

THE BEGININGS OF THE RULES OF HALACHIC ADJUDICATION

SIGNIFICANCE, FORMATION AND DEVELOPMENT
OF THE RULES
CONCERNING THE TANAIC HALACHA AND LITERATURE

Thesis submitted for the Degree
DOCTOR OF PHILOSOPHY
To the Senate of the Hebrew University

Jerusalem, 2002

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This dissertation was executed with the supervision of Professor Yaakov Sussmann

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ABSTRACT

This work deals with the rules set by the amoraim for determining the halakhah in cases of disagreements between tannaim. Chapter Two contains the list of the rules discussed in the work.

The conclusion of this work is that the system of halakhic determination according to rules was innovated in the school of R. Yohanan. He and his students were the first to formulate a series of rules which served as the basis for legal determination regarding the disputes of the tannaim. Chapter Three contains a definition of the concept of rules and the characteristics of different rules.

Before R. Yohanan, decision based on formal rules was not the major method of deciding the halakhah. The classical method, described by the tannaim as that preferred by the Torah, was to bring the disputed cases for deliberation before the court, which would then determine the law by majority vote. At the apex of the legal system was the High Court in Jerusalem, to which were referred questions which had not been resolved by the lower courts. The decision of the High Court was binding on all of Israel.

According to the tannaim, this ideal system existed during the Second Temple. The undermining of social and public stability around the period of the destruction of the Temple brought with it the termination of the judicial system. As a result, many legal disputes were not resolved and “The Torah became as two Torahs”.

With the restoration of leadership after the destruction, R. Gamliel attempted to restore the central role of the court at the *bet hava'ad* in Yavneh and to resolve all disputes. This attempt was unsuccessful. As a result of its failure and the transition to the leadership of R. Elazar ben Azarya, R. Akiva and their contemporaries, another approach was developed in Yavneh, one which saw disputes and pluralism as a positive phenomenon. Instead of striving for a uniform halakhah by reaching clear cut decisions, the sages of Yavneh in the generation after R. Gamliel dealt with different opinions by collecting and preserving them.. The Mishnah of tractate Eduyot reflects the system of collection and organization of disagreements according to the school of Yavneh. In general, the literature of the tannaim reflects the collation of differing opinions without deciding between them.

At the same time, the recognition of the legitimacy of multiple opinions and disputes did not do away with the need to reach one halakhic decision, which then would be binding on all of the Jewish people. There was, therefore, a need to form new ways for halakhic decision making.

In the beginning there was not a systematic solution but rather partial answers. The halakhah of the tannaim dealt, for example, with the question of an individual who travels from a place with one custom to the place where the practice is different, or with how should one act when given two conflicting answers to a halakhic query.

There were also attempts to reach halakhic decisions on the level of the *bet midrash* and the general community. Sometimes a group of sages was convened to discuss and reach a conclusion. In certain cases a sage or a group of sages attempted to impose its opinion on the community, making use of their political power. Demographic and political reality determined the relative strength of different *batei midrash*. However, there was no uniform system which could give systematic and regular answers to the many disputes in all areas of life and of halakhah. Chapter Five deals with decision making in the period of the *tannaim*.

The composition of the Mishnah by R. Yehuda Hanasi did not solve the problem of decision-making because the Mishnah continued the tradition of the tannaim of quoting differing opinions. Indeed, Rabbi often chose to omit certain opinions from his Mishnah, thereby reducing the number of differing opinions. Sometimes he presented one opinion in a way that it could be inferred that this is the preferred opinion. Nevertheless, it was impossible to see in the Mishnah a binding work of halakhah.

Even when the Mishnah became, both in Babylonia and in Eretz Israel, the central text of study, it was not thought as an authoritative code of law. This, for two reasons. On one hand, as mentioned above, the Mishnah was not written as a legal codex. It contains many disputes as well as passages (referred to by the Talmud as *stam mishnah*) in which the author is anonymous and it is impossible to know if it reflects the opinion of one sage or of the majority of them. There are also contradictions within the corpus of the Mishnah itself. It is even not clear which Halakhah is reflected in the Mishnah. It can not be said with certainty that it reflects the opinion of R. Yehuda Hanassi, as there are many cases in which the opinion of Rabbi himself (quoted in a baraita) is not mentioned at all in the Mishnah.

The second reason that the Mishnah was not treated as a legal code is the close acquaintance of the early amoraim with the extensive literature of the tannaim. As is well known, Rabbi edited the Mishnah from a multitude of tannaic traditions. The Talmud describes Rabbi as forming his Mishnah out of thirteen versions of mishnah. For the first amoraim, the tannaitic tradition as a whole was a living entity. Thus, they compared the Mishnah of Rabbi to parallel sources, and from them could choose other opinions and interpretations, identify the authors of the anonymous mishnah and reach halakhic decisions on the basis of the totality of sources. Even if in certain cases they attributed importance to the Mishnah of Rabbi, it is not clear from their writings that they saw the Mishnah as an authoritative code of halakha. Chapter Six deals with decision making of the early *amoraim*.

Only in the second and third generations of amoraim, did the status of the Mishnah as a halakhic work begin to become authoritative . Before it could be used as a legal code, there was a need to create a system which would enable the student to decide the halakhah in case of dispute. The creation of these rules is the result of the efforts of R. Yohanan and his school .

R. Yohanan and his school created two systems of rules: methodological-literary rules (which infer the halakhically binding opinion from the way it appears in the Mishnah) and personal rules (which govern disputes between certain sages).

The central methodological rules give precedence to the halakhah of the anonymous mishnah (*stam mishnah*) over any opinion quoted in the name of a specific sage, give precedence to a mishnah over a *baraita*, and give preference to the opinion quoted in the name of “The Rabbis” over that of an specifically named scholar. Chapter Eight contains an extensive discussion of the methodological rules.

The personal rules set a hierarchy between the outstanding sages of the different generations. In the generation of Yavneh, the halakhah is according to R. Akiva. Among his students the halakhah follows R. Yosse in his disputes with each one of his contemporaries, R. Yehudah in his disputes with R. Shimon and R. Meir, and (according to the *Yerushalmi*) R. Shimon in his dispute with R. Meir. In the generation of Rabbi the rule states that “the halakhah is according to Rabbi in his disputes with his contemporaries”. Chapter Seven contains an extensive discussion of the personal rules.

This group of basic rules, together with a number of secondary ones, cover a large percentage of the disputes in the Mishnah. This, because the form of “an anonymous opinion and then a dispute” is the common way of citing different opinions and because the tannaim who figure in the personal rules are those cited most often in the Mishna.

Previous to R. Yohanan halakhic decision did not follow formal rules. The Amoraim of the first generations dealt with each case on its own merits, determined the identity of the anonymous tanna, and decided disputes based on the case at hand, the established custom and the halakhic traditions. Only rarely do their considerations take into account the fact that an opinion appears in a mishnah and not in a braita or as an anonymous opinions, nor do they regularly prefer one sage over others.

The act of halakhic decision in the first generations of the amoraim, was, like in the days of the tannaim, an innovative act of an outstanding scholar, recognized as qualified to make such decisions and as a public leader, whether on the local or national level. The number of decisors in this period is limited to the known heads of the generations, in Babylonia and in Eretz Israel.

The rules of R. Yohanan and his students were therefore seen as innovative. True, the rules did contain a logic based on the traditions of the ancient halakhah, on the acceptance of the Mishnah and on the status of those sages whose rulings were given precedence. Nevertheless, the very use of rules to decide the halakhah without deliberation of the specific case limited the freedom of the decisor to follow his own opinion, and the other hand enabled sages of lesser status and authority to decide the halakhah based on the Mishnah. Their decisions were in this way granted the authority, as it were, of R. Yehuda Hanassi himself.

In the Yerushalmi, there is no sign of opposition to decision based on rules or of disputes regarding the rules themselves. It would seem that in Eretz Israel, the place of R. Yohanan which was under the authority of his students, this method of decision was accepted widely in a short time. On the other hand, the Babylonian Talmud reflects a more complex process. R. Mesharshya expresses a total opposition to rules: “These rules are non-existent”. Despite the fact that the Gemara limits his words as regarding only to certain amoraim (especially Rav), this is evidence that the rules were not universally accepted. In addition, the Bavli states that among the students of R. Yohanan himself there was a dispute whether to accept the rules or not. It should be

noted that this opinion appears only in refuting a challenge and does not offer the name of a specific sage who disagreed with R. Yohanan.

Among the Babylonian contemporaries of R. Yohanan and his students, Rab Nachman, Raba, R. Yosef, and Abaye, we find discussions between the sages regarding the way the rules should be used. This indicates a process of confrontation, integration and final acceptance of the rules. The Bavli refers also to a debate among the students of R. Yohanan regarding the authority of the rules: Is the halakhah established according to the rules universally binding on all, or it is possible to dissent? Should the halakhah created by the rules be publicized and taught to all, or only transmitted to the individual who asks for a ruling?

After the system of decision by rule was accepted in the two centers of Eretz Israel and Babylonia, the rules themselves (just like any other halakhic tradition) became objects of discussion. This discussion followed typical talmudic patterns: comparison between rules, definition of their scope, resolution of contradictions etc.

The most prominent phenomenon in the talmudic discussion of the rules is the need to resolve the divergences between the system of rules and those halakhic decisions of amoraim that preceded the acceptance of the rules. As previously mentioned, the amoraim of the first generations did not determine the law using rules but rather on a case-by-case basis. Inevitably, those decisions were sometimes consonant with the rules but sometimes they were contradictory. An amora might sometimes have followed the opinion which the Mishnah quoted in the name of “the sages” and sometimes decided against that opinion. Some decisions followed R. Yehuda and sometimes R. Yosse.

As a result, the gemara confronted two types of questions. First, when the decision contradicts a rule. The gemara then asks, why the amora follows a braitā against a mishnah, an individual opinion and not that of “the sages”, or R. Shimon and not R. Yehuda. Secondly, when the decision is appropriate to the rule, the talmud asks why was there a need at all for a legal decision – the law could have been deduced from the rule.

The Talmud ignores the fact that the early amoraim were unaware of the rules and gives ad hoc answers to each difficulty. The Gemara finds it easier to justify the discrepancies, basing itself on the meta-rule of R. Yohanan himself, that every rule has an exception. On the other hand, an individual decision appropriate to the rule was

considered more problematic, inasmuch as it attests to the fact that the decisor was unaware of the rule. In those cases the Gemara used various solutions, which explained why this case might have been seen as an exception to the rule. Chapters Seven and Eight discuss the reception and interpretation of each of the rules separately. The topic is summarized in Chapter Nine.

The assumption of the later amoraim that decision by rules was always the halakhic system encouraged them to form new rules. Although we have no rules that were formulated after the students of R.Yohanan, later amoraim often interpreted statements by early amoraim as though they were general rules. For example, the aggadic statement “the Mishnah of R. Eliezer Ben Ya’akov is of small scope but like fine flour” was interpreted by the latter amoraim as a binding rule. A statement of an early amora combining two separate decisions, “The halakhah is according to R.Shimon Shezuri regarding [a get ordered to be written by] one who is critically ill and *trumet ma’aser* [which was returned to the original pile]” was understood by later amoraim as referring to all the disagreements involving that *tanna*. Chapter Four discusses the statements similar to rules which were later interpreted as rules.

The activities of the later amoraim and the redactors of the Talmud completed the project of R.Yohanan in a number of ways. They continued the process by accepting the rules, using them and determining halakhah according to them. Additionally, they framed the talmudic discourse regarding legal decision-making, so that the impression was given that the rules had been accepted by the early amoraim. In this way, the rules became universally accepted and authoritative. They also formed a system of solutions to difficulties and contradictions through definitions and interpretations of the rules themselves and the relations between them.

With the canonization of the Babylonian Talmud, later rabbinic scholars had at their disposal a wide-ranging system of rules for rendering halakhic decisions from the Mishnah and other tannaitic sources. Their continued work of collation, organization and interpretation of the rules is to be found in all post-talmudic halakhic literature. In addition, there developed a specific genre of rabbinic literature known as the books of rules dealing with this topic. Appendix A contains a list of the books of rules and their treatment of the rules of decision regarding disagreement of *tanaim*.

Above all, the project of R. Yohanan and his students, as completed by the succeeding generations, gave legitimization to this mode of halakhic decision. The possibility to

adjudicate out of a halakhic text using set rules, and the possibility of formulating rules which would facilitate this adjudication, is the basis for latter systems of rules, which apply to latter rabbinic works. Such rules include those for determining the halakhah in disputes of amoraim (which began to be formulated in the gemara and developed mostly in the geonic period) and continue with rules relating to latter day halachic works including the Shulchan Aruch.