld. The important legal status of the Ban, rooted in the legal and social factors in Ashkenaz, is evident from the fact that Ban was upheld over the commandments of fertility⁷ and levirate marriage, and that rabbis were not inclined to waive it even in cases of insanity or abandonment (*igun*⁸) of the husband.⁹ Moreover,

⁵Cf. *Resp. Rosh*, 43:8. On the great importance accorded the Ban in family law among Ashkenazi Jews, see the sources mentioned in Westreich, *Transitions*, at 119, n. 12.

⁶Levirate marriage is marriage with a brother's widow, commanded if the brother died without offspring. A brother-in-law so obligated is called *yabbam*. Release from such obligation is possible only after performing the ceremony of *chalitza*, which permits the widow to marry someone else.

Ashkenazi rabbinical rulings underwent a radical change with respect to levirate marriage. In the mid-12th century a gathering of the rabbis of Speyer, Worms, and Mainz ruled to reject the Ban in favor of levirate marriage (Westreich, *Transitions*, at 127-128), although dissenting opinions began to be heard, especially from rabbis associated with the school of Rabbenu Tam (Westreich, *Transitions*, at 130). During the 13th century an increasing number of rabbis began to uphold the Ban over the commandment of levirate marriage (Westreich, *Transitions*, at 131), and by the 14th century Rosh (R. Asher b. Jehiel) ruled unequivocally that in Ashkenaz a married *yabbam* had no other option than *chalitza*. Cf. E. E. Urbach, Responsa of the Rosh in Manuscript and Print, in: *Jewish Law Annual 2* (1975) 17; Westreich, *Transitions*, p 199.

⁷Literally, the commandment to *be fruitful and multiply*. It devolves on the man and is fulfilled by having at least one son and one daughter.

⁸*Igun* is a condition in which the man cannot cohabit with his wife.

⁹See conclusion in Westreich, *ibid.*, pp. 163, 164.

even when just cause was found for waiving the Ban, the rabbis preferred to waive the ruling that forbade divorcing a wife against her will than the ban on polygamy.¹⁰

The Ban did not spread to medieval Spain and Provence.¹¹ We know of polygamy in Spain, especially in cases where the husband wished to fulfill the fertility commandment or the levirate marriage.¹² Nevertheless, polygamy was not widespread in these countries, because of the custom of promising in the *ketubbah* (Jewish marriage contract) not to take another wife¹³ and because the law of the land forbid it.¹⁴ This was not the case among Ashkenazi Jews who moved

¹⁰Cf. *Resp. Maharam of Rothenburg* (Prague) 946. See also his *responsum* in *Teshuvot u-pesakim* 138, where he mentions two actual cases. See also the *responsa* of mid-14th century Ashkenazi rabbis in *Resp. Maharam of Rothenburg, loc. cit.*, 1021.

¹¹A *responsum* by Rashba deals with this explicitly: *That takkanah did not spread throughout our borders. Nor have we heard that it spread to Provence, bordering France* (*Resp. Rashba*, 3:446); cf. also *Resp. Ran* 48. For a detailed discussion of the subject, see Havlin, *Enactments* cf. 200ff.; Asis, *Polygamy*; Havlin, *New light*

¹²Notably the case of R. Hasdai Crescas, a leader of the Spanish Jewish ethnic group in the latter half of the 14th century. In 1393 R. Hasdai requested permission of the king to marry a second wife. The reasons given were that his first wife had ceased to bear children. Baer, p. 435 ff. 12. Baer believed that bigamy was indeed practiced to fulfill the fertility commandment. *Ibid.*

¹³A common practice in Spain was to add monogamy clauses to the *Ketubbah*. Cf. Friedman, *polygyny*, 34, 36, as well as 42 and 43, and the sources mentioned there. Monogamy clauses were also added to *Ketubbot* in Toledo, capital of Castille, where Moslem influence was strong. See *Resp. Ribash*, 208. It is possible that this reflects an actual local enactment requiring that a monogamy clause be written in the *Ketubbah*, and was more than merely a custom that evolved over time. Although such clauses could not completely eliminate polygamy, they undoubtedly reduced it considerably.

¹⁴Havlin, *Enactments*, 205 and the sources mentioned there. Regarding Aragon, this is explicitly attested by Ribash: *In this kingdom, whoever marries a second wife risks being beheaded by the king, unless granted permission.* (*resp. Ribash*, 509) Only those granted special leave by the king could take a second wife. For evidence of Jews who were granted such permission, see Asis,

to Spain and Provence. The rabbis there acknowledged the validity of the Ban (but only concerning Ashkenazi Jews), but granted it lesser legal status than it enjoyed in Ashkenaz. Rashba, author of most of the Spanish *responsa* concerning the Ban, ruled that any cause based on Talmudic law took precedence over the Ban, such as cases where the man wished to fulfill the fertility commandment, or where the wife was insane, and surely in cases where the wife behaved immorally.¹⁵

In general, in Spain the Ban was viewed as a ruling designed to protect the wife from arbitrary conduct on the part of her husband, *to place restrictions on men who chase women and abuse their wives*, as Rashba put it. Therefore, when the husband had just cause, the rabbis in Spain ruled that the Ban did not apply. In Ashkenaz, in contrast, just cause was not sufficient for waiving the Ban; inappropriate conduct on the part of the wife was also required. Apparently in Ashkenaz the Ban was not only intended to protect the woman, but also to establish a new family pattern, essentially founded on monogamy and not allowing a man to divorce his wife without her consent.

The first reference to the Ban in Italy dates from the 15th century. From then on *responsa* of illustrious Italian rabbis dealt with this question extensively, providing an important legal source for deliberations about waiving the Ban to the present day. The earliest encounter between different medieval Jewish ethnic groups was in the 15th and 16th centuries in Italy. The communities there included an Italian Jewish ethnic group dating back to ancient times; Ashkenazi and French Jews who began arriving in the second half of the 14th century; many Spanish and Portuguese Jews (Sephardim) who came after the expulsion in 1492; Romanians

Polygamy, 261, as well as notes 47 and 65 and throughout the article. This considerably reduced polygamy among the Jews of Spain. Castille, however, appears not to have had a similar royal edict, as we may also infer from *Resp. Ran*, 48; Havlin, *Enactments*, 205.

¹⁵Cf. Havlin, *Enactments*, 230, 234-235. This is illustrated by the case of Rashba's Ashkenazi disciple, whose wife went insane. He moved to Provence because in Ashkenaz the rabbis would not waive the ban and permit him to take another wife, whereas Rashba was willing to waive the Ban. See Westreich, *Transitions*, pp. 177-178.

who lived in regions conquered by the Italian states in the Balkans and Greek Islands.¹⁶ Each of these ethnic groups had its own socio-legal heritage in the field of family law, especially concerning polygamy. Therefore the issues that arose in this regard were more complicated, and questions of law acquired an additional dimension: the need to cope, be it overtly or covertly, with other legal traditions.

The decisions passed in Italy in this era provide an important legal source for any discussion of waiving the Ban, even to the present day, and played a significant role in shaping the subject. In my opinion, the questions that arose, the arguments made by the rabbis, and the positions taken in actual practice derived to a large extent from the interaction of these different ethnic groups.

We begin by examining whether in the period under discussion the Ban was accepted without challenge in Italy, and then turn to a discussion of infertility as a cause for waiving the Ban.

2. Validity of the Ban of R. Gershom in Italy

In Germany and France, the validity of the Ban was accepted throughout the period under discussion. The Ban had not spread, however, to the Iberian Peninsula and to Provence, and was not a binding legal instrument there. In Italy, notwithstanding the non-Ashkenazi ethnic groups living there,¹⁷ the Ban was accepted. This is understandable in northern Italy, since most of the

¹⁶On the ethnic composition of Italian Jewry, cf. Schulwass, Italy, 1-15. Also Simonson, Mantua 4-5, and Preface, page v-vi. On autonomous Ashkenazi, Sephardic, and Levantine Jewish communities in 16th-century Venice, cf. D. Karpi, *Be-Tarbut ha-Renaissance u-vein Homot ha-Ghetto -- Mehkarim be-Toledot ha-Yehudim be-Italia ba-Meot ha-14-17 (The Renaissance from within Ghetto Walls - Studies in the History of the Jews of Italy in the 13th-16th Centuries;* University publications, 1989) 168, 233. Bonfil, Renaissance, 19-20, 59-63, 185-187. Another ethnic group were the Levantines Jews. But they are not considered in this paper as a separate group because most of them were Spanish Jews who emigrated to the Ottoman Empire and from there to Italy.

¹⁷*Ibid.*

Jews there were from Ashkenaz¹⁸ and the Ban was an integral part of their legal and social heritage. Available sources, however, indicate that throughout Italy Jews of other backgrounds did not dispute the Ban's applicability to them or to the regions where they lived. Quite the contrary, R. Judah Minz, the leading Italian rabbi in the second half of the fifteenth century, ruled that the Ban applied everywhere unless proven otherwise.¹⁹ On the basis of this principle, he ruled that the Ban also applied in Corfu, an island in the Adriatic Sea. The Jews of the island, who belonged to the Romaniot and Italian Jewish ethnic groups,²⁰ did not challenge this ruling, and only a few expressed reservations about his decision that the Ban supersedes the fertility commandment.

A different limitation on the validity of the Ban first appeared in Jewish legal sources from fifteenth-century Italy: the claim that the validity of the Ban had expired at the end of the fifth millennium.²¹ This was first claimed in a *responsum* of Joseph b. Solomon Colon (Maharik)²² citing R. Solomon b. Abraham Adret (Rashba), and later spread throughout Jewish legal works.²³ Even Maharik, however, presented this fact only as a supporting argument and not the main reason for his ruling, therefore we do not know what he truly thought about Rashba's assertion. As far as interpreting Maharik's intentions in this regard, sharp controversy emerged between rabbis in the Land of Israel and in Egypt.²⁴ Their arguments provide an exhaustive discussion of

¹⁸ Schulwass, Italy, 11-12.

¹⁹*Resp. Minz*, 10.

²⁰On the ethnic composition of the Jewish population of Corfu, see below, n. 38.

²¹I.e., 1240 C.E.

²²About Maharik see Simonsohn, Mantua, 704.

²³*Resp. Maharik*, 101. Although this ruling originated with Rashba, his *responsum* was not known even in Spain and even among his own circle of influence. Rashba's *responsum* was first published by Havlin, *Enactments*, 231. As far as the rabbis were concerned, this ruling originated with Maharik.

²⁴Westreich, *Transitions*, pp. 267, 270-272.

the question but no definitive answer on Maharik's personal position. The cases which have come down to us pertaining to the Ban in 15th and 16th century in Italy do not cite this argument as a reason for waiving the Ban, even as secondary justification, save for one case decided by Maharik.²⁵

In sum, the Ban was followed in Italy during the period under discussion, but the positions taken with regard to conditions for waiving the ban differed.

One of the most important causes for waiving the Ban is the commandment to *be fruitful and multiply*. This fertility commandment is the first precept given in the Torah, directed initially to Adam and later to Noah.²⁶ The Sages greatly praised this precept,²⁷ and ruled that *If a man take a wife and live with her for ten years during which time she does not bear a child, he may not abstain*.²⁸ The Babylonian Talmud rules that a man who has cohabited with his wife for ten years and still not had a child must be forced to divorce her.²⁹ In the Middle Ages the fertility commandment was one of the principal reasons for polygamy,³⁰ due to high infertility and infant

²⁵ *Resp. Azriel Daianah*, 122, where the author cites Maharik's *responsum* with Rashba's statement, although he does not use it to argue his case. See also Westreich, *Transitions*, pp. 217-219, the case of R. Isaac the Sephardi in which no one argued that the Ban did not apply because of the petitioner's Sephardic origin.

²⁶ Gen. 1:28; 9:1.

²⁷ Babylonian Talmud, *Yevamot* 65b.

²⁸ Mishnah *Yevamot* 6:10. *Tosefta* (Lieberman) *Yevamot* 8:5 adds that he must divorce her and pay the sum stipulated in her *Ketubbah*.

²⁹ This is the opinion of R. Tahlifa, Babylonian Talmud, *Ketubbot* 77a, against the minority view of Shmuel. R. Tahlifa's position was almost unanimously accepted by later *poskim*. Alfasi, *loc. cit.*; *She'iltot* (Natziv ed.) 18; Maimonides, *Hil. Ishut* 15.7; *Tur, Even ha-Ezer* 1; *Shulhan Aruch, Even ha-Ezer* 1.10. Only Ravan, in addenda to his work, ruled according to the minority view that the fertility commandment need not be enforced. Cf. Westreich, *Transitions*, 110-11.

³⁰ Friedman, *Polygyny*, 8.

mortality rates.³¹

3. The Bonafazo Case and the Imposition of Ashkenazi Tradition

The R. Bonafazo case focuses on whether the Ban could be waived in cases where the husband had not fulfilled the fertility commandment. The case³² took place before 1490.³³ R. Gershon Bonafazo was a talmudic scholar and instructor of Romaniot origin who lived and worked on the island of Corfu.³⁴ After ten years of married life during which his wife had not born children, he married another woman in order to fulfill the fertility commandment, as the Mishnah instructs. Portions of the Corfu Jewish community objected to R. Bonafazo's act, claiming that it was contrary to the ban and to a local enactment prohibiting polygamy. This faction was fully supported by R. J. Minz, a great Halachic expert from Padua, who issued a ban against R. Bonafazo.³⁵ Even though R. Minz wielded great authority, not all the Jewish population went along with his call for a ban on R. Bonafazo, and the latter appealed to R. Eliyahu Mizrachi, the

³¹Westreich, *Transitions* 50 on the high incidence of infertility and infant mortality in the Middle Ages. See also S. Shahar, *Yaldut B-yemei Ha-beinayim* (Dvir 1990) 239, which provides the following estimates with respect to Europe before the industrial revolution: 20-30% of all children born died during the first year of life; only 50% lived to age five, and mortality rates remained high until age ten.

³²The facts of the case are taken from *Resp. Minz*, 10, and *Resp. Mizrachi* 14, unless otherwise noted.

³³Benayahu, *Benyamin Ze'ev*, 21.

³⁴Benayahu, *ibid.*, 18-21; *Encyclopedia Judaica*, V. 5, p. 970.

³⁵The status of R. Minz is discussed in Daniel Karpi, *The Jews of Padua during the Renaissance* (1369-1509) (Hebrew.), doctoral dissertation, Hebrew University, 1977. Note that both R. Minz's city and Corfu were under the rule of the republic of Venice at that time, which could explain R. Minz's involvement in events taking place in Corfu.

leading rabbi in the Ottoman Empire,³⁶ for his opinion on the matter. R. Mizrachi responded that *the Ban cannot override a commandment, and that a waiver of the Ban was therefore not required*, hence R. Bonafazo acted legally. When R. Bonafazo's opponents learned of this opinion, they reported it to R. Minz, who responded strongly by defaming R. Bonafazo's character with claims that he had forged R. Mizrachi's *responsum*. R. Minz also demanded that the community keep the ban he had pronounced on R. Bonafazo.³⁷

Who supported R. Bonafazo, and who opposed him? We know of two ethnic groups living side by side on the island of Corfu: a Romaniot ethnic group, which was the oldest and best-established, and an Italian group of lesser status and comprised of more recent arrivals, including émigrés from Ashkenaz.³⁸ It is evident from R. Minz's reaction that only part of the community opposed R. Bonafazo's conduct. Presumably the Romaniot Jews did not come out against their rabbi and did not acquiesce in the ban against him, especially since he had received the full support of the leading Romaniot rabbi, R. Mizrachi. It turns out that R. Bonafazo's opposition came from the Italian ethnic group, which also included Ashkenazi Jews.

Although R. Bonafazo's deed led to intra-communal strife on the social level, the disagreement is not as clear on the theoretical-legal level. In contrast to Rashba's position with respect to Sephardic Jews,³⁹ R. Mizrachi did not deny the validity of the Ban, nor did he argue that the Ban did not apply in Italy or to the Romaniot ethnic group. He even gave the Ban elevated legal

³⁶On R. Mizrachi's status, see S. Rozanis, *Divrei Yemei Yisrael be-Tograma* (Hebrew) (Dvir, 1930) Part I, pp. 70ff. R. Mizrachi played a central role in taking in waves of Jewish exiles from Spain and elsewhere, and was greatly esteemed and influential.

³⁷Note that R. Bonafazo was greatly esteemed by R. Mizrachi, the leading rabbi in the Ottoman Empire. M. Strason, *Mivhar Katavim* (Mossad Ha-Rav Kook, 1969) 178-180. (In addition to the sources referenced there, mention should be made of *Resp. R. Mizrachi*, 49, and *Resp. Benjamin Ze'ev*, 78. Cf. also Havlin, *Enactments*, 210, n. 27.) On R. Bonafazo's status as one of the more prominent rabbis in Greece in his time, see Benayahu, *Benjamin Ze'ev*, 21.

³⁸Cf. Baron, Corfu, 170; *Encyclopedia Judaica*, V. 5, 169-182.

³⁹*Supra*, n.15.

status by comparing Rabbenu Gershom to *the court of* [the great sages] *R. Ammi and R. Assi*.⁴⁰ However, R. Mizrachi held that the Ban is superseded by the fertility commandment, basing his view about the legal status of the Ban on patently Ashkenazi Halachic sources. He cited rulings by the rabbis of Speyer, Worms, and Mainz from the 12th century,⁴¹ that *the Ban of Rabbenu Gershon does not supersede the commandment*, and rejecting a widow's request that her *brothers-in-law* be forced to perform *chalitza* on the grounds that they were married. This decision, handed down in a case where the Ban conflicted with the commandment of levirate marriage, was the cornerstone of R. Mizrachi's opinion. The main thrust of R. Minz's criticism was aimed at R. Mizrachi having based his opinion on this 12th-century *responsum*. R. Mizrachi also cited a ruling from *Sefer Maharil* which read as follows:

*I have found in actual practice that R. Y. Molin, of blessed memory, instructed⁴² to marry his deceased brother's wife, if he so desired, even if he already had a wife; since the Ban of Rabbenu Gershon was not enacted in such situations.*⁴³

Although the discussion in these sources revolved around the conflict between the Ban and the commandment of levirate marriage, nevertheless R. Mizrachi held that likewise the fertility commandment superseded the Ban. R. Mizrachi went even further, extending his argument to include other causes such as a woman who transgressed the faith or became an apostate, and cited *responso* and decisions of Ashkenazi rabbis in favor of waiving the Ban on polygamy and divorce against the woman's will.⁴⁴ In sum, R. Mizrachi's approach, similar to that of Rashba,

⁴⁰Cf. R. Joseph ben Lev's criticism in *Resp. Maharibal*, III 79.

⁴¹Aptowitzer, *Ravyah*, 203. The *responsum* is originally found in *Sefer Ravyah* 973 (manuscript), and was copied into *Sefer Ha-Mordechai*, Yevamot 31. R. Mizrachi apparently found this *responsum* in *Sefer Ha-Mordechai*.

⁴²The word *yabbam* appears to be missing here.

⁴³*Maharil Minhagim, Seder ha-Chalitza* 4.

⁴⁴Namely, a *responsum* of the Maharam of Rothenburg, who permitted divorcing a woman against her will if she had transgressed the faith, in *Resp. Maharam (Lvov)* 393; and *Resp.*

was that the Ban was superseded with respect to both of its components whenever the husband's case was based on a cause originating in Talmudic law. Unlike Rashba, however, R. Mizrachi based his view on *responsa* and rulings by Ashkenazi rabbis who took a stand on this question.⁴⁵

Even though R. Mizrachi acknowledged the validity of the Ban over Italy's Romaniot ethnic group as well, and based his conclusions solely on Ashkenazi sources, in my opinion the legal controversy between him and R. Minz still had to do with a conflict between two different legal traditions. This view provides a deeper understanding of the controversy and helps solve several perplexing points regarding the nature of the arguments made by R. Minz in his staunch and uncompromising stand, which was accompanied by harsh censure of R. Bonafazo. I believe R. Minz's position was based primarily on the centuries-old Ashkenazi legal tradition that the Ban superseded the fertility commandment, and on the deeply-rooted social custom of not seeking a divorce or requesting permission to marry another woman on the grounds of not having had children. His extensive arguments and complex reasoning on this question were intended merely to uphold this tradition, and not to base the said rule on it.

The arguments made by R. Minz, were strongly criticized by Jewish legal scholars, most notably R. Joseph Caro.⁴⁶ I omitted the detailed polemic because of its excessive complexity.⁴⁷

Maharam Resp. (Cremona) 245. This *responsum* is mentioned in *Kitzur Mordechai*, *Ketubbot* 196, without giving the details of the case. It is apparently the source on which R. Mizrachi relied.

⁴⁵It was perfectly clear to R. Mizrachi that the local *regulation* enacted by the Corfu population against polygamy had to yield to the fertility commandment. Another question discussed by R. Mizrachi at R. Bonafazo's request concerned whether a local enactment that did not enjoy public consensus was binding on those who disagreed with it. It is clear from this that not everyone in Corfu accepted the enactment against polygamy; as we hypothesized above, and the Romaniot ethnic group may have disagreed.

⁴⁶R. J. Caro, *Resp. Beit Yosef*, *Ketubbot* 14; R. Joseph ben Lev, *Resp. Maharibal* III 54; R. Shlomo Cohen, *Resp. Maharshakh* I 20.; R. Shmuel Jaffe Ashkenaz, cf. his *responsum* on the Ban (Y. S. Spiegel, ed.) in *Va-Yita Eshel -- R. Aaron Dreizin and R. Shmuel Solomon Dreizin Memorial* (David Abraham Mandelbaum and Aaron Dreizin, eds., 1990) 92.

The interesting question is, what motivated R. Minz to take a legal position based on a theoretical foundation that is so open to criticism and refutation? Moreover, what led him to defend his position so vehemently, offending and insulting such an important rabbinic figure as R. Bonafazo? It seems that the real basis for Minz's position was the Ashkenazi legal tradition that emerged during the Middle Ages, and not the arguments that he brought up in his *responsum*. The purpose of the arguments in his *responsum* was to defend an existing tradition against outside criticism, and not to provide the foundation for a new position.

What are the Ashkenazi legal and social traditions of the Middle Ages that decisively defer the fertility commandment in favor of the Ban?⁴⁸ A ruling of the rabbis of Speyer, Worms, and Mainz, also first mentioned by Ravyah,⁴⁹ deals with a request to waive the Ban because the husband did not fulfill the fertility commandment. The request was flatly rejected by the rabbis, although the petitioner had two additional arguments: his wife's insanity and the impossibility of cohabiting with her. This decision is cited by Ravyah as a precedent in another case which he adjudicated and whose facts were similar to the former. Here, too, Ravyah ruled that the Ban should not be waived for the fertility commandment, arguing,

We are not at liberty to waive the Ban of the illustrious Rabbenu Gershom, for there are so many unhealthy and barren women, yet no one opens his mouth to complain.

In other words, the deeply-seated social practice not to insist on divorce or bigamy because one's wife is barren is proof, according to Ravyah, that his ruling is correct.⁵⁰ Presumably, on the theoretical level, this approach is related to that of Raban R. Eliezer ben Nathan of Mainz (Raaban),⁵¹ which voids the legal status of the fertility commandment by arguing that barrenness

⁴⁷ Cf. Westreich, *Transitions*, pp. 204-207 for a comprehensive discussion of this polemic.

⁴⁸ Cf. Westreich, *Transitions*, pp. 106-111.

⁴⁹ E. Aptowitzer, Ravyah, p. 201. The ruling is cited from a manuscript of *Sefer Ravyah* 921, recently published: *Sefer Ravyah -- Responsa* (Bnai Brak, D. Davlitzky, ed., 1989).

⁵⁰ This *responsum* of Ravyah is discussed at length in Westreich, *Traditions*, 111-119.

⁵¹ Grandfather of Ravyah, active in the mid-12th century.

should be ascribed to the sin of living outside of Israel, and that the Sages sought to abrogate the fertility commandment because of the destruction of the Temple.⁵²

In the first half of the thirteenth century R. Isaac Or Zarua issued a far-reaching ruling that a man must be forced to divorce a fiancée who refuses to wed him for no just reason, so that he can fulfill the fertility commandment, and opposed granting him permission to take a second wife on the grounds of the Ban.⁵³ In the early fifteenth century, Jacob ben Moses Moellin (Maharil), who ascribed great importance to the fertility commandment and less to the Ban, nevertheless refused to waive the Ban on these grounds, stating: *It is not for us to take action just because we see fit.*⁵⁴ In other words, despite the fact that purely theoretical considerations justified the conclusion to waive the Ban in favor of fertility, nevertheless in actual practice he would not depart from the existing legal tradition. Indeed, from the thirteenth century on, throughout the extensive body of Ashkenazi legal sources we have not found one case where the husband sued for permission to wed a second wife or to divorce his wife solely on the grounds of her being barren.⁵⁵ This contrasted with Spain during the same period, and with the Ottoman Empire in the sixteenth century, where such cases were commonplace. There were cases in Ashkenaz where fertility was mentioned as cause, but the wife's barrenness was only a secondary argument, the true reason for the suit being another.⁵⁶ Moreover, even where the Ban was waived, the rabbis preferred to permit the husband to divorce his wife against her will, rather than allow him to take a second wife, unless the waiver was being used as a means of coercion and enforcement.⁵⁷

⁵²Westreich, Traditions, 106-111.

⁵³*Teshuvot Maimoniyot on Seder Nashim*, 34.

⁵⁴*Resp. Maharil ha-Hadashot*, 202.

⁵⁵Westreich, Transitions, 118-127.

⁵⁶*Ibid.*

⁵⁷*Ibid.* A notable example is the *responsum* of the Maharam of Rothenburg, (Prague), 946, dealing with a wife who rebelled against her husband, fleeing the house and taking property with her, and also threatened to convert to Christianity. The court demanded that the woman return

The case of R. Bonafazo presented R. Minz with a new situation. The latter, as an Ashkenazi rabbi, had become accustomed to upholding the Ban over the fertility commandment because of centuries of legal tradition buttressed by deeply-seated social practice. Now for the first time an Ashkenazi rabbi found his position challenged from without and had to respond with a comprehensive body of arguments justifying the Ashkenazi legal tradition. The challenge came from members of an ethnic group – the Romaniots – that was under strong Ashkenazi influence⁵⁸ and therefore accepted written Ashkenazi legal sources such as the Ban and the rulings of the rabbis of Speyer, Worms, and Mainz. However they did not share the tradition of Ashkenazi jurisprudence, which was an oral tradition, nor were their social practices similar, as we see from the behavior of R. Bonafazo, who was an important rabbi in the Romaniot ethnic group. On the basis of the Ashkenazi sources available to him, R. Mizrachi formulated an approach similar to that of the rabbis of Spain, amounting to the practice of waiving the Ban when the husband had just cause, even if the wife's conduct had not brought about it. To convince R. Bonfazo's adherents to join in the ban against their leader, R. Minz had to attempt to found his legal argument on accepted written sources, a difficult challenge because he did not have explicit sources taking a clear stand on the matter. There were the rulings of the rabbis of Speyer, Worms, and Mainz, and of Ravyah, unequivocally stating that the Ban superseded the fertility commandment, but these decisions were first published by R. Solomon Luria in the mid-sixteenth century⁵⁹ and were not known to R. Minz.

As did Ravyah, R. Minz used the argument of the elevated status enjoyed by the Ban as

home and restore the property she had taken with her. The Maharam of Rothenburg ruled that if she did not consent, then her husband could file a bill of divorce with the court, along with a sum of money to be determined, after which he would be permitted to marry another woman. The wife would be given the bill of divorce that had been filed with court only after complying with the court's demands.

⁵⁸This is true of R. Mizrachi, who wrote, *I have also found some glosses... by the Maharam ha-Levi, father of my teacher, Rabbi Eliyahu ha-Levi of blessed memory, who all his life was raised in Ashkenazi yeshivot.* (Resp. R. Mizrachi 41, p. 108b).

justification for his position.⁶⁰ He said, *The edict of the gaon is no less important than the takkanot of the rabbis of the Talmud, and this is very important* (my emphasis).⁶¹ If the Ban was of equal weight to edicts passed by the rabbis of the Talmud, then just as the rabbis of the Talmud could do away with the fertility commandment through an edict, so too could Rabbenu Gershom.⁶² R. Minz placed great importance on the argument that the fertility commandment had lesser status. One of his important sources on this was the argument in *Sefer Avi'asaf* that is based on the *baraita* at the end of the chapter *Hezkat ha-Batim*. This approach actually became well-established in the rulings of Ashkenazi rabbis since the 12th century, and undoubtedly *Sefer Avi'asaf*, citing Raban, reflects better than any other source the change in approach to fertility that began to emerge in Ashkenaz by the 12th century.⁶³

It is surprising that R. Minz pointed to Ravyah as a rabbinic authority who held that the Ban superseded fertility, even though it was Ravyah who decisively ruled that levirate marriage took precedence over the Ban. Indeed, from a purely theoretical point of view, the logical conclusion is that of R. Mizrahi, namely that fertility takes precedence over the Ban, which follows from Ravyah's decision in the matter of levirate marriage.⁶⁴ Historically, however, the truth lies with

⁵⁹*Resp. Maharshal*, 65.

⁶⁰Westreich, *Transitions*, 112.

⁶¹According to R. Minz, this conclusion follows from what was said by R. Isaac Or Zarua.

⁶²In his opinion, this argument provided one of the foundations for the change that occurred in 12th-century rulings in Ashkenaz regarding rejection of the fertility commandment in favor of the Ban, and which found expression in the above-mentioned *responsa* of Ravyah and of the rabbis of Speyer, Worms, and Mainz. Westreich, *Transitions*, 111-119.

⁶³Westreich, *ibid.*

⁶⁴Westreich, *ibid.*, where we discuss at length how these two decisions were reconciled by Ravyah, in the case of Madame Origiyah by stating that levirate marriage had precedence over the Ban, and in the case of R. Samuel b. R. Azriel's son by stating that fertility had precedence over the Ban.

R. Minz, as becomes evident from the detailed *responsum* by Ravyah.⁶⁵ R. Minz was unaware of this *responsum*, and the fact that he managed to come up with the same reasoning as Ravyah, who represented Ashkenazi tradition on this question, indicates that the legal tradition in Ashkenaz and the foundation on which it developed were deeply rooted, whether consciously or not, in the minds of the Halachic experts there. This also explains why R. Minz was willing to take such an adamant position despite his arguments being open to extensive criticism.

4. Appearance of Sephardi Elements and Retraction of Ashkenazi Tradition

The fact that R. Minz's arguments were so problematic and that the real basis for his position was the Ashkenazi legal tradition, without any direct precedent to substantiate it,⁶⁶ provides the background for the radical change in position taken by R. Meir Katzenellenbogen of Padua (the Maharam of Padua), a disciple of R. Minz who succeeded his teacher as head of the *yeshivah* in Padua several years after R. Minz's death.⁶⁷ When a query was addressed to the Maharam of Padua about a certain Reuben who had lived with his wife for ten years and not yet had children and now wanted to return to his former concubine, who in the interim had been wed and divorced, in order to have children by her,⁶⁸ the Maharam stated in his *responsum*:

⁶⁵ See above.

⁶⁶Ravyah's *responsum* on the fertility commandment was not yet known.

⁶⁷On the Maharam of Padua, cf. E. Ziv, Maharam, 160-195.

⁶⁸The issue at stake was whether the *Halacha* forbidding a man to remarry a former wife who herself had been married to another man in the interim applied in the case of a concubine. The Maharam of Padua ruled that there was no obstacle to restoring the concubine, but advised Reuben to take her as a wife. The Maharam thus joined a discussion about waiving the Ban in order to fulfill the fertility commandment.

I think he should be permitted to marry, without concern for the Ban of Rabbenu Gershom against taking a second wife, since Rashba, [that is R. Simeon b. Abraham,⁶⁹ in responsa 280,] expressed the opinion that Rabbi Gershom did not issue his takkanah [enactment] to overrule the commandment in the case of a man who is still childless after living with his wife for ten years... therefore it is preferable for him to marry her properly with a ketubah and marriage ceremony, rather than take her as a concubine.⁷⁰

The Maharam of Padua reiterated this position in another case.⁷¹ The question there concerned divorcing a woman against her will on account of her behaving immorally. The Maharam of Padua listed the Talmudic laws that take precedence over the Ban, putting the fertility commandment in first place, stating that it unquestionably supersedes the Ban. To substantiate his position, the Maharam of Padua gave a list of rabbis who concurred, and against them only the author of the commentary *Nimukei Yosef* seemed to him to disagree. The Maharam of Padua concluded that *the opinion [in Nimukei Yosef] is invalidated by Ritba, responsa of rabbis from France, and responsa of Rashba.*⁷² The Maharam of Padua adopted the stand taken by the Spanish rabbis, rejecting the Ban in favor of the fertility commandment and essentially permitting polygamy on these grounds. This position is diametrically opposed to that of R. Minz, and therefore contradicts the Ashkenazi legal tradition. The question of how such a reversal of position occurred in such a relatively short time has occupied Jewish legal scholars. One of the explanations offered is that R. Minz was not aware of the Sephardic legal sources on which the

⁶⁹On the Maharam of Padua's erroneous identification of Rashba and the origins of this mistake, cf. Havlin, *Enactments*, 212.

⁷⁰*Resp. Maharam of Padua*, 19.

⁷¹*Resp. Maharam of Padua*, 13.

⁷²Here, too, the Maharam of Padua identifies Rashba with the tosafist R. Shimshon b. Abraham, as in 19, *supra*, n.70. Cf. Havlin's article discussing the Maharam's remarks here, including his hypothesis that there were two edicts, one of Rabbenu Gershom and one of R. Shimshon.

Maharam of Padua later relied.⁷³

In my opinion, it is highly unlikely that R. Minz would have changed his mind had he known about the Spanish sources since his position was rooted in his strong adherence to the Ashkenazi legal tradition and not in a purely theoretical analysis. Had the Spanish sources come to his attention, it is possible that he would have challenged the Spanish rabbis' authority to intervene in a purely Ashkenazi matter, as Maharshal responded, similarly to Minz, giving definite priority to the Ashkenazi legal tradition.⁷⁴ The change of mind that took place with the Maharam of Padua is apparently due to biographical factors, making such a reversal possible. The Maharam of Padua was born *circa* 1473, and in his youth studied in the *yeshivah* of R. Jacob Pollack in Prague.⁷⁵ His teacher was one of the innovators of the Polish approach to Talmud study, later continued by R. Shalom Shakhna, who believed that every rabbi ought to use his own discretion and Halachic judgment in each and every case, and not rely uncritically on the rulings of his predecessors.⁷⁶ The Maharam of Padua later moved to Italy where he was a student of R. Minz. Thus, when R. Minz passed away in 1509, the Maharam was still quite young and had not fully formed his approach to Jewish law. In Italy he became acquainted with other traditions -- Romaniot, Italian, and even Sephardic, which became widespread in Italy when exiles began arriving after the Expulsion from Spain in 1492. This meeting of cultures provided an opportunity for him to become acquainted with Sephardic legal sources, which took a clear stand

⁷³Havlin, *Enactments*, 210 note 27. The Maharam of Padua clearly knew of R. Minz's *responsum*, at least before the *takkanah* of Ferrara, in which he again took the same position with minor changes (to be discussed later). The Maharam of Padua himself printed the *responsum* of R. Minz along with his own *responsa* (see the introduction by Maharam of Padua to *Resp. R. J. Minz*). These *responsa* were printed in Venice in 1553 (Boaz Cohen, *Kontras ha-Teshuvot*, Budapest, 1890, p. 48); and the Ferrara enactments were issued in 1554. See below.

⁷⁴*Resp. Maharshal*, 65.

⁷⁵Cf. Ziv, *Maharam*, p. 160.

⁷⁶On R. Jacob Pollack, see *Encyclopedia Judaica*, Vol. 13, pp. 833. On R. Shalom Shakhnah's independent-minded approach, see Westreich, *Poland*, 75-76.

asserting that the Ban must give precedence to the fertility commandment. Opposing these sources there was only the *responsum* by R. Minz, which was based on a refutable body of arguments and did not suffice to defend the Ashkenazi legal tradition.⁷⁷ It is possible that the new approach originating in the school of his teacher, R. Jacob Pollack, contributed to his willingness to examine this legal question objectively.⁷⁸ Unlike the Maharam of Padua, R. Minz came to Italy from Ashkenaz in the mid-15th century, around the age of 50, with a definitive and well-formed approach to Halakhah. For him, R. Bonfazio's deed did not provide an opportunity for re-examining the question on its merits, rather it represented a threat to the Ashkenazi tradition, which in his eyes was unchallenged and had to be defended at any cost.

5. A Synthesis in the Ferrara Enactment

The decisions of the Maharam of Padua take a clear stand: the Ban on polygamy should be waived to fulfill the fertility commandment. This position, however, was qualified by the enactments of Ferrara from 1554,⁷⁹ enacted at a conference of eminent rabbis representing the important communities in Italy and headed by the Maharam of Padua himself, who signed in the

⁷⁷Note that the *responsa* by Ravyah and by the rabbis of Speyer, Worms, and Mainz were not yet known, and therefore could not be used as counter-arguments in support of the Ashkenazi tradition.

⁷⁸Note that the status of the Ban grew weaker among 16th-century Polish rabbis. R. Isserlish (Remu), in his glosses on *Shulhan Aruch, Even ha-Ezer* 1:10, cites two contradictory positions on whether to waive the Ban on account of the fertility commandment, and does not decide between them. This trend is even more prominent in cases of waiving the Ban because of the wife's insanity. Here, Remu took a stand and ruled that the Ban was waived in such cases (*ibid.*). Cf. Westreich, Poland, pp. 72-74. Other Polish rabbis ruled similarly, e.g., R. Sirkish, Bait Hadash, Tur, *Even ha-Ezer* 1, at the end lists all the rabbis of Ashkenaz and Russia who supported his position. Westreich, *ibid.*, 75. Only Maharshal, noted for his devote adherence to the Ashkenazi legal tradition, was not willing to depart from the ruling of the rabbis of Speyer, Worms, and Mainz in this matter. Cf. Westreich, *ibid.*, 76-79.

name of the *Venetian tradition*.⁸⁰ This is the wording of the *takkanah* at issue:

Whereas certain people uphold the ruling that if in ten years a married man has not yet fulfilled the fertility commandment he may take another wife without regard for the Ban of Rabbenu Gershom, we concur and rule that if he has had a son or a daughter, although he has not fulfilled the fertility commandment, he may not take another wife, except with the consent of his wife and one of her relations.

The preamble indicates that not everyone relied on the ruling that fertility took precedence over the Ban. Moreover, the reference to *certain people* indicates that they were actually the minority, and that most did not follow this interpretation. It is difficult to say to which ethnic group this minority belonged, although presumably they were not part of the Ashkenazi ethnic group, whose social and legal tradition did not sanction polygamy in order to fulfill the fertility commandment.

The main thrust of the enactments was to prohibit a man whose wife had born one child from taking another wife, even if he had not yet fulfilled the fertility commandment (requiring that one have both a son and a daughter), unless he was granted permission by his wife and one of her relatives. Several questions arise here: What motivated this ruling, especially in view of the decisive position taken by the Maharam of Padua himself in his *responsa* waiving the Ban on account of fertility? What were the grounds for distinguishing between the cases where the wife had had no children and where she had had one? What was the origin of the solution to make polygamy contingent on the consent of the wife and one of her relatives?

⁷⁹Finkelstein, *Self-Government*, p. 302. This *takkanah* can also be found in Lampronti, Vol. 10, 157b.

⁸⁰The preface to the enactments in Lampronti (*loc. cit.*) quotes R. Samuel Archivolti of Padua as follows: *In our day, the important rabbis throughout Italy gathered in Ferrara and legislated enactments on the 21st of Tamuz, 5314 (1544)*. These enactments were known in Italy and were recopied several times, as indicated by the material presented at the end of the enactments.

The authors of the enactment did not spell out their motivation, but it stands to reason that the wife and her family always objected to the husband taking another wife. This factor was the main motivation behind that of adding a monogamy clause to *ketubbot* in countries where the Ban did not apply, and behind local enactments forbidding polygamy in these places.⁸¹ It is possible that the Ashkenazi tradition, which upheld the Ban over the fertility commandment, tried to minimize waivers of the Ban even for members of other ethnic groups.⁸² This opposition, however, is not enough to enact a rule. The same opposition existed probably also when the wife had born no children at all, but those who enacted the rule did not restrict the husband from taking another wife in such cases. Therefore, it seems that in addition to opposition by the wife and her family, there was another operative factor here, namely the ruling cited in a Spanish Halachic Authority, *Nimukei Yosef*:

*For those who accept the Ban of Rabbenu Gershom against bigamy, even in this situation they may not take another wife. Thus far the opinion of the author.*⁸³

In other words, the Ban superseded the fertility commandment in cases where the wife has born one child. Clearly the commentary *Nimukei Yosef* was known to the Maharam of Padua before the Ferrara enactments (1554), since it was printed in Istanbul (Constantinople) in 1509 along with *Sefer ha-Rif*, and he cites the latter in his *responsa* on this question,⁸⁴ printed by him in 1553. It may well be that this ruling, written by the author of *Nimukei Yosef*, was one of the reasons the rabbis of Italy reduced waivers of the Ban by reason of the fertility commandment to cases where the wife had born no children at all. Nevertheless, the enactment did not apply Ashkenazi law in its full sway, for it allowed the husband to take another wife if his wife

⁸¹Friedman, Polygyny, Introduction and pp. 3-4, 28.

⁸²Consistent with our assumption that the *certain people* mentioned in the *enactment* as allowing bigamy on account of the fertility commandment were not Ashkenazi Jews.

⁸³R. Alfasi, *Nimukei Yosef*, *Yevamot* 20a (Makor Publ., Jerusalem, 1970; First printing, Constantinople, 1509).

⁸⁴Cf., for example, *Resp. Maharam of Padua* 13, 14, 51.

consented. The legislators of this *takkanah* may have taken a stand like that mentioned in Ran's *responsa*,⁸⁵ allowing the wife to renounce the protection offered her by the Ban and consent to her husband taking another wife. To prevent a situation in which the man might apply unfair pressure on his wife to consent to his marrying another woman -- a concern also foreseen by Ran -- the enactment required that the wife's relatives also give their consent. Perhaps the legislators were less strict in this matter because their legislation may have applied to non-Ashkenazi ethnic groups that had been brought under the Ban by the rulings of R. Minz.

In 1564, a few years after the Ferrara enactments, an Italian rabbi returned to the traditional Ashkenazi position, upholding the Ban over the fertility commandment. The case involved a woman from Venice who brought suit to force her husband to grant her a divorce⁸⁶ because her husband was a criminal, involved in forgery of coins and theft in several countries, and had not supported his wife and children for more than thirteen years. The rabbis who adjudicated the case -- Maharam of Padua, R. Baruch Uziel Hezkito, and R. Eliezer Ashkenazi -- sought a solution to the wife's problem and a way of forcing the husband to grant her a divorce. Most of the deliberations revolved around coercing the husband on grounds of the wife detesting her husband and other reasons not germane to the case. However, R. Eliezer Ashkenazi brought up one other argument that does relate directly to the question:

Moreover, it seems to me that, in view of it being the court's opinion that the aforementioned Rachel detests her husband Reuben because of his great wickedness, since we now have the Ban of Rabbenu Gershom prohibiting a man to take a second wife and he has not fulfilled the fertility commandment insofar as he has no daughter, he ought to be forced to divorce her on the grounds of the

⁸⁵*Resp. Ran* 48.

⁸⁶*Resp. Remu* 36, 96. These *responsa* are not actually by Remu but somehow worked their way into the volume. See the editor's comments on these *responsa*. No. 36 is signed Baruch Hezkito of Ferrara and dated 1564. In the body of the *responsum* reference is made to the ruling of the Maharam of Padua on this matter. No. 96 is signed R. Eliezer Ashkenazi, who gives Venice as his residence.

fertility commandment. The same response was given by R. Isaac b. Moses, cited in a *responsum* pertaining to the laws of divorce. Despite his reservation that the *takkanah* might be taken advantage of by loose women, note that at the end he turned the question over to the court. In the light of all this, it seems that wherever there is no suspicion of the wife's argument being used to cover looseness and there is room to force him to divorce on the grounds of fertility, the husband should be coerced to divorce.

Thus, R. Eliezer Ashkenazi explicitly adopted the position of R. Isaac Or Zarua, giving the Ban its most elevated legal status,⁸⁷ namely, that in view of the Ban the man must be forced to divorce his wife to fulfill the fertility commandment, and may not take a second wife to that end. R. Eliezer viewed this argument as solid foundation for forcing a husband to grant his wife a divorce, not simply as a supplementary argument supporting other reasons. Therefore he drew a distinction between the case at hand and that of R. Isaac Or Zarua, which in the final analysis left the decision up to the court's discretion. His main argument was that R. Isaac Or Zarua's hesitation was due to his fear of benefiting loose women, since there the woman refused to be wed (i.e. she was betrothed but not married) without sufficient reason. Here, on the other hand, there was no question of dealing with a loose woman; rather it was clearly a case of amending the situation for a woman in great distress. Clearly this argument was unacceptable to the Maharam of Padua, since he had ruled definitively that the fertility commandment took precedence over the Ban, and that a man wishing to fulfill this commandment should be permitted to marry another woman without making him first divorce his wife. All the more so, he should not be forced to divorce his wife to fulfill the fertility commandment when the option existed of waiving the Ban so that he could take another wife. In the present case, the man had a son and lacked only a daughter; thus according to the Ferrara enactment the fertility commandment could not be used as a legal argument enabling the husband to marry another

⁸⁷Westreich, Traditions, 119-125.

woman.⁸⁸

R. Eliezer Ashkenazi clearly reflected the Ashkenazi legal tradition, granting the Ban elevated legal status, and sought to use this tradition to resolve a difficult matter of family law: the limitation, which had become deeply rooted in rabbinic rulings, not to force a husband to divorce a rebellious wife. Moreover, it is doubtful whether R. Eliezer Ashkenazi's ruling reflected the prevalent position among rabbis in Italy. R. Eliezer Ashkenazi was born in Italy and was the great grandson of Maharik,⁸⁹ but in his youth he studied in several cities in the Ottoman Empire and returned to Italy close to the time this *responsa* was written.⁹⁰ What he says may therefore be only a reflection of the Ashkenazi tradition and not indicative of the thinking among the rabbinic community there.⁹¹

In the final analysis it appears that the position taken by Maharam of Padua, and not that of R. Minz, prevailed in Italy. According to the testimony of R. Arye of Modena, *it rarely happened that a man took a second wife after living with his first wife many years without her bearing child.*⁹² In other words, Jewish society in Italy was basically monogamous, and the cases where a man had two wives followed from his desire to fulfill the fertility commandment. An Italian prayer book (*mahzor*) has come down to us with a list from 1555 of cases of bigamy due to the fertility commandment, close to the time of the Ferrara enactment.⁹³ This attests that in the 16th century the attitude of the Jews of Italy to the fertility commandment was different from that of the Jews of Ashkenaz in the Middle Ages. It does not indicate whether such cases occurred

⁸⁸This is one of the arguments made by R. Baruch Hezkito in *Resp. Remu* 36 for rejecting R. Eliezer Ashkenazi's argument.

⁸⁹Cf. Benayahu and Laras, 83. On R. Eliezer Ashkenazi, cf. also Elbaum, 47, n. 60, and the sources cited there.

⁹⁰*Ibid.*

⁹¹*Ibid.*

⁹²Cf. Schulwass, Italy, p. 148.

⁹³Assaf, 114.

within the Ashkenazi community. Nevertheless it is clear that R. Minz failed in his demand to prohibit polygamy practiced on the grounds of the fertility commandment in other ethnic groups. Presumably among Italian (as opposed to Ashkenazi) Jews the status of the fertility commandment did not diminish at any stage, and hence the public continued to view this commandment as prime justification for polygamy. Nevertheless, Jewish society in Italy was basically monogamous, since the laws of the land prohibited Jews from taking more than one wife unless explicitly permitted to do so.⁹⁴ Neither did the approach of R. Minz make headway on the legal level, as his outstanding spiritual heir, the Maharam of Padua, adopted the Sephardic approach that rejects the Ban in favor of the fertility commandment. Moreover, the Ferrara enactment further attests that the position of the Maharam of Padua became generally accepted.

⁹⁴Cf. Westreich, *Transitions*, pp. 217-219 the case of R. Isaac ha-Sephardi, a Spanish Jew who was already married and sought to perform levirate marriage. It is said there that he intended *to obtain leave from the Pope to have two wives*.

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