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Report on the Rabbinic Dissertation Submitted by

Joshua Aaronson

in Partial Fulfillment of the Requirements for Ordination

Tannaitic Authority in Amoraic Sources

Mr. Joshua Aaronson's thesis is a critical-historical study of Talmudic passages in which amoraic traditions contradict tannaitic teachings. In order to do his thesis, Aaronson had to review the secondary literature which outlines the contemporary understanding of how the Talmud came into being. He acquainted himself with the works of Abraham Weiss, David Weiss-Halivni, and Hyman Klein all of whom have contributed to the present academic view that the stam, the unattributed connective material of the Talmud, represents the redactional level of the Talmud. This level is separate from the basic tannaitic and amoraic material which is the Talmud's core. Aaronson proceeded using this method which allowed him to see the relationship between amoraic traditions and tannaitic ones exclusive of the redactional viewpoint.

The first level of Aaronson's work are obvious examples of amoraim who either contradicted or rejected mishnaic or baraita teachings. Outstanding among these was Rav, but Johanan and others were also involved in such activities. Sometimes disputes were direct, sometimes more oblique. An example of an oblique amoraic challenge to a tannaitic source would be when an amora favors a baraita view over a mishnaic one or declares the mishnah null for some reason.

Beyond these examples, Aaronson worked primarily in Tractate Berakhot. He analyzed sugyot in which the terms "metivei", "la kashya", and similar phrases and formulas appeared. These indicate a contradiction between sources, frequently amoraic and tannaitic sources. The contradictions are introduced by the anonymous redactor and frequently resolved by the same party. Aaronson raises the possibility that these contradictions may, at one time, simply have existed. No resolution was sought at the early states of the Talmud's development because there was no notion of a hierarchy which valued tannaitica more than amoraica. "La Kashya" and other forms of contradiction/dispute resolution are issues for the late redactional levels of the Talmud who imposed this hierarchy on the existent traditions. In searching for the roots of such a development, Aaronson found a difference in the first two amoraic generations' attitudes towards tannaitic traditions compared with those of third generation and their successors. The first two amoraic generations appear to be less awed by the tannaim than are the members of the third generation and those who followed. By the last amoraic generation and the period of redaction, tannaitic

authority is absolute.)

Aaronson concludes by stating that if his analysis is correct, a point that would have to be substantiated by a wider scope of tractates and phenomena, the idea of continuous halakic authority would be supported to some degree. The claim that there is something intrinsic about diminishing halakic authority would be undermined. Only convention and consensus would then explain why amoraim did not argue against tannatic traditions. In terms of the larger history of the halakha, it might explain why, for example, the gaonim found it eminently possible to override amoraic and tannatic rules.

April 26, 1990

Respectfully submitted,
Dr. Michael Chernick
Referee

Tannaitic Authority in the Amoraic Sources

Joshua M. Aaronson


**Thesis Submitted in Partial Fulfillment of
Requirements for Ordination**

**Hebrew Union College-Jewish Institute of Religion
Graduate Rabbinic Program
New York, New York**

1990

Referee: Dr. Michael Chernick

Dedicated to my grandfather:

S. Harold Aaronson 

From rabbinic school I learned about Judaism,
From you I learned how to be a Jew.

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Acknowledgments

I am grateful to Dr. Michael Chernick for sharing his vision, wisdom, patience, time and love for Talmud with me. This thesis is as much a product of his work as it is mine, though I alone am responsible for any errors. I am also grateful to Congregation B'nai Jeshurun of Short Hills, New Jersey, who graciously provided me with access to their computers, paper and library. A special word of thanks goes to Rabbi Barry H. Greene, who encouraged me to take the time to do this thesis properly, often at the expense of my work at B'nai Jeshurun, as well as Rabbi David Levy for his logistical support and friendship. Finally, neither this thesis nor my tenure at the College could have been possible without the unwavering support of my parents, Michael and Deana Aaronson.

Introduction

The Talmud is the most voluminous and complex work in the canon of Jewish sacred literature. It is also, arguably, the most significant, if for no other reason than its impact on the daily life of every Jew, Orthodox, Conservative or Reform. The Talmud is the repository of Jewish law, or halakhah; even the most ardently non-halakhic Jews adhere (sometimes unwittingly) to its precepts as they approach the huppah in anticipation of the wedding ceremony, which like almost every Jewish ritual is in form and in content a product of the Talmud.

It is due to both its canonical status and intimidating scope that the Talmud has been largely immune from the prying eyes of the modern scholar. In comparison to the modern study of the Bible, the modern study of the Talmud is in its infancy. Although scholars since Saadia Gaon have been questioning the origin of the Talmud and its component parts, it is only in the 20th century that the scientific study of the Talmud has flourished. There are a number of reasons for the late development of critical Talmudic studies.

Although both Christian and Jewish scholars from across the ideological spectrum (in terms of a commitment to the text as the "Word of God") have been engaged in the scientific investigation of the Bible, the Talmud has been, for the most part, the exclusive domain of yeshiva-trained Jewish scholars committed to

the idea that the Talmud is the unchangeable "Word of God." It is only recently that scholars trained in both the traditional methods of Talmudic studies and the methods of modern scholarship have turned their attention toward the Talmud. Nor is it possible to underestimate the effect of the Holocaust on the development of critical Talmudic studies. The Holocaust eliminated, for all practical purposes, an entire generation of Talmudic scholars, in effect rupturing the previously unbroken chain of transmission that extended back to the earliest days of the Academies.

In spite of formidable obstacles, significant progress has been made into the modern study of the Talmud. One question has been the focus of much of this modern investigation: Is the Talmud a unified whole or is it the combined product of a number of different sources? There is little doubt that the latter is true. Even traditional commentaries acknowledge the existence of a variety of sources. The most obvious example is the existence of a large corpus of material, contemporary with the Mishnah, called beraitot, which appear in the Talmud in bits and pieces.

Although there is a general consensus that a number of different sources are contained within the Talmud, several serious problems remain. Is it possible to date these sources relative to each other? Which sources are considered more authoritative? Why were certain sources included in the text and others excluded? How does the use of these sources reflect or influence the process of decision making within the Talmud?

It is an interest in these broad issues, especially the process of decision-making in the Talmud, that prompted this thesis. However, these broad issues can only be resolved, if indeed they can ever be resolved, through many investigations of a much smaller scope that chip away at the larger facade of the imposing Talmud. This thesis is one such investigation.

The broad goal of this thesis is to show that questions about the process of making halakhah are suggested by the text itself and are not merely imposed upon the text by 20th century students of Talmud with their own agendas. To achieve this goal, we have undertaken an examination of a few specific key phrases that serve as a window for our investigation. Our hope is that this work will highlight inconsistencies in the text that raise doubts about the process of making halakhah and point the way for further study.

Chapter 1

In the setting of the yeshivah, the Talmud has been deciphered according to a byzantine conglomeration of internal rules. Among other things, these rules govern the attribution of anonymous mishnaiyot (most are attributed to Rabbi Meir), the resolution of disputes between contemporaries (the Halakhah is according to Beit Hillel in disputes with Beit Shammai) and the resolution of disputes between sages of different eras. This latter category is governed by one overarching principle: an Amora (post-Rabbi Yehuda Ha-Nasi sages) cannot dispute a Tanna (sages through Rabbi Yehuda Ha-Nasi). This thesis is devoted to an examination of this operating rule of the Talmud.

As applied to the process of halakhic decision making in the Talmud, the rule that an Amora may not dispute a Tanna has far-reaching implications. It enhances the halakhic authority of the Mishnah. It gives weight to the premise that the process of making truly new halakhah ended with the canonization of the Mishnaic text and all that followed is merely commentary and explanation or extension of Mishnaic law.

As integral as this rule is to understanding the halakhic process, it is even more integral to understanding the redactive process by which the Talmud came

into being. The alleged veracity of this rule suggests a number of related issues that are germane to the redaction of the Talmud. Did the Amoraim themselves adhere to such a rule? Or, was this rule imposed upon the Amoraim by a later redactor? Did the Amoraim recognize a distinction between themselves and the Tannaim? In regard to authority, do all Amoraic generations view themselves in the same relationship to the Tannaim, or are later Amoraim more deferential to their Tannaitic predecessors than Amoraim who studied with Tannaim?

These questions imply a hermeneutic, namely, that the Talmud is constructed from a variety of sources, each with a different chronology in relationship to the other, each with a different history and, quite possibly, each with a different halakhic agenda. This hermeneutic has been developed extensively in the work of such modern scholars as Abraham Weiss, Hyman Klein and David Weiss Halivni. Aspects of their work will be discussed below as it relates to this thesis. However, the first step in examining the rule, "an Amora may not dispute a Tanna," is to seek out passages in the Talmud text itself that give rise to the questions we posed above.

Passages that stand in opposition to the rule that an Amora cannot dispute a Tanna exist. These passages can be divided into two categories: sugyot that include the phrase rav Tanna hu' u'falig (Rav is a Tanna and may dispute) and sugyot in which an Amora gives more weight to a beraita than a mishnah.

I. Textual Inconsistencies-Rav Tanna hu u'falig

The phrase Rav Tanna hu u'falig is problematic because chronologically Rav is an Amora.¹ According to the rule, "an Amora may not dispute a Tanna," Rav should not be able to dispute a Tanna. Why is Rav accorded the status of a Tanna?

It is true that Rav may be considered a "border" figure—not quite a Tanna, but not really an Amora. According to his biography, Rav studied with both Rabbi Yehuda ha-Nasi and Rabbi Hiyya.² Yet other students of Rabbi Yehuda ha-Nasi are not accorded the status of a Tanna.

Although the phrase Rav Tanna hu u'falig is a limited phenomenon, there are at least three passages in which it is found: Sanhedrin 83b, Gittin 38b and Ketuvot 8b.³ In the Sanhedrin passage, the discussion concerns the punishment for a non-priest (zar) that eats terumah. The anonymous Talmud cites a beraita which rules that a non-priest who eats terumah is liable for death, while Rav Kahana and Rav Assi cite Rav's opinion that a non-priest who eats terumah is lashed.

¹ Chanokh Albeck, Mavo' l'Talmudim, (Tel Aviv: Dvir Co. Ltd., 1969), p. 170.

² Albeck, pp. 170-171.

³ The phrase tanna hu u'falig also appears in the Talmud. In some cases, the phrase actually refers to a tanna. In other cases, the person to whom this phrase refers is unclear. These instances may warrant further examination beyond the scope of this thesis.

וְדָר שֶׁאֵינֶה
 אֶת הַחֲרָמָה : אִם רַב וְדָר שֶׁאֵינֶה
 הַחֲרָמָה לֹקֵה אִם לִיה רַב כְּדֵנָה וְדָר
 אִם לֹדֵר לִמָּא מִן בְּמִיתָה וְכֵחֵב יֻכַּל
 וְדָר לֹא יֻכַּל קִדְשׁ אֲנִי הוּא מִקְדָּשׁ הַפָּסִק
 הָעֵנִן מִיִּדְבִּי וְאֵלֶּה הֵן שֶׁבְּמִיתָה וְדָר הָאֻכַּל
 אֶת הַחֲרָמָה מִתְּנִיתָ אֲדֹב קָא רְמִית *דָּר
 תָּנָא הוּא וּפְלִיג :

⁴A foreigner {non-priest} that eats terumah... Rav said "A foreigner that eats terumah is lashed."

Rav Kahana and Rav Assi said to Rav, "Why does not the master say {a foreigner that eats terumah} '...is liable for death,' since it is written '...no stranger shall eat of the holy thing (Leviticus 22:10)?

{Rav responds} "I, the Lord, do sanctify them," interrupts the issue.⁵

An objection was raised: "These are that which are liable for death: ...foreigner that eats terumah."

You oppose this teaching {a beraita} against Rav? Rav is a Tanna and may dispute {the teaching of a beraita}.

In this brief passage, there are two attempts to refute Rav's ruling that a non-priest who eats terumah is liable for lashings. First, two of Rav's disciples (Kahana and Assi) propose a refutation based upon the juxtaposition of two Biblical texts in Leviticus. Not only is their semikhut weak, (due to the intervening clause, as Rav points out⁶) but, as a general rule, a disciple may not

⁴ In all translations in this thesis, the following key is used: UPPER CASE=MISHNAH; boldface=beraita; {...}=editorial insertions; (...)=textual citations.

⁵ Kahana and Assi are attempting to use the juxtaposition of Leviticus 22:9-10 to indicate that a non-priest who eats terumah is liable for death, not merely lashing as Rav rules. Lev. 22:9-10 reads: "They shall therefore keep my charge, lest they bear sin for it, and die therefore, if they profane it: I the Lord do sanctify them. No stranger shall eat of the holy thing." Rav is arguing that because the phrase "I, the Lord, do sanctify them," separates the two relevant clauses, a semikhut cannot be used.

⁶ The refutation of Rav Kahana and Rav Assi is not attributed to Rav by name. I attribute it to Rav based upon context, as does the Soncino Translation, Sanhedrin, p. 552.

refute his master. Thus, from the outset, Kahana and Assi have little chance of successfully refuting Rav.

However, the contradictory beraita raised by an anonymous voice presents a more serious challenge to Rav's ruling, especially given the absence of a mishnah on this subject. Based upon the rule that "an Amora may not disagree with a Tanna," an Amora is expected to defer to a beraita unless he can cite either a contradictory mishnah or at least a contradictory beraita. However Rav's ruling, ostensibly the ruling of an Amora, overrules a beraita. So unusual is this situation, that an anonymous voice is compelled to call Rav a Tanna, thus empowering him with the authority to refute a beraita.

A sugya in Gittin 38b suggests even more powerfully that the status of Rav was unique. In this passage, Rav rules that if a man sanctifies a slave for the Sanctuary's use the slave becomes a free man. Neither the slave's body nor his money value becomes sacred property. In other words, the slave's master may not force him to do physical labor in the Temple nor must he contribute his sale worth to the Temple.

Rabbah refutes Rav's view with a beraita, one in which Rabbi Yehuda ha-Nasi espouses a view opposing Rav. Despite this powerful refutation of Rav, the sugya ends with the statement that "Rav is a Tanna and may dispute." Hence, the beraita, for all its "power," is dismissed in the face of Rav's "Tannaitic" status.

אמר רבה אמר
 רב המקדיש עבדו יצא לחירות מאי מעמא
 נפיה לא קדיש לדי לא קאמר דליהי עמי
 קדוש קאמר ורב יוסף אמר רב "המפקד"
 עבדו יצא לחירות מד מקדיש כ"ש מפקד
 מאן דאמר מפקד אבל מקדיש לא דלמא
 לדי קאמר איבעא לה ציד נם שחרור
 א לא ציד ת"ש דאמר רב דזיא בר אבין
 אמר רב איד זה ואיד זה יצא לחירות
 "וציד נם שחרור אמר רבה וסותבין
 אשכעתין המקדיש נכסו והו ביה עבדים
 "אין הגוברין רשאן להוציאן לחירות אבל
 מוכרין אותן לאחרים ואחרים מציאן אותן
 לחירות רבי אומר אומר אני "אף הוא נותן
 די עצמו ויחזא מני שהוא כמסור לו
 מצינ' קא רמח עליה ורב תנא הוא
 ופליג

Rabbah said Rav said: "When one who sanctifies his slave, the slave goes free."

...Rabbah said, "I raise an objection against what I have learned {from Rav, above}: If one sanctifies his property and there were slaves included among them {the property}, the treasurers are not permitted to bring them {the slaves} forth to freedom, but, should sell them to others and others may bring them forth to freedom."

"Rabbi {Yehuda ha-Nasi} said, 'I say he {the slave} gives his own money value and is liberated because it is as if the treasurer {of the Temple} sells him to himself.'"

Do you oppose Rav with this beraita? Rav is a Tanna and may dispute.

Rabbah was a third generation Babylonian Amora. He was neither a contemporary nor a student of Rav. He was however, an Amora of considerable stature and the head of the Academy of Pumbedita.⁷ As Rabbah was active two generations later than Rav, it is not unreasonable to believe that the question of Rav's status would be settled by the time of Rabbah. Clearly, Rabbah himself has no problem quoting a beraita that opposes Rav; at least there is no statement from Rabbah to this effect.

⁷ Albeck, p. 307.

Rabbah's refutation of Rav is based upon Rabbi Yehuda ha-Nasi's refutation of Rav. Yet, despite Yehuda ha-Nasi's seemingly iron-clad refutation of Rav, an anonymous voice says that "Rav is a Tanna and may dispute."

That the phrase "Rav is a Tanna and may dispute," appears after the statement of Rabbi Yehuda ha-Nasi and not after Rabbah's statement is significant. By inserting the phrase in this location, the anonymous voice of the Talmud emphasizes the authority of Rav by equating him with Rabbi Yehuda ha-Nasi.

The phrase, "Rav is a Tanna and may dispute," also appears in Ketuvot 8b. This seemingly innocuous passage is significant not simply for this phrase itself, but because the authority of Rav is juxtaposed to the authority of Rabbi Yohanan.

The debate concerns the inclusion of bridegrooms and mourners into the quorums necessary for the recitation of the bridegroom's and mourner's benedictions respectively. Rav takes the view that bridegrooms are included in the quorum, while mourners are not. An opposing beraita rules that both are included in the quorum. An anonymous voice states that, "Rav is a Tanna and may dispute."

Immediately following this statement, Rabbi Yohanan is quoted as agreeing with Rav. Again, the beraita raised in opposition to Rav is raised in opposition to Yohanan. However, the sugya proceeds at length to refute Yohanan.

א"ר נחמן אמר רב יוחנן
 מן המצין ואין אבלים מן המצין מחיבי חתנים ואבלים מן המצין מתניתא
 קא רמיח עליה דרב *רב תנא הוא ופליג אהמר *אמר ר' יצחק א"ר יוחנן
 חתנים מן המצין ואין אבלים מן המצין מחיבי חתנים ואבלים מן המצין

כי תניא הווא "בברכת המזון כי קאמר רבי
 יוחנן יבשורה

Rav Nahman said Rav said: "Bridegrooms are included in minyan {the minyan needed to recite the benedictions of the bridegroom} and mourners are not included in minyan {the quorum needed to recite the mourner's blessing}.

An objection was raised: "Bridegrooms and mourners are included in minyan."

You oppose Rav with this teaching? Rav is a Tanna and may dispute.

It has been said R. Yizhak said Rabbi Yohanan said, "Bridegrooms are included in minyan and mourners are not included in minyan."

An objection was raised: "Bridegrooms and mourners are included in minyan."

With regard to what was this taught? With respect to birkat ha-mazon. With regard to what did Rabbi Yohanan say this {that bridegrooms are included in minyan and mourners are not included in minyan}? With regard to the line of mourners.⁸

⁸ This is a reference to the "mourners blessing," recited to comfort mourners at the house of mourning. It must be recited in the presence of a quorum. See Megillah 4:3.

Based upon this passage, there can be no doubt that Rav is viewed (at least by the redactor of this sugya) as a more authoritative figure than Yohanan.⁹ The same beraita that presents no challenge to Rav's ruling that bridegrooms are included in the quorum and mourners are not, poses a serious challenge to Yohanan, whose own ruling mirrors that of Rav's verbatim.

It is worth noting at this point, that Rabbi Yohanan himself studied with Rabbi and was the transmitter of a variety of Tannaitic teachings.¹⁰ However, from a chronological perspective, Rabbi Yohanan is unquestionably an Amora.

The status of Rav is called into question by three Talmudic passages: Sanhedrin 83b, Gittin 38b and Ketuvot 8b. Each of these passages suggests a different aspect of the problem.

In Sanhedrin, Rav disputes a beraita, an incident which may be dismissed on the basis of Rav's status as a "border" figure. However, in Gittin, Rav disputes Rabbi Yehuda ha-Nasi's beraita. Rav's contradiction of Rabbi is not easily resolved. Even his status as a "border" figure would not necessarily explain this, because Rav whether a Tanna or an Amora, should not be permitted to dispute with his teacher, Rabbi Yehuda ha-Nasi. Finally, in the passage from Ketuvot, Rav's halakhic authority vis a vis Rabbi Yohanan is underscored with the

⁹ The status of Rabbi Yohanan is the subject of some debate within the Tosafot and the Talmud itself. A more complete discussion of this issue is included later in this chapter.

¹⁰ Albeck, p. 184.

statement that, "Rav is a Tanna and may dispute" the same halakhic issue in which Yohanan—who echoed Rav's ruling—was challenged.

These three passages support the theory that although Rav may not have been a Tanna chronologically, he was in some instances granted the same halakhic authority as other Tannaim. The significance of this notion is that while according to chronology and tradition, the halakhic authority of the Tannaim was granted only to those sages through Rabbi Yehuda ha-Nasi, there is in fact, some evidence to suggest that the halakhic authority of the Tannaim extends at least one-half of a generation beyond Rabbi Yehuda ha-Nasi.

II. Amoraic Sources that favor Beraitot

In general, a mishnah is more authoritative than a beraita. Thus, in terms of resolving disputes between Amoraim, one would expect that the use of a mishnah as a proof-text would outweigh, by virtue of halakhic authority, a contradictory beraita. There are, however, a number of cases in which a beraita, cited by an Amora or anonymous voice, is successfully used to refute a mishnah.¹¹

¹¹ A complete listing of these passages is found in Israel Levi, "Keta'im mi-Mishnat Abba Sha'ul," Mesillot l'Torat ha-Tannaim (Tel Aviv: 1918, rpt., 1960), p. 93, n.1.

One of the more blatant examples of this phenomenon is found in Eruvin 36b. The mishnah in question (found on 36b), concerns the establishment of an eruv in the event two visitors approach a point inside the eruv simultaneously from opposite directions. In the mishnah, R. Yehuda rules that if one of the visitors is the eruv-maker's teacher, a person may go to his teacher. If both visitors are his teachers, a person may go in either direction. Rav overrules this mishnah on the basis of a beraita attributed to R. Yehuda.

ר' יהודה אומר אם היה אחד מהן וכו':
 ורבנן וימצא דניחא ליה בחבריה מפי מרביה
 אומר רב ליתא למתניתין מדתני או דתני
 או ר' יהודה אומר אין אדם מתנה על שני
 דברים כאחד אלא אם (כן) בא רבם למורה
 עירובו למורה ואם בא רבם למערב עירובו
 למערב אבל לכאן ולכאן לא מאי שנא לכאן
 ולכאן דלא *דאין ברירה למורה למערב נמי
 אין ברירה אומר רבי יוחנן וכבר בא רבם
 אודכה ליתא לדאון ממתניתין לא סלקא
 דעתך דהא שמעין ליה לרבי יהודה ולית
 ליה ברירה

R. YEHUDA SAYS, "IF ONE OF THEM WAS..." {the mishnah continues, "...HIS TEACHER, HE MAY GO TOWARD HIS TEACHER, BUT IF BOTH WERE HIS TEACHERS HE MAY GO TO THE LOCATION HE PREFERS."}

And the rabbis?¹² Sometimes it is more pleasing to meet one's colleague than one's teacher.

Rav said, "This mishnaic teaching is not to be applied from what Ayo learned {based upon what Ayo learned}. Ayo learned: R. Yehuda

¹² Prior to this discussion, on this page, anonymous Tannaim suggested that even if only one person is the eruv-maker's teacher, he may still have a choice in which direction to go. This inquiry wants to know how this could be so.

says: 'No man can make a condition concerning two things as one.' {A person cannot make a condition on two events that occur simultaneously.}

"Rather, if a sage came to the east {from the east}, his eruv {will be} to the east and if a sage came to the west {from the west}, his eruv {will be} to the west, but to here and to here {from both directions}, no."¹³

Why is it taught {above} "to here and to here, no?" Because there is {no rule} of beraira.¹⁴

R. Yohanan said: "{This mishnah applies only} when a sage already came {the sage arrived prior to twilight at the start of Shabbat and thereby determined the eruv's direction}."

On the contrary, {say} that which Ayo learned is not to be accepted over a mishnah {rather than accept R. Yohanan's rereading of the mishnah}.

No. You musn't think that {we reject Ayo's teaching} since there is mishnaic evidence that, in fact, R. Yehuda rejects beraira.

This passage includes three relevant points: 1) there is a direct refutation of the mishnah by a named source, Rav; 2) an authority who is clearly an Amora, Yohanan, restructures the mishnah; 3) all statements that fully support the mishnah are anonymous.

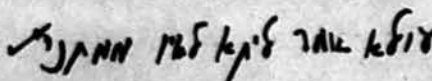
The previous discussion concerning the status of Rav suggests the possibility that Rav may have the authority to refute a mishnah. Yet, in this particular passage, neither an anonymous voice nor a named source finds it necessary to explain that, "Rav is a Tanna and may dispute." This is so because Rav's support rests on Ayo's beraita.

¹³ The problem here is the retroactive establishment of an eruv.

¹⁴ The principle of retroactive selection is called beraira and does not apply to the case of two persons simultaneously approaching an eruv from opposite directions.

Rabbi Yohanan does not directly contradict the mishnah, rather, he rules that the mishnah applies to a different situation—a situation neither raised by the mishnah nor by R. Yehuda in Ayo's beraita. This has the practical effect of supporting R. Yehuda's beraita or, at least equalizing its authority to that of Mishnah.

Although the final statement which immediately follows Yohanan's ruling (the statement begins, "On the contrary, that which Ayo learned...") may be seen as a reversal of Yohanan merely through its juxtaposition, it is an anonymous statement that, in terms of content, seems more directly aimed at Rav. In either case, since both Rav and Yohanan favor the beraita, it is clearly an attempt to contradict their point of view and one that fails, at least for the time being.

Significantly, one third generation Babylonian Amora—Ulla—upholds the Mishnah. In Eruvin 37a, we find the statement:  "Ulla said, 'Ayo's (version) is not to be accepted by virtue of our mishnah.'" Ulla is supporting the Mishnah, in contrast to Rav and Yohanan, both early Amoraim, who are disputing the Mishnah. This conforms to the theory, promulgated in chapter four, that by the third generation a change had taken place with respect to the authority of the Amoraim.

The fact that the statements supporting the mishnah are anonymous is significant, for if, as many modern scholars suggest, the anonymous voice is a post-Amoraic phenomenon, it then is possible to advance the theory that a dispute between Rav or Yohanan and the Mishnah based on a beraita did not become

problematic until the after the Amoraim. Thus, Rav and Yohanan had a much different understanding of their authority vis a vis the Tannaitic sources than did the anonymous voice. This theory would account for the placement of the anonymous support of the mishnah after Yohanan's statement.

In Bava Kama 36a-b, there is another example in which an Amora favors a beraita over a mishnah. This sugya, which covers the better part of two pages, concerns the remuneration of claimants in the event an ox gores a number of other oxen successively.

The mishnah (B.K. 36a) in question offers two methods for paying the claimants. According to Rabbi Meir, compensation should be made to the last claimant first (the owner of the last ox gored). According to R. Simeon, the claimants are paid a sum equal to the value of their gored ox minus the amount one claimant owes to the next. That is, this method is based upon the principle that claimant "a" is responsible for the goring of claimant "b's" ox, claimant "b" is responsible for the goring of "c's" ox, etc.

Two beraitot contradict this mishnah. In one, R. Ishmael suggests that the claimants are paid like any other creditors: the earlier the liability, the prior the claim. However, R. Akiba suggests that the ox becomes common property of the claimant and the defendant. Most of the sugya attempts to reconcile the beraitot of Ishmael and Akiba with the two methods in the mishnah. Finally, Shmu'el rules as follows:

אמר ליה שמאל לרב יהודה *שינא שבוק
מתניתין ורמא בתרא רישא ר' ישמעאל וסמא
ר' עקיבא

Shmu'el said to Rav Judah: "Shinenah {a diminutive name for Rav Judah used by Shmu'el in Berakhot 36a}, forget this mishnah {i.e. its apparent construction} and follow me: The first part {of the mishnah} is according to R. Ishmael, the second part {of the mishnah} is according to with R. Akiba {and not according to a single Tanna's view, as the mishnah seems to say}.

Shmu'el rules that no attempt should be made to reconcile the inconsistencies of the mishnah, rather, the beraitot of Ishmael and Akiba should be followed. This is the first time an Amora other than Rav or Yohanan rules in favor of a beraita rather than a mishnah.

Shmu'el is a contemporary of Rav and thus, might be considered to be a "border" figure, much like Rav. Yet, there is no doubt that Shmu'el, like Rav, was chronologically an Amora.¹⁵ In addition, there is no statement such as, "Shmu'el is a Tanna and may dispute," as there is for Rav. Despite this, the ruling of Shmu'el was permitted to stand and there is no evidence in this passage that a named authority or anonymous voice found Shmu'el's ruling problematic.

The examples in Eruvin 36b and Bava Kama 36b suggest the possibility that certain Amoraim possessed the authority to choose between contradictory mishnaiyot and beraitot. Were these Amoraim aware they were exercising this

¹⁵ Albeck, p. 172.

authority or was this authority granted to them by later generations and/or redactors? Perhaps the Amoraim saw themselves as simply the "next" generation of sages—not the first generation of Amoraim. These texts give weight to the notion that for the early Amoraim at least, there was no distinction between their halakhic authority and the halakhic authority of their predecessors.

III. The Status of Rabbi Yohanan

The Gemara does not specifically refer to Rabbi Yohanan as a Tanna in the same manner it calls Rav a Tanna, i.e., there are no statements to the effect that, "Yohanan is a Tanna and may dispute."¹⁶ However, it emerges in some of the Tosafot, as well as in the commentaries of Maimonides and Nachmanides, that Yohanan should be considered to have an halakhic standing equal to that of some of the Tannaim.

One indication that the status of Rabbi Yohanan is problematic is found in connection with Ketuvot 8b.¹⁷ In this passage, Rav rules that bridegrooms are included in minyan, while mourners are not. A beraita holds that both are included in minyan. The response to this disagreement is, "Rav is a Tanna and may dispute." Rabbi Yohanan agrees with Rav, yet is refuted with the statement

¹⁶ Shraga Abramson, "R. Yohanan Tanna u'falig," Sinai (1989), 185.

¹⁷ The entire Ketuvot passage is reproduced and translated above, pp. 8-9.

that the ruling (bridegrooms are included in minyan, but mourners are not) actually refers to birkat ha-mazon.

One of the ba'alei tosafot comments on the phrase "Rav is a Tanna and may dispute."¹⁸ The Tosafot is attempting to explain the reason a ruling of Rav is allowed to stand, while the identical ruling by Yohanan is refuted.

The Tosafot argue that it was completely acceptable for the Talmud (that is to say, the anonymous voice of the Talmud, although the Tosafot do not use this terminology) to simply say that Rav disagreed with a beraita, while in the case of Yohanan, the absence of the statement, "Yohanan is a Tanna and may dispute," is proof that Yohanan was an Amora. However, the Tosafot then admit that there are places in the Talmud which might give the impression that Yohanan was in fact a Tanna, thus making it necessary for the Talmud (again, the anonymous voice of the Talmud) to emphasize Yohanan's actual status as an Amora by refuting his ruling in Ketuvot 8b.

One such passage is found in Yoma 43b. Here R. Yohanan directly contradicts a beraita; moreover, he refutes a named Tanna, R. Shimon b. Yehozadak.

[¹⁸] תני תנא
קמיה דר' יוחנן כל השומות כשדות בור
חזן משל פרה אמר ליה ר' יוחנן "פוק חני
לברא לא מצע שומה בור פסלה דר'
יוחנן לא מבעיא לחנא ולא ציית אלא
אפי' לדביה לא ציית דאמר ר' יוחנן משם
ר'ש בן יוחנן שומה פרה בור פסלה
ואני אמר כשדה לא מצע שומה שפסלה
בור :

¹⁸ Tosafot, Ketuvot 8b, comment beginning rav tanna hu u'falig.

A Tanna taught before R. Yohanan: "All of the slaughterings by a foreigner {in this instance, zar means an Israelite who is not a priest} are valid except for {the slaughtering of} the red heifer."

R. Yohanan said to him: "Go teach {this} outside, we do not find the slaughtering by a foreigner invalid."

And R. Yohanan did not need to listen to a Tanna, nor did he even listen to his teacher {in this matter}, that R. Yohanan said, "Although R. Shimon b. Yehozadak {ruled} that a slaughtering of a red heifer by a foreigner is invalid, I say it is valid; we do not find a slaughtering by a foreigner that is invalid."

Here, R. Yohanan rejects, outright, the opinion of a beraita even when that beraita is attributed to a specific Tanna, R. Shimon b. Yehozadak. Yohanan's view on this matter is not reversed, even by an anonymous voice. It is not unreasonable to conclude, based solely on this passage, that Yohanan was equal in authority to the Tannaim.

This is, in fact, the conclusion of Shraga Abramson in his article, R. Yohanan Tanna u'falig. Abramson admits that there is not a specific statement that Yohanan is a Tanna. However, Abramson argues that there is a considerable body of evidence in post-Talmudic commentaries that support the notion that Yohanan effectively possessed the halakhic authority of Tanna.¹⁹

Abramson's article does not conclusively prove that Yohanan was a Tanna. Abramson's interest is merely in establishing that there was a tradition that recognized the unique status of Yohanan among the Amoraim. There is more

¹⁹ Abramson, pp. 185-187.

than simply a post-Talmudic tradition. There is also evidence within the Talmud that clearly presents a serious challenge to the premise that Yohanan as an Amora was unable to dispute Tannaim.

IV. Modern Textual Criticism-The Secondary Sources

The interpretation of the aforementioned texts is largely predicated upon the premise that the Talmud text as we know it today reflects the work of an editor or editors and this "editor" is known as the anonymous voice or the stam. That such an anonymous voice exists in Gemara is not in doubt—any cursory reading of the text proves this. However, virtually nothing is known about the origin of this stam material or about the precise sources from which the stam culled the halakhic material that eventually became the Talmud.

One of the most important unresolved issues is the problem of dating the stammaitic material. Is this material post-Amoraic or contemporaneous with the Amoraim? The emerging view among modern scholars is that the stam is possibly a very late Amoraic, but more probably a post-Amoraic phenomenon.

Hyman Klein was one of the first modern scholars to postulate the existence of a post-Amoraic stratum called the Sebara.²⁰ This strata bridged the Amoraic and Geonic periods.

According to Klein, the two major components of any sugya are the Gemara and Sebara. Klein defined the Gemara as the simplest statement and the Sebara as the explanation and interpretation of this statement. The two strata were characterized by linguistic differences: the Gemara was in Hebrew and the Sebara was in Aramaic. Furthermore, Klein observed that most Talmudic questions are posed in Aramaic, while the response is framed in Hebrew. Klein reasoned from this observation that "the response preceded the question, which was constructed afterwards to account for the Amora's interpretation."²¹

Klein further concluded that the Saboraim used a large variety of halakhic and midrashic collections available in developing their interpretations. Klein also surmised that the Saboraim applied the same principles of interpretation to both the Mishnah and Gemara.²²

Klein's theory implies that the Saboraim selected from a vast library of rabbinic literature and added their own interpretations to it. Klein dates this

²⁰ Terry R. Bard, "Julius Kaplan, Hyman Klein, and the Saboraic Element," in The Formation of the Babylonian Talmud, ed. Jacob Neusner (Leiden: E.J. Brill, 1970), p. 68. Henceforth, known as "Neusner."

²¹ Neusner, p. 69.

²² Neusner, p. 72.

selection process to the time of R. Ashi, which he claims is a time of both Amoraic and Saboraic activity. The Saboraic period ended by the sixth century.²³

Like Klein, Abraham Weiss also proposes that the Talmud is composed of various strata, but Weiss offers a more specific chronology for the development of these strata. According to Weiss, there is a stratum from the students of R. Yehuda, a large, homogeneous stratum from Rava and Abaye, as well as later strata.²⁴ Like Klein, Weiss believes in the existence of the Saboraim—indeed according to Weiss, the beginning of virtually every tractate is Saboraic. However, this material was eventually absorbed into either the Talmud itself or various Geonic halakhic collections.²⁵

More recently, Shamma Friedman defines three stratum: Amoraic, anonymous material and late glosses.²⁶ The anonymous material, according to Friedman, interprets the Amoraic strata and must be, therefore separated from the Amoraic strata in order to understand the Amoraic strata on its own terms.

²³ Neusner, p. 74..

²⁴ Shama Kanter, "Abraham Weiss: Source Criticism," in Neusner, p. 90.

²⁵ Neusner, p. 91.

²⁶ Shamma Friedman, "A Critical Study of Yevamot X With a Methodological Introduction," ed. H.Z. Dimitrovsky, Texts and Studies Analecta Judaica, Vol. 1 (New York: Jewish Theological Seminary, 1977), summary of article in unpaginated English section. Henceforth, known as "Friedman."

Friedman argues that any contradictions in the Amoraic texts were not part of the original, but were later editorial additions.²⁷

The idea that textual contradictions were later additions to the text is in concert with the thinking of David Weiss-Halivni. Weiss-Halivni attempts to separate original, Talmudic "source" material from the "traditions" that reflect a revision of the original.²⁸ Yet, Weiss-Halivni goes beyond Friedman's assertion, arguing that the major problem in Talmudic analysis was not simply contradictory sources, but rather the presence in the text of forced interpretations, which were also later additions.

Weiss-Halivni suggests that most of the changes in the original sources stemmed from the mistakes of the professional reciters, who were responsible for the oral transmission of all received traditions. As inconsistencies arose, subsequent generations attempted to "correct" the sources. Ultimately, this process led to the "forced interpretation" that is problematic for Weiss-Halivni. The need for this "forced interpretation," argues Weiss-Halivni, was "their (the authors of these interpretations) strong desire to eliminate legal disagreement among sources. Legal disputes were generally sources of difficulty, as they impeded legal decision and undermined the doctrine that no Amoraic disciple ever rejected older, more authoritative teaching."²⁹

²⁷ Friedman, in unpaginated English summary.

²⁸ Robert Goldenberg, "David Weiss Halivni, *Megorot umesorot*," in Neusner, p. 135.

²⁹ Neusner, p. 136.

V. Applying Modern Scholarship to the Texts

This chapter examined a significant body of evidence that is inconsistent with the Talmud's own internal rules that govern the process of halakhic decision making. This evidence falls into three categories: 1) passages that question the status of Rav, 2) passages that question the status of R. Yohanan and 3) passages in which an Amoraic source gives more weight to a beraita than a mishnah. All three of these groups of problematic texts undermine the premise that an Amora may not dispute a Tanna.

Traditionally, Rav has been classified as an Amora. However, in at least three passages he is explicitly called a Tanna. In all of these passages the phrase Rav Tanna hu' u'falig is used to justify Rav's refutation of a beraita and, in at least one case (Gittin 38b), his direct refutation of Rabbi Yehuda ha-Nasi. Even Rav's status as a "border" figure, an authority that bridges the Tannaitic and Amoraic eras, does not explain this inconsistency.

Although in Ketuvot 8b, R. Yohanan is ultimately refuted despite the fact he uses the same argument as Rav in an attempt to dispute a beraita, one of the ba'alei tosafot suggests that his status as an Amora was in doubt. The modern scholar, Shraga Abramson, suggests that while there is no explicit statement in the text to the effect that, "R. Yohanan is a Tanna," there are a number of passages in which Yohanan acts with the authority of a Tanna.

Finally, we examined a variety of texts in which Amoraic sources favored a beraita in choosing between contradictory beraitot and mishnaiyot. According to tradition, by the time of the Amoraim, the authority of the Mishnah was well-established; thus no Amora should be able to choose a beraita, a less authoritative source, over a mishnah.

In terms of modern scholarship, the theory advanced by a number of thinkers that the Talmud reflects the editorial hand of a post-Amoraic redactors, the Saboraim (or, as some prefer, the stammaim), is based, in part, upon the very inconsistencies raised in this chapter. Without this theory, these inconsistencies are merely part of the seemingly convoluted structure of the Talmud. However, this theory helps structure the chaos of contradictory opinions and inter-generational conflicts. When the template of the Saboraic editor is imposed upon the Amoraic Gemara, it becomes possible to infer that the distinction between Amoraim and Tannaim evolved over the course of several generations, as opposed to the traditional view that the line between the two groups of sages was drawn at the chronological nexus of their respective periods.

The existence of the Saboraic, or as some prefer, the stammaitic editor, is based in large part upon the idea that Aramaic technical terms, usually anonymously introduced, are the evidence that a late-Amoraic or Saboraic redactive process took place. Only a detailed examination of precisely these terms can begin to unlock the complexities of that process.

Chapter 2

The text of the Talmud is well-suited for philological study. In fact, technical terms, properly interpreted, are the key to understanding the text even on its most basic level. In addition to illuminating the plain meaning of the text, technical terms also provide modern scholars a convenient window through which to approach the critical study of the Talmud. Abraham Weiss, among others, was a leading proponent of this method.¹

The problem itself—an Amora disagreeing with a Tanna—suggests an approach to the use of technical terms. Although a number of terms imply disagreements, only a few terms explicitly point to disputes. Mei-tei-vei is one such term. In order to narrow the scope of the investigation to a level appropriate for this thesis, the examination of technical terms is restricted to Berakhot.

¹ Neusner, p. 88.

I. Mei-tei-vei-Background

Mei-tei-vei is a grammatical derivative of the Aramaic root מ'ת. The root is commonly found in Gemara in three different forms: teyuv-ta', mei-tei-vei, and 'ei-tei-vei-h. The usage of this root in these forms is restricted to Gemara.

Teyuv-ta is a direct refutation, based upon a clear proof. It is commonly used in disputes between Amoraim and Tannaim in those instances when an Amora is overruled by a Tanna. This effectively supports to the rule that an Amora may not disagree with a Tanna. Therefore, for obvious reasons, we will not examine this form of the root in this thesis.²

'Ei-tei-vei-h indicates an objection raised by an individual, usually a named sage. It appears most commonly among Amoraim. The textual problems, if any, which this term suggests can generally be resolved with great accuracy because the term is used by a named authority. Thus we can place the issues into a specific context and time.

Mei-tei-vei introduces an objection that ostensibly several authorities raise. Almost invariably, it is an anonymous objection. In general, Mei-tei-vei introduces either a beraita or a mishnah that contradicts the ruling of an Amora.

The premise that anonymous, Aramaic material is evidence of a post-Amoraic or Saboraic redactor might suggest that mei-tei-vei is an editorial

² It would, however, be worthwhile to determine if the refutation suggested by teyuv-tah is actually upheld in the text or if in the final analysis the refutation is overruled—in effect an Amora successfully disputing a Tanna.

insertion from that period. Thus a contradiction raised against a Amora from a Tannaitic source, such as the type introduced by mei-tei-vei, becomes a post-Amoraic phenomenon. Therefore, the resolution of such a conflict has significant implications for the "rule" that an Amora cannot dispute a Tanna.

The term mei-tei-vei is used 27 times in Berakhot. Of these, a number of usages are irrelevant to this discussion. In these instances, the objections raised are based upon Biblical verses, revolve around aggadic passages, or are concerned with disputes between two Amoraim. Of the remaining 15 usages, only the most outstanding examples have been chosen for inclusion in this thesis.³

II. The Resolution of Mei-tei-vei

There are three possible resolutions to any dispute in the Talmud. First, the ruling of the disputed party may be upheld. Second, the ruling of the disputed party may be overturned in favor of the disputing party. Finally, the dispute is permitted to stand without any definitive resolution.

An examination of the salient usages of mei-tei-vei in Berakhot reveals another alternative: the explanation that there actually is no contradiction. This type of resolution has two basic forms: 1) a statement that the text is misread or improperly quoted or 2) a direct statement of lo kashya—"there is no contradiction."

³ For a complete list of the 15, see Appendix, p. 77.

The lo kashya resolution is the most common resolution to a contradiction raised in "mei-tei-vei-form" in Berakhot. It is a subtle resolution that often appears as no resolution at all. Conversely, the statement that the text is misread or improperly quoted is rather blatant, almost crude, for such a statement leaves little room for response. Instead, this form of resolution attributes a dispute to differences in understanding a ruling or applying a ruling to a particular situation. Such a statement cannot logically be refuted, whereas a lo kashya statement can be refuted, or at least a refutation can be offered on the basis of inference and deduction.

III. A Misread or Improperly Quoted Amoraic Text

In Berakhot 15b, there is a discussion about the inaudible recitation of the Shema. The mishnah (Berakhot 15a) is quite clear: a person who recites the Shema inaudibly has performed his obligation to recite Shema. The mishnah records the opposing opinion of R. Yose, who rules that such a person has not performed his obligation to recite Shema.

Rav Joseph, a third generation Babylonian Amora, suggests that the difference between Yose and the Tanna Kama applies only to the recitation of Shema, not to the recitation of other berakhot. Joseph rules that for other berakhot, someone who has recited inaudibly has not performed his obligation. A

beraita is raised against Joseph that states that someone who has recited birkat ha-mazon inaudibly has performed his obligation.

אמר רב יוסף מחלוקת בק"ש אבל בשאר מצות דברי הכל
לא יצא דכתיב 'הסכת ושמע ישראל' מתיבי לא יכרך אדם ברכת המזון
בלבו ואם בירך יצא אלא אי ארמך הכי ארמך אמר רב יוסף מחלוקת בק"ש
דכתיב שמע ישראל אבל בשאר מצות דברי הכל יצא דכתיב הסכת ושמע
ישראל הווא ברברי תורה כתיב :

Rav Joseph said: "The disagreement {about reciting the Shema inaudibly in the mishnah, Berakhot 15a} concerns the recitation of Shema {only}, but concerning the remaining mitzvot, all agree that one does not fulfill his obligation {if he recites inaudibly}, as it is written, 'Take notice and hear, Israel...' (Deuteronomy 27:9)."

An objection was raised {mei-tei-vei}: A man should not bless birkat ha-mazon silently, but if he blesses {thusly}, he has fulfilled {the mitzvah of reciting birkat ha-mazon}.

Rather, if this was said {Rav Joseph's statement}, it was said like this, "Rav Joseph said, 'The disagreement {about reciting the Shema inaudibly in the mishnah, Berakhot 15a} concerns the recitation of Shema {only}, but concerning the remaining mitzvot, all agree that one does fulfill his obligation {if he recites inaudibly}.'"

But is it not written, "Take notice and hear, Israel?" That concerns words of Torah {only}.

There can be no doubt that the beraita introduced by mei-tei-vei directly refutes Rav Joseph. Joseph rules that all berakhot except for the Shema must be performed audibly in order to be valid, while the beraita rules that it is not necessary to recite other berakhot, in this case birkat ha-mazon, audibly in order to fulfill one's obligation.

This conflict is solved using the Aramaic phrase 'i 'itamar, hakhi 'itamar: "if it was said, it was said like this..." This resolution, inserted by an anonymous source, sidesteps the entire dispute by claiming that Rav Joseph said something other than that which was directly attributed to him. There is no indication from Rav Joseph's statement that Joseph himself found his own statement problematic. It is not possible to know if Joseph was aware of the contradictory beraita, however it is clear from his statement that he was aware of the dispute concerning the recitation of various berakhot inaudibly. It is also clear that he felt justified in interpreting or extrapolating from the mishnah.

The source of the objection cannot be definitively determined. According to the premise that Aramaic indicates a post-Amoraic source, it is possible to infer that this mei-tei-vei has been inserted by such a source. At the very least, the objection is post-Rav Joseph, which already places it into the fourth Amoraic generation.

Despite the paucity of hard evidence, it is not unreasonable to surmise that Rav Joseph was aware of existing beraitot that contradicted his opinion, but felt able to make a contradictory ruling. That is, he was unaware of the rule that an Amora cannot dispute a Tanna. The dispute between R. Joseph and a beraita became problematic for a late Amoraic or post-Amoraic source for whom the rule that an Amora may not dispute a Tanna was a guiding principle. This led to a revision of R. Joseph's memra by the stam. This tentative conclusion relies heavily upon the theories of modern scholars who postulate the existence of a

post-Amoraic redactor. However, it is completely reasonable to believe that an Amora the stature of Rav Joseph, the student of Yehuda and teacher of Abaye, would be aware of large collections of beraitot, especially regarding an issue as significant as the recitation of Shema and birkat ha-mazon. The alternative is to accept the idea that Rav Joseph was aware that an Amora could not dispute a Tanna. If that is true, one must also accept the idea that, in this example, Rav Joseph was not aware of any contradictory beraitot, a less likely possibility.

Berakhot 10b

Another instance in Berakhot 10b also reflects the practice of altering a memra in order to reconcile the contradiction. In this example, Rav Hisda cites Mar 'Ukva in the matter of reciting the Shema later than at its required time. Mar 'Ukva says a person who recites Shema late omits the benediction yozeir 'or prior to the Shema; the mishnah rules that such a person does not omit any of the benedictions surrounding the Shema. A beraita is raised against Mar 'Ukva that supports the mishnah. The stam then asserts Mar 'Ukva actually said something else entirely. At the end of this passage, Mar 'Ukva is in complete agreement with the mishnah and beraita.

הקרא

מכאן ואילך לא הפסיד : אמר רב חסדא אמר מר עוקבא ובלבד שלא יאמר יוצר או מיתבי הקרא מכאן ואילך לא הפסיד כאדם שהיה קורא בתורה אבל מברך הוא שתיים לפניו ואחת לאחריה חזיבא דרב חסדא חזיבא איכא דאמרי אמר רב חסדא אמר מר עוקבא מאי לא הפסיד שלא הפסיד ברכות תניא נמי הכי 'הקרא מכאן ואילך לא הפסיד כאדם שקרא בתורה אבל מברך הוא שתיים לפניו ואחת לאחריה

**THE ONE WHO RECITES THE SHEMA HENCEFORTH,
DOES NOT LOSE.**

Rav Hisda cited Mar 'Ukva who said: "Provided he does not recite 'yozeir 'or'."

An objection was raised {mei-tei-vei}: The one who recites the Shema henceforth does not lose. He is similar to a man who reads Torah, but he says two before and one after.

This refutation of Rav Hisda is a refutation.

There are those who said that Rav Hisda {actually} said Mar 'Ukva said: "What is meant by 'he does not lose?' He does not lose the benedictions {before and after the Shema}."

It was also taught thus {in a beraita}: The one who recites henceforth does not lose; he is as one who reads Torah, but he blesses twice before and once after it.

Despite statements to the contrary by the stam, Rav Hisda does not agree with the mishnah. The mishnah states, unambiguously, that a person who recites Shema later than its appointed time does not omit any benedictions. Rav Hisda states that such a person omits the 'yozeir 'or', one of the benedictions that precedes the Shema.

In this passage, the anonymous voice of the Talmud is itself rather ambiguous. There is the Aramaic statement that the beraita raised by the mei-tei-vei is a refutation of Rav Hisda. This would seem to resolve the dispute. However, the stam goes further, because the very next statement is the Aramaic phrase 'eika' de'amrei, "there are those that said..." This statement introduces an entirely different reading of Hisda's citation of 'Ukva, a reading that is completely in concert with the mishnah and beraita. Thus, a passage that begins with Rav Hisda disputing a mishnah, ends with Rav Hisda agreeing with the mishnah, even

though Hisda himself does not concede the point. Instead, the stam provides the vehicle for the reconciliation.

As was the case in Berakhot 15b, we cannot determine with any certainty that Rav Hisda knew of a contradictory beraita. However, in this example, unlike Rav Joseph, Hisda undoubtedly knew of the mishnah and he disagreed with it. In Hisda's defense, he cited Mar 'Ukva, who was a contemporary of Rav and belonged to the group of sages that straddled the Tannaitic and Amoraic periods. Regardless, the evidence against him is considerable: both a mishnah and a beraita oppose him on this issue. In spite of this, he is not simply refuted with the statement teyuvta'. Instead, the stam cites a totally different rendering of the Hisda-Mar Ukva source in such a way as to make it appear as though he and Mar 'Ukva were in complete agreement with the mishnah.

Berakhot 41a

In Berakhot 41a, yet another Aramaic technical term resolves the contradiction introduced by mei-tei-vei. In this discussion, the debate revolves around the proper benediction to recite when several varieties of food are on the table. There is a disagreement in the mishnah (Berakhot 40b). R. Yehuda rules that one of the seven species enumerated in Deuteronomy 8:8 takes precedence, while the Sages rule that whichever food one prefers takes precedence. 'Ulla rules that where the blessings are different, it is necessary to bless each variety. A beraita introduced by mei-tei-vei rules that even when blessings are different, as in the case of radishes and olives, one blessing may cover both. An Aramaic

technical term, hakha' bema' askinan, "with what are we dealing?", partially resolves the issue and provides a means for ignoring 'Ulla's ruling without overturning it completely.

היו לפניו מנין הרבה כו' : אמר עולא
מחלוקת בשברכותיהן שוות דרבי יהודה
סבר "מן שבעה עדיף ורבנן סברי מן חביב
עדיף אבל בשאין ברכותיהן שוות ד"ה
מברך על זה וחזור ומברך על זה מתיבי
היו לפניו צנן וזית מברך על הצנן ופוסק
את הזית הב"ע כשהצנן עיקר

THERE WERE SEVERAL VARIETIES BEFORE HIM...{R. YEHUDA SAYS THAT IF THERE IS AMONG THEM SOMETHING OF THE SEVEN KINDS, HE MAKES THE BLESSING OVER THAT, BUT THE SAGES SAY THAT HE MAY MAKE THE BLESSING OVER ANY KIND THAT HE PLEASES; Berakhot 40b.}

'Ulla said: "There is a disagreement concerning blessings that are equal. Rabbi Yehuda holds that one of the seven takes precedence. The Sages hold that which is liked {better than the other varieties} takes precedence. However, concerning blessings that are not equal, all agree one blesses on this one and returns and blesses on another {until all the different varieties are blessed}.

An objection was raised: There were put before him a radish and an olive. A blessing over the radish exempts the olive. {The olive is one of the seven species enumerated in Deuteronomy 8:8; the radish is not.}

With what are we dealing? {With a situation in which} the radish is the main dish.

'Ulla, a third generation Babylonian Amora, interprets the mishnah by claiming the dispute over precedence applies only in the event the blessings over the food were equal. The beraita introduced by mei-tei-vei presents a problem for 'Ulla's ruling because a radish and an olive do not have equivalent blessings, in fact the olive is one of the seven species and the radish is not. Yet, a blessing over the radish, according to the beraita, exempts the olive. This is a direct refutation of R. Yehuda's ruling, as well as a refutation of 'Ulla's ruling. According to 'Ulla, it would be necessary to recite a benediction for both the radish and the olive.

The resolution introduced by the Aramaic technical term hakha' bema'i 'askinan permits the ruling of 'Ulla to stand; the rest of this sugya deals with the contradictory beraita as it relates to R. Yehuda's ruling. At no point is the ruling of 'Ulla overturned. The discussion of his ruling ends with the resolution of hakha' bema'i 'askinan.

In Berakhot 41a, the technical term "with what are we dealing?" permits the ruling of an Amora to stand alongside a contradictory beraita by claiming the beraita actually applies to a different circumstance. This has the same practical effect as the resolution in the previous two passages in which contradictions between Amoraim and beraitot were also permitted to stand.

In all three of the preceding examples, the contradictions and their resolutions were introduced by Aramaic technical terms. In all three examples, Amoraim—no later than third generation Amoraim—disputed Tannaitic sources

and in all three examples, only the anonymous voice of the Talmud, the stam, attempted to resolve, eliminate or gloss over the conflicts.

IV. The Use of lo kashya' to reconcile mei-tei-vei

The Aramaic technical term lo kashya, "there is no contradiction," is the most commonly used method of reconciling a contradiction that is introduced by mei-tei-vei in Berakhot. Its frequent use suggests the possibility that this term may be worthy of more detailed study and indeed, the succeeding chapter examines uses of the phrase lo kashya' not connected with mei-tei-vei. However, this section is concerned only with the use of the term as a method for resolving the mei-tei-vei.

Two distinct applications of this technical term emerge. One form of lo kashya' permits two seemingly contradictory statements, one Amoraic, the other a bəraitā, to stand. Another form of lo kashya attributes the two contradictory rulings to two different circumstances, separate from the situation under discussion.

Berakhot 32b

An example of the first type of lo kashya' appears in Berakhot 32b. This passage discusses the mishnah on Berakhot 30b which rules that one should not interrupt the Tefila even to greet a king. Rav Joseph rules this mishnah applies only to Jewish kings. For non-Jewish kings, a person may interrupt the recitation

of the Tefila. Mei-tei-vei introduces a contradictory beraita that rules a person should shorten but not interrupt the Tefila even for robbers who, like gentile kings, may endanger one's life if ignored in favor of prayer. The lo kashya evades the issue through a subtle interpretation that permits both the ruling of the beraita and the ruling of Rav Joseph to stand.

אפילו המלך שואל
 בשלום לא ישיבנו: אמר רב יוסף לא שנו אלא למלכי ישראל אבל למלכי עכו"ם פוסק מתיבי
 'המחפלא וראה' אנס בא כנגדו ראה קצין בא כנגדו לא דא מפסיק אלא מקצר ועולה לא קשיא
 דא 'דאפשר לקצר' (*יקצר ואם לאו פוסק)

**EVEN IF THE KING INQUIRES REGARDING HIS WELFARE
 {DURING THE RECITATION OF THE TEFILA}, DO NOT RESPOND
 TO HIM.**

Rav Joseph said: "This is taught only for kings of Israel {Jewish kings}, but for non-Jewish kings, he may interrupt {his prayer}.

An objection was raised {mei-tei-vei}: One who is praying {the Tefila} and sees a robber or a wagon coming toward him may not interrupt {the recitation of the Tefila}. Rather {he should} shorten {the prayer} and move away.

There is no contradiction {lo kashya, between Rav Joseph's ruling and the beraita}. If it is possible to shorten, one shortens. If not, one interrupts.

Since the mishnah does not specify the type of king, Jewish or non-Jewish, at the very least, Joseph is interpreting the mishnah. Regardless, the beraita raised by mei-tei-vei directly refutes Rav Joseph since it rules that in the event a robber or wagon—both dangerous and life threatening—approaches it is possible to abbreviate the recitation of the Tefila. The text implies this scenario is analogous

to the non-Jewish king inquiring about a person's welfare insofar as failure to respond appropriately would endanger the worshipper's life.

According to the rule that an Amora may not dispute a beraita, the beraita should overrule Rav Joseph. However, the resolution introduced by lo kashya' permits both rulings to stand. That is, if one cannot follow the beraita, one should follow Rav Joseph's opinion.

As in previous examples, the use of Aramaic technical terms to introduce anonymous statements is significant. Without the objection and subsequent resolution introduced by the two Aramaic technical terms mei-tei-vei and lo kashya', a dispute exists between an Amora, Rav Joseph and a beraita. In the final analysis, however, the mishnah, Rav Joseph and the beraita all appear to function harmoniously with one another.

Once again, there is a tension between the early Amoraim (through at least the third generation) and the late-Amoraic/post-Amoraic redactor suggested by modern scholars and indicated in the text by the presence of Aramaic technical terms. On the one side are the Amoraim such as Rav Joseph who maintain a dialogue with the Tannaitic sources, who dispute with, contradict and freely interpret the rulings of beraitot and the Mishnah. On the other side are the late/post-Amoraic editors who resist disputes between Tannaitic and Amoraic sources and attempt to reconcile problematic passages.

Berakhot 33b

In the second form of lo kashya, contradictory statements are resolved by applying them to different situations. For example, in Berakhot 33b, R. Zeira' rules that repeating the Shema is similar to repeating 'we give thanks' (modim, modim). Concerning one who makes the latter liturgical error, the mishnah at Berakhot 33b rules that we should silence the person. However, a contradictory beraita introduced by mei-tei-vei rules that a person who repeats the Shema is blameworthy, but is not silenced. This ruling contradicts R. Zeira'. The resolution that is introduced by lo kashya applies R. Zeira's ruling to one circumstance and beraita's ruling to another circumstance.

מדיים מדיים משתקין אותו : אמר ר' זירא "כל
האומר שמע שמע כאומר מדיים מדיים דמי מתיבי הקרא את שמע וטפלה דרי זה מגונה מגונה
הוא דדוי שתוק לא משתקין ליה לא קשא דאמר מילתא מילתא ותגי לה דאמר פסוק
פסוק ותגי ליה

{THE ONE WHO SAYS}... 'WE GIVE THANKS, WE GIVE THANKS,' SILENCE HIM.

R. Zeira' said: "All who say 'Shema, Shema,' are similar to those who say, 'We give thanks, we give thanks.'"

An objection was raised {mei-tei-vei}: The one who recites the Shema and repeats it, behold this is blameworthy. He is blameworthy, but we do not silence him. {Hence, the beraita contradicts R. Zeira's ruling.}

There is no contradiction {lo kashya}. In one {the beraita, which ruled that someone who repeats the Shema is reprehensible but not silenced} he says each word and repeats it; in the other {R. Zeira', who ruled someone that repeats the Shema is silenced}, he says each verse and repeats it {and in doing so, appears to address two gods}.

R. Zeira' is a third generation Palestinian Amora. In this passage, he stands in direct opposition to a beraita. However, the resolution introduced by the Aramaic technical term, lo kashya' manages to reconcile these two simple, unambiguous, but contradictory, statements by applying each to a different circumstance. This resolution is characterized by the use of the formula ha'...v'ha'... "one applies to this and the other applies to that." This formula, like both mei-tei-vei and lo kashya' is in Aramaic, lending credibility to the idea that the entire statement of contradiction and its resolution represent the work of one editor. Neither Zeira's ruling nor the beraita suggests the possibility of this or any solution. It is only the anonymous voice of the Talmud that brings order to the chaos of dispute contained within this passage by using the Aramaic formula, "mei-tei-vei...lo kashya'...ha'...v'ha'..." which resolves the dispute.

Berakhot 29a

Precisely the same Aramaic formula is used to resolve the contradiction in Berakhot 29a. This passage discusses mistakes in reciting the intermediate benedictions of the Tefila. R. Tanhum citing R. Assi rules that if one errs during the recitation of the birkat ha-shanim, the petition for a fruitful year which includes seasonal requests for rainfall, it is not necessary to repeat it. A beraita cited in the mei-tei-vei form rules the person must repeat this benediction if he errs during its recitation. The lo kashya' formulation reconciles the contradictory rulings by applying one ruling to individual prayer and the other to public prayer.

אין תנחום אמר רב אסי מעה ולא הזכיר גבורות נשמים בתחיית המתים מחזירין אותו שאלה
בברכת השנים אין מחזירין אותו מפני שיכול לאומרה בשומע תפלה והבדלה בתנן הדעת אין מחזירין אותו
מפני שיכול לאומרה על הכוס מתיבי "מעה" ולא הזכיר גבורות נשמים בתחיית המתים מחזירין אותו
שאלה בברכת השנים מחזירין אותו והבדלה "בתנן הדעת" אין מחזירין אותו מפני שיכול לאומרה על הכוס
ליקרא בידוד הא בצבור בצבור

R. Tanhum said R. Assi said: "One who makes a mistake and does not mention the "miracle of rain" in the "resurrection of the dead," he is turned back {he must repeat the prayer}; {if he does not mention} the request in the "blessing of the years," he is not turned back because he can say it in "that listens to prayer," and {if he did not mention} havdalah in "Grantor of knowledge," he is not turned back because he can say it over the cup {of wine}."

An objection was raised {mei-tei-vei}: One who makes a mistake and does not mention the "miracle of rain" in the "resurrection of the dead," he is turned back; {if he does not mention} the request in the "blessing of the years, he is turned back; and {if he does not mention} havdalah in "Grantor of knowledge," he is not turned back because he can say it over the cup {of wine}.

There is no contradiction {lo kashya'}. One {the statement in which a person is turned back} refers to an individual, the other {the statement in which a person is not turned back} refers to public prayer with a congregation.

R. Tanhum and the beraita differ on only one point: Tanhum rules that one who omits the request for rain in the "blessing of the years" need not repeat the benediction; the beraita rules such a person must repeat the benediction. The ruling of Tanhum and the beraita are almost identical; in fact they differ by exactly one word--'ein. There is no hint in either statement that one refers to the prayer of an individual and one refers to the public prayer with a congregation. However, the stam provides the resolution through the use of the Aramaic formula, mei-tei-vei...lo kashya'...ha'...ha'...

V. Conclusions Concerning the resolution of mei-tei-vei

In six separate examples, the Aramaic technical term mei-tei-vei was used by the stam to introduce a Tannaitic contradiction of an Amora. All six contradictions were resolved using one of several Aramaic formulas, again, introduced by the stam. Finally, there was not a single instance in which the opinion of the Amora was directly overturned. Instead, in all six passages the opinion of the Amora was permitted to stand. It is true, that in some cases, the stam, through the use of Aramaic formulations, made it appear as though the Amora agreed with the mishnah or beraita. However, at the very least, the version of the Amora's ruling revised by the stam was permitted to stand alongside the contradictory beraita or mishnah.

Furthermore, there is no evidence to indicate that any of the Amoraim involved in these disputes was aware of any rule prohibiting an Amora from disputing with a Tannaitic source. Not a single Amora reversed himself when confronted with contradictory evidence, which lends credibility to the notion that such evidence was presented after the ruling. Otherwise, one would expect that at least in some cases an Amora would respond directly to the contradiction or give a signal that he deferred to the more authoritative ruling of a beraita or mishnah.

At least in Berakhot, this phenomenon appears limited to Amoraim through the third generation. The pattern of mei-tei-vei followed by a resolution is not used in connection with any of the late Amoraim. An investigation into the

use of this term through the Talmud would be necessary to reveal if this is statistically significant, but even the limited occurrence in this tractate is worth considering.

Possibly, the third Amoraic generation marked a turning point in the authority of sages. Perhaps Amoraim through the third generation viewed themselves as authoritative as true Tannaim. In the fourth, fifth and sixth Amoraic generations, the idea that an Amora could not dispute a Tanna began to take root. Finally, in the post-Amoraic or Saboraic period, the idea had become so powerful that the Saboraim could not permit disputes between Amoraim and Tannaim to stand without comment or resolution.

This is, of course, mere conjecture at this point. However, this chapter does examine a preponderance of evidence that, at the very least, strongly suggests the possibility of such a theory. The examination of mei-tei-vei in this chapter also suggests that the technical term lo kashya merits further investigation as this term is the single most frequently used term to resolve conflicts between an Amora and beraita.

Chapter 3

The Aramaic technical term lo kashya is commonly and accurately translated "there is no contradiction." The word kashya is a derivative of the Aramaic root 'ep. Like mei-tei-vei, the use of lo kashya is restricted to Gemara. The root is also found in its positive form, kashya, meaning contradiction or difficulty. In contrast to lo kashya, kashya is often found without a resolution.¹

As a rule, the term lo kashya always follows a dispute and introduces its resolution. Although the phrase is generally presented anonymously, there are a few instances in which a named authority uses the term; two of these passages will be examined below.

There are 50 occurrences of the phrase lo kashya in Berakhot. Approximately 23 of these passages resolve disputes between Amoraim, are used to explain contradictions within a single text or are used in primarily midrashic passages. Consequently, these passages are not relevant to our discussion.

In virtually every one of the remaining usages, the contradiction that gives

¹ For this very reason, kashya might warrant an examination of its own to determine the precise situations in which a contradiction is permitted to stand.

rise to the term lo kashya' is resolved by one of two methods: competing statements are 1) applied to different circumstances, or 2) attributed to different authorities.² Interestingly, the most obvious resolution, choosing one statement while refuting another, is apparently not an option, at least in Berakhot. In every one of these passages, both contradictory statements are permitted to stand. Clearly, one function of the technical term lo kashya' is to permit two contradictory statements to stand side by side.

Although the notion that lo kashya' permits two contradictory statements to exist side by side may seem to be self-evident, two other characteristics of the technical term lo kashya' have emerged from our investigation that point to a more significant phenomenon. First, in a large number of passages, lo kashya' is used in sugyot in connection with relatively late (third generation or later) Amoraim. Second, in many passages lo kashya' is used to resolve disputes between two Tannaitic sources and an Amoraic interpretation. In combination, these two phenomena give credibility to some of the modern theories concerning the redaction of the Talmud, specifically the notion that Aramaic signals a late-Amoraic or post-Amoraic insertion. A corollary to this theory is the idea that these late insertions are, in effect, "resolving" conflicting opinions that had simply been allowed to exist prior to the third Amoraic generation. Although it is not possible to extrapolate these theories beyond Berakhot, the dominance of these characteristics would seem to preclude their merely being coincidental

² For a complete list of relevant citations in Berakhot, see Appendix, p. 77.

occurrences.

I. Contradictions Resolved by Application of Statements to Different Circumstances

In the first type of lo kashya' resolution, contradictory statements are resolved by applying each one to a different circumstance or scenario. This use of lo kashya' appears in its simplest form in Berakhot 8a. In this brief sugya, R. Hiyya b. Ammi, an Amora, cites his teacher, 'Ulla (also an Amora). 'Ulla rules that a person should always live in the same place as his teacher. An opposing beraita rules that a person should not live in the same place as his teacher. The resolution introduced by lo kashya' applies the statement of 'Ulla to a person who is submissive to his teacher and the beraita to a person who is not submissive to his teacher.

ואמר רבי חייא בר אמי משמיה דעולא לעולם ידור אדם במקום רבו שכל זמן ששמעי בן גרמ קיים לא נשא שלמה את בת פרעה והתנאי אל ידור לא קשיא הא דכייף ליה הא דלא כייף ליה:

Berakhot 8a

R. Hiyya b. Ammi cited 'Ulla: A man should always live in the same place as his teacher, because as long as Shime'i b. Gera lived, Solomon did not marry the daughter of Pharaoh {out of respect for his teacher}.

But has it not been taught {in a beraita}: Do not live {in the same place as your teacher}?

But has it not been taught {in a beraita}: Do not live {in the same place as your teacher}?

There is no contradiction {lo kashya'}. This statement {the statement of 'Ulla} applies to one that submits to him {his teacher}, this one {the beraita} applies to one that does not submit to him.

In this sugya, the teaching of an Amora (both 'Ulla and Hiyya b. Ammi are Amora'im) conflicts with the teaching of a Tannaitic source. According to the "rules" of Talmudic decision making, the Tannaitic source should prevail. However, the resolution introduced by lo kashya' permits both rulings to stand. The resolution, that one statement applies to a person who is submissive to his teacher, while the other applies to one who is not submissive to his teacher, is not implied in the various texts. In fact, the cited beraita includes only two words, "do not live," leaving little room for interpretation. Furthermore, there is no indication that these two contradictory statements can be reconciled at all using any method. The resolution suggested by lo kashya' is not related to anything in the sugya itself—it is clearly a forced resolution. This is characteristic of lo kashya'.

The lateness of the Amora associated with this sugya, R. Hiyya b. Ammi, is also characteristic of sugyot in which the technical term lo kashya' appears. Virtually every salient passage in which it is found contains a reference to or quote from a late Amora. In the specific example of Berakhot 8a, R. Hiyya b. Ammi is a fourth generation Amora. 'Ulla is a third generation Amora.

In Berakhot 50b, we find another example of this type of lo kashya' resolution. At issue is a beraita which states that one should not throw bread,

when placing it on the table or in front of someone sitting at the table. The text relates an incident in which Mar Zutra threw dates and pomegranates to R. Ashi; Mar Zutra claims the ruling that one should not throw bread applies only to bread. Then Ashi and Mar Zutra each cite contradictory beraitot to buttress their argument. Lo kashya' resolves the conflict.

ת"ד *ד' דברים נאמרו בפ"א
 מניחין בשר חי על הפת ואין מעבירין כוס
 מלא על הפת ואין זורקין את הפת יאין סומכין
 את הקערה בפ"א אמר ר' זוטרא ורב אשי
 ברכו ר' פתא ביהדי דדי איתי לקמיהו רב
 ורמני שקל מ' זוטרא פתק לקמיהו דרב אשי
 דסתנא א"ל לא סבר לה מ' להא דתניא אין
 זורקין את האוכלין הדוא בפ"א תניא ודתניא
 בשם שאון זורקין את הפת כך *אין זורקין את
 האוכלין א"ל ודתניא אף על פי שאין זורקין
 את הפת אבל זורקין את האוכלין אלא לא
 קשיא 'הא במדי דממאי הא במדי דלא
 ממאי

Our rabbis taught {in a beraita}: four things have been said with respect to bread. One should not place raw meat on bread, and one should not pass a full cup over bread, one should not throw bread, and one should not lean the dish against bread.

Ameimar, Mar Zutra, and Rav Ashi sat down to dine together; dates and pomegranates were put before them. Mar Zutra threw some {dates and pomegranates} in front of Rav Ashi.

He {Rav Ashi} said to him {Mar Zutra}: "Does not the Master hold with the teaching {in a beraita} that 'one should not throw food?'" {Mar Zutra replied}: That applies to bread {only}.

{Rav Ashi}: But is not it taught that just as one should not throw bread, so too one should not throw food?

He {Mar Zutra} said to him {Rav Ashi}: "But, it has been taught {in another beraita}, 'even though one should not throw bread, one may throw food?'"

However, there is no contradiction. One {the statement of Ashi that one should not throw food} applies to food which spoils; the other {the statement of Mar Zutra to the contrary} applies to food that does not

spoil.

This section of the sugya is the paradigmatic form of the technical term lo kashya. This passage contains the three distinguishing characteristics of the lo kashya resolution: late Amoraim, two contradictory Tannaitic sources and the statements of the Amoraim and Tannaim are permitted to stand side by side.

This passage begins by citing a beraita which clearly states that one should not throw bread. Next, Mar Zutra throws fruit; Ashi confronts him with a second beraita that states one should not throw any type of food. Mar Zutra claims it applies to bread only. At this point, it is not clear whether Mar Zutra is speaking of the original beraita or the beraita which Ashi cited. Sensing the confusion, Ashi cites the complete version of the beraita, which unequivocally states that neither bread nor food should be thrown. Mar Zutra cites a third beraita which states unequivocally that food may be thrown.

At this point, Ashi and Mar Zutra are at a stalemate since each has cited a beraita to support his argument. This is as far as the attributed, non-anonymous text goes. It is only the anonymous text introduced by lo kashya that resolves the standoff. As in Berakhot 8b, there is no hint in the text itself of the resolution that the anonymous text will shortly impose on the dispute. Neither the first beraita (introduced by Tannu rabbanan) nor either of the beraitot cited by Ashi and Mar Zutra, speak of perishable food. As in Berakhot 8b, the resolution introduced by lo kashya is clearly forced.

It is important to note that lo kashya not only resolves a conflict between

Amoraim and Tannaim, but also between Tannaitic sources as well. It follows from this passage that this particular Tannaitic dispute must have remained unresolved at least through the time of Ashi and Mar Zutra, both of whom are sixth generation Babylonian Amoraim. It is then likely that the resolution imposed by lo kashya must originate no earlier than the sixth generation and more probably comes from the generation following Ashi and Mar Zutra since it is fairly clear that neither Ashi nor Mar Zutra resolved the issue themselves, this already dates the resolution beyond the traditional end of the Amoraic era.

It is certainly true that the throwing of food is not one of the more burning halakhic issues in the Talmud. However, it is precisely for this reason that the forced resolution of lo kashya seems incongruous. If any issue could be left unresolved, certainly the throwing of food would be one, since the issue has virtually no halakhic significance. Only when this resolution is seen in the broader context of the attempt by the anonymous voice of the Talmud to bring some consistency and order to the chaos of competing opinions does such an insignificant issue become meaningful.

These two examples, Berakhot 8a and 50b highlight the three characteristics of the lo kashya resolution which applies conflicting rulings to different circumstances. The first characteristic is that this form of lo kashya is often associated with late Amoraic sages. Second, often lo kashya resolves disputes between competing Tannaitic sources as well as disputes between Amoraic and Tannaitic sources. Finally, the lo kashya resolution permits all

rulings to stand side by side, i.e., no ruling is chosen over others as definitive.

II. Conflicts Resolved by Attribution to Different Sages

The second major form of the lo kashya' resolution attributes contradictory statements to different authorities. This form of the lo kashya' resolution is similar to the preceding form in that it too is characterized by the presence of late Amoraim and the resolution of contradictory Tannaitic sources. In addition, the final resolution introduced by lo kashya' permits competing rulings to stand side by side. This form differs, however, from the preceding form in that the "resolution" it suggests is not actually a resolution at all. Even after different positions are attributed to different sages, the dispute remains, except the disputants are not anonymous.

In the two examples of this form considered below, the phrase lo kashya' is introduced by a named authority, R. Sheishet. Rav Sheishet is a third generation Babylonian Amora. At least in Berakhot, there are no other uses of this phrase in connection with a specific Amora other than Rav Sheishet.

In the first passage, Berakhot 37a, the term lo kashya' is used in a straightforward manner to clear up a discrepancy between the teachings of two, anonymous beraitot. One beraita rules that one should recite a particular blessing after eating a certain type of rice. Another beraita rules that there is no need to recite a blessing afterwards. Rav Sheishet, using the term lo kashya', attributes

the first ruling to R. Gamliel and the second ruling to the Sages.

אמר מר הניס

את האורח מברך עליו בורא פרי האדמה מוצנו אפוא ובשלו אע"פ שהפחוסות
קיימות בתחלה מברך עליו בורא מיני מזונות ולבסוף ברכה אחת מעין שלש
והתניא 'לבסוף ולא כלום אמר רב יששת לא קשיא הא ר"ג והא רבנן

A {certain} teacher says: The one who chews rice, bless over it, 'Creator of the fruit of the ground.' If one grinds it and bakes it, at the beginning bless over it 'Creator of different types of food,' and at the end, one blessing that includes three.

But isn't it taught: At the end, there is no blessing at all?

Rav Sheishet said: "There is no contradiction. One {the first statement} is the opinion of R. Gamliel, the other is the opinion of the Sages."

In this particular example it is necessary to read further in the text because the Talmud cites the actual beraita from which Rav Sheishet apparently made his ruling:

דחניא

*זה הכלל כל שהוא משבעת המינים רבן גמליאל אומר שלש ברכות וחכמים
אומרים ברכה אחת מעין שלש

berakhot 37b

That it is taught {in a beraita}: This is the general rule: anything that is from one of the seven species, R. Gamliel says three blessings {should be recited} and the Rabbis say one that includes three.

A careful reading of the text reveals that this beraita, which presumably serves as the basis for Rav Sheishet's statement, has nothing to do with the issue

Rav Sheishet is attempting to resolve. This beraita deals only with the proper blessing to accompany one of the seven species, of which rice is not one.

However, because rice is similar in quality to the "seven species" grains, perhaps R. Sheishet could infer from Gamliel's view that it should have a more significant blessing. Moreover, the issue Rav Sheishet is addressing hinges upon the fact that the rice is ground and baked, potentially changing its nature and thus requiring a "higher class" blessing. At any rate, it is by no means certain that this beraita is the basis of Rav Sheishet's statement. Given that we know of no actual source which directly supports R. Sheishet's claim, it is likely that Rav Sheishet's statement is based on nothing more than his own reasoning alone. R. Sheishet's resolution would thus be similar to an anonymous lo kashya'. Rarely is evidence brought to support the resolution of an anonymous lo kashya', giving the impression that an anonymous lo kashya' is based solely on the anonymous author's own conjecture.

The most interesting thing to notice about this form of lo kashya' is that this type of resolution is actually less of a resolution than the preceding form which applies competing rulings to different circumstances. Merely attributing competing rulings to different sages in no way explains or "resolves" the contradiction; it simply gives the putative source of each statement. In Berakhot 37a, Rav Sheishet's statement simply tells the reader that one ruling is Gamliel's and the other ruling is the Rabbis, but the contradiction remains.

In Berakhot 16a, our present form of lo kashya' is combined with the

preceding form of lo kashya' in which contradictory rulings are applied to different circumstances in a problematic passage that concerns one of the most famous disputes in Berakhot. In this sugya one anonymous beraita rules that workers recite the full Tefilla while another anonymous beraita rules that workers recite an abbreviated form of the Tefilla. Again, it is Rav Sheishet who uses the lo kashya' formulation. According to Rav Sheishet, Gamliel ruled workers recite the full Tefilla, while R. Yehoshua ruled that workers recite an abbreviated form of the Tefilla. Rav Sheishet's statement ostensibly conforms precisely to a mishnah. However, an anonymous statement attributes both rulings to Gamliel and, using the lo kashya' formulation, applies each ruling to a different circumstance.

*חזר הפעלים שהיו עושין מלאכה אצל בעל הבית
קורין ק"ש ומברכין לפניו ולאחריה ואוכלין פתן (ז) ומברכין לפניו ולאחריה
[ו] ומתפללין תפלה של שמונה עשרה אבל אין יורדין לפני התיבה ואין נושאים
כפיהם ודחניא מעין י"ח אמר רב ששת לא קשיא*הא ר'ג הא ר' יודישע

Our Rabbis taught {in a beraita}: Workers {manual laborers} doing work for an employer recite the Shema and bless before it and after it; and eat their bread and bless before it and after it; and pray the Tefilla of the eighteen benedictions, but do not go down before the ark and do not raise their hands {to give the priestly benediction}.

But has it been taught {in another beraita}: {Workers say} an

abbreviated form of the Eighteen Benedictions?

Rav Sheishet said: "There is no contradiction, one {workers recite the full Tefilla} is the opinion of R. Gamliel, the other {workers recite an abbreviated form of the Tefilla} is the opinion of R. Yehoshua.

At this point, Rav Sheishet's statement is completely correct, based upon a mishnah found in Berakhot 28b. That mishnah reads as follows:

מתני' רבן
נמליאל אומר בכל יום ויום מתפלל אדם שמנה עשרה רבי יהושע אומר מעין י"ח

RABBAN GAMLIEL SAYS, "EVERYDAY ONE SHOULD PRAY THE EIGHTEEN BENEDICTIONS." R. YEHOShUA SAYS, "AN ABBREVIATED FORM {OF THE EIGHTEEN BENEDICTIONS}."

This well-known dispute is not resolved in the Mishnah itself. The statements of both Gamliel and Yehoshua are unambiguous. In addition, it is important to notice that neither Gamliel nor Yehoshua makes reference specifically to workers.

In the continuation of Berakhot 16a, immediately after the statement of Rav Sheishet, the anonymous voice of the Talmud attributes both conflicting beraitot to Gamliel. According to this revision, Yehoshua would not have ruled separately for workers, since he applied the ruling that it is permissible to recite an abbreviated form of the Tefilla to everyone equally. Using this reasoning, the anonymous voice attributes both beraitot to Gamliel, concluding that one applied to laborers working for a wage, while the other applied to laborers working in return for room and board.

א"ר' יהושע כמי איריא פועלים אפילו כל אדם נמי אלא אירי ואירי ר"ג
 ולא קשיא ["] כאן בעושינ בשכרן כאן בעושינ בסעודתן

If R. Yehoshua {ruled that workers can recite an abbreviated form of the Tefilla}, why {did he specifically} argue 'workers?' The same applies to everyone.

However, both statements represent the view of R. Gamliel and there is no contradiction. One opinion {that workers may recite an abbreviated Tefilla} applies to workers earning a wage; the other {that workers should recite the full Tefilla} applies to workers earning their meals.

This reversal of Rav Sheishet by the stam unquestionably contradicts the mishnah in Berakhot 28b. There is no evidence in the remainder of the sugya to support the view of the stam. If the stam is aware of the existence of a supporting beraita—which would be the only possible justification for the stam's position—it is not mentioned in this passage. The sugya ends with another anonymous beraita that supports the stam. However, there is no evidence that this beraita represents R. Gamliel's view.

If the presence of an anonymous, Aramaic technical term such as lo kashya indicates a late Amoraic or post Amoraic redactor, this sugya is surprising indeed. After all, this hypothetical redactor is contradicting a well-know mishnaic dispute that had remained unresolved at least through the third Amoraic generation, the generation of Rav Sheishet. Rav Sheishet used the form of lo

kashya' that does not resolve any contradiction. In this example, Rav Sheishet's statement merely re-stated the position of the Mishnah. Rav Sheishet did not resolve the dispute, nor did he find the dispute problematic. Given that Rav Sheishet's statement fits so well with the Mishnah and that the Mishnah itself does not resolve this dispute, one cannot help but ask why the stam made any further revision in this particular text.

In terms of the significance of this passage for our understanding the use of lo kashya', it appears that the text favors the use of one form of lo kashya' over the other. The form of lo kashya' in which contradictory statements are attributed to different sages is weak. It is, in reality, no resolution at all. When possible, as in Berakhot 16a, the text opts to use the form of lo kashya' that applies contradictory statements to different circumstances. This form of lo kashya' is a "true" resolution of a contradiction, for if two conflicting statements actually do apply to different circumstances, then there is no contradiction.

III. Conclusions about Lo Kashya'

The Aramaic technical term lo kashya' is found in two forms in Berakhot. In the first form, competing statements are applied to different circumstances. In the second form, competing statements are attributed to different authorities.

In reality, the second form of the term is not a true "resolution." It is more accurate to say that the second form of the term, in which competing statements

are attributed to different authorities, mediates rather than resolves the dispute. There is evidence to indicate (Berakhot 16a) that the first form of lo kashya is the preferred usage.

The two forms share three characteristics. First, both forms commonly resolve disputes between Tannaitic sources in addition to disputes between Amoraic and Tannaitic sources. Second, in virtually every relevant usage of this term, all contradictory statements are permitted to stand side by side. Occasionally, the second form of lo kashya is introduced by a named authority.

Finally, the most significant characteristic of lo kashya is that it is almost exclusively associated with late Amoraic sages—third generation or later. This suggests that the third generation marked a turning point in Amoraic authority vis a vis the Tannaim. After the third generation, the stam or anonymous voice of the Talmud exhibits a reluctance to overturn or set aside completely Tannaitic rulings. This is in contrast to evidence cited in chapters 1 and 2 of this thesis in which early Amoraim such as Rav and R. Yohanan disputed Tannaitic sources without hesitation.

The investigation of lo kashya has revealed evidence that seems to support the theory that Aramaic technical terms signal a late insertion (late-Amoraic or post Amoraic) into the text. As we indicated, this term is overwhelmingly associated with late Amoraic sages in Berakhot. In Berakhot 16a, Rav Sheishet's own use of this term is overturned by an anonymous usage of the term, clear evidence that in at least that specific example, the anonymous usage was a late or

post-Amoraic insertion.

The term lo kashya' is used consistently in Berakhot to settle disputes between Tannaitic sources. If we accept the premise, supported by our research, that the term is a late or post-Amoraic insertion, the idea that such a "late" insertion resolves or in any way mediates Tannaitic disputes is significant. The mediation of Tannaitic disputes, some of which originated well back into the Tannaitic era, by a late textual insertion, implies an agenda on the part of the redactor using the editorial tool lo kashya'. Was it to enforce a ruling that an Amora may not dispute a Tanna? Had the idea of disputes and unresolved issues become anathema to the late rabbinic sages? At this level of research, we can only conclude that these questions are prompted by the text itself and are not merely based upon conjecture.

Conclusion

In this thesis, we have investigated the problem of conflict between the Tannaitic and Amoraic eras in an effort to determine the veracity of one of the fundamental, internal Talmudic rules: an Amora cannot dispute a Tanna. At the outset, our goal was to establish the credibility of the premise that this rule is not always in concert with the empirical evidence found in the text itself.

Our investigation examined three categories of Talmudic texts that support this hypothesis: 1) passages that called into question the authoritative status of Amoraim such as Rav and R. Yohanan; 2) texts in which Amoraim favored beraitot over Mishnah; 3) Tannaitic objections to Amoraim introduced by Aramaic technical terms.

Rav is explicitly called a Tanna in at least three separate passages, this despite that fact that he is chronologically an Amora. At best Rav may be considered a "border figure," a Sage that straddles the Tannaitic and Amoraic eras. However, even Rav's status as a border figure cannot explain his disputation of Rabbi Yehuda ha-Nasi in Gittin 38b. These texts strongly suggest that Rav acted with the authority of a Tanna.

The status of R. Yohanan is also unclear. There can be no doubt that Yohanan was chronologically an Amora; he cannot even be considered a border figure like Rav. However, comments in the Tosafot to Ketuvot 8b point to a tradition that questioned the status of R. Yohanan. In addition, we examined one specific example, Yoma 43b, in which Yohanan rejected outright the opinion of a beraita. Furthermore, the research of Shraga Abramson argues that Yohanan effectively possessed the halakhic authority of a Tanna.

At least two sugyot, Eruvin 36b and Bava Kama 36b suggest that certain Amoraim possessed the authority to choose between contradictory mishaiyot and beraita. In Bava Kama, Shmu'el explicitly disregards a mishnah in favor of a contradictory beraita. There is no statement in the Talmud to effect that "Shmu'el is a Tanna and may dispute," such as there is regarding Rav, implying that the Gemara had no reason to doubt Shmu'el's status as an Amora. This makes his dispute with the mishnah all the more surprising.

Two Aramaic technical terms, mei-tei-vei and lo kashya', were examined in this thesis. Our research revealed that mei-tei-vei is for the most part a term used in connection with early Amoraim (through the third generation), while lo kashya' is a term used primarily in connection with Amoraim third generation or later. More importantly, the resolution of the objection raised by mei-tei-vei tends to favor the Amoraic source while the resolution introduced by lo kashya' tends to favor the Tannaitic source.

We predicated much of our research upon a number of theories postulated

by modern scholarship. One theory posits the existence of a late or post-Amoraic redactor, called the Sebara or the stam. A corollary to this theory is that various Aramaic phrases indicate the presence in the text of such an editor.

Based upon our research in both the primary and secondary sources, we offer the following conclusions:

- 1-The Talmud text itself strongly suggests that some Amoraim were permitted to dispute Tannaitic sources.
- 2-This "Tannaitic authority" extends at least one, perhaps two generations beyond the traditional end of the Tannaitic period.
- 3-The third Amoraic generation marks a turning point for Amoraic authority.
- 4-The tendency to favor Tannaitic sources becomes pronounced after the third Amoraic generation.

In essence, these conclusions point to an evolution in Amoraic authority. In the early Amoraic generations, the authority of the Amoraim closely paralleled the authority of their immediate Tannaitic predecessors. As the Amoraim became more removed by time from the Tannaim, Tannaitic sources became more authoritative. By the late Amoraic period, the idea that an Amora could not dispute a Tanna gained wide acceptance.

It is important to note that our conclusions are based primarily on our work in Berakhot. Thus, at best, these are but tentative conclusions. Our investigation of Berakhot uncovered a trend; only a larger effort can determine if

the trend is a pattern used throughout the Talmud. However, our stated goal was not to draw definitive conclusions but to point the way for further investigation, a goal we have achieved. We offer the above conclusions as a working hypothesis with which to approach further research.

Some Speculations of a Personal Nature¹

It may be somewhat incongruous for a liberal Jew to be preoccupied with a text many liberal Jews consider to be little more than a dusty repository for an antiquated mode of religious expression. However, as I stated in the introduction to this thesis, even the most ardently non-halakhic Jews adhere sometimes unwittingly to the precepts of the Talmud. This is because although there may be such a thing as a non-halakhic Jew, there is no such thing in this day and age as non-Talmudic Judaism. Every modern Jewish movement (and every modern Jew), defines itself in relationship to the Talmud. Reform Judaism, for example, rejects, either implicitly or explicitly, a particular relationship to the Talmud.

However, the Talmud is our connection to our Jewish past; it is impossible to speak of the Jewish tradition as distinct from the Talmudic tradition. The lack of a clear Reform vision of the Jewish future is, I believe, largely a result of a collective misunderstanding of our past: there is no Jewish tradition without the

¹ Although this section was prompted by my advisor, the following remarks represent the opinion of the author alone, thus the transition from "we" to "I."

Talmud.

It is then incumbent upon every liberal Jew to develop at least a working knowledge of the Talmud. But, for a liberal Jew it is more important to understand the process by which the Talmud was shaped than it is to understand the results of that process. This thesis is a small step in that direction.

The traditional point of view has been that there was no actual process or, at best, that the Talmudic process was defined within clearly identifiable parameters and stopped at a fixed point in time. This idea is anathema to the liberal Jew. However, the idea that the Talmudic process is dynamic, that the Talmudic process is continuous and that participation in that process is the obligation of every thinking Jew is, to my mind, the cornerstone of the liberal Jewish experience. To ignore that obligation is to opt out of the Jewish experience.

This thesis, therefore, is not merely an academic exercise. It is a serious attempt to participate in what I believe is the quintessential Jewish experience. It is my hope, regardless of whether or not its conclusions are eventually born out, that the work in this thesis will point the way for other liberal Jews to participate in this experience.

Appendix

1. Inclusive list of relevant mei-tei-vej citations in Berakhot:

10b	29a	43a
15a	32b	43a
23b	33b	43b
23b	40a	53b
25a	41a	60a

2. Inclusive list of relevant lo kashya citations in
Berakhot:

8a	24a	40a
9a	36a	50b
16a	36b	50b
16a	37a	55b
17b	37a	57b

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