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The Economic and Social Aspects of the Halakha
in the Tannaitic Period

by

Bennett M. Hermann

Thesis submitted in partial fulfillment
of the requirements for the Degree of
Master of Arts in Hebrew Letters and
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Digest

The Economic and Social Aspects of the Halakha in the Tannaitic Period

This thesis analyzes and evaluates the economic and social method of interpreting Talmudic material; particularly as it has been used by Dr. Louis Ginzberg in his essay, "The Significance of the Halakha" in his book On Jewish Law and Lore; and, by Dr. Finklestein in his biographical work on Akiba, entitled, Akiba. Both scholars hold the position that social and economic factors can help explain the halakhic positions of different Tannaim. For example, Dr. Ginzberg interprets the basis for the Hillel-Shammai controversies in the following manner: Hillel represented the interests of the poor and Shammai, the wealthy. Dr. Finklestein interprets Akiba's halakhic position, in many cases, to have been the result of his representing the interests of the "plebeian" classes; while his opponents represented the interests of the "patricians." This thesis provides ample examples of the methodology of both scholars.

This methodology was challenged by an Israeli scholar, Dr. Gedalia Allon, in his critical essay, "HaShittah Hasozilogith B'heker Hahalakha." It is Dr. Allon's contention that although the economic and social method of interpreting Talmudic sources has some merit, it is still not developed enough to warrant serious consideration. Dr. Allon disputes Dr. Finklestein's position on Rabbi Akiba by citing various passages, which seemingly contradict what Dr. Finklestein has written, from the Talmudic literature.

Finally, this thesis will evaluate Dr. Allon's criticism of Dr. Finklestein's methodology. We will attempt to show that Dr. Allon has been overly critical, and that he has not met Dr. Finklestein on his own terms. We shall also try to demonstrate that the economic and

social mode of interpreting Tannaitic literature is a viable and exciting one and possesses more force than with which Dr. Allon will credit it.

Table of Contents

Introduction.....	Page i
Dr. Louis Ginzberg's Social and Economic Interpretation of the Hillel and Shammai Controversies.....	1
Dr. Louis Finklestein's Social and Economic Interpreta- tion of Rabbi Akiba's Halakic Decisions.....	12
Dr. Gedalia Allon's Criticism of Dr. Finklestein's Methodology..... (Including Personal Criticism and Evaluation of Presented Material)	20
Appendix A: Additional Tannaitic Material Pertaining to Hillel and Shammai Covered by Rabbi Ginzberg	30
Appendix B. Additional Tannaitic Material Pertaining to Rabbi Akiba Covered by Dr. Finklestein.....	31
Bibliography.....	37

Economic and Social Aspects of the Halakha in the Tannaitic Period

Introduction

The selection of a thesis topic generally reflects a student's interest in a particular area of study. The sea of the Talmud has held a strong fascination for me ever since I began my Jewish studies on a college level. I was especially attracted by the vastness and scopic range of the great work; and undoubtedly, the strangeness and difficulty of the textual language added to the air of mystery.

To be able to say that one knows Talmud requires years of training and experience. I cannot and do not pretend to say that "I know Talmud"; but I can say that I am very interested in it. Slowly, one gets to know the different Rabbinic personalities in the Talmud: first the Tannaim and then the Amoraim. Hillel and Shammai, Akiba, Jochanan ben Zakkai, Rabbi Meir and many, many others.

Each of these men was responsible for the formation and development of Jewish law. When one reads the Talmud, however, one rarely receives an insight as to what motivated these men to legislate the way they did. The Mishna, itself, is a legal code; the purpose of which was to categorize a selected, but still large, number of Jewish laws, and to make them easier for transmission - first orally and then in writing. But in thinking about the possible reasons why Hillel differed with Shammai, or Akiba with Ishmael, one is perplexed. It is possible that they were arguing out of a strict legal approach: Each man understood Jewish law in a certain way and this is reflected in their legal decisions? Or it is possible that there were other motivations behind their positions?

Louis Ginzberg and Louis Finklestein have forcefully suggested and demonstrated another way to interpret the judgements of the rabbis

both in the Mishna and in the Talmud. Their approach takes into consideration social and economic factors. When I first read Dr. Ginzberg's essay, "Significance of the Halakhah" in his book, On Jewish Law and Lore, I must admit that I was excited. I considered his method to be an ingenious way to interpret and bring alive the pages of Talmudic legal development and analysis, which often are very cut and dry.

In this thesis, we shall describe and critically appraise Dr. Ginzberg's method, which was adopted as well by Dr. Finklestein in his book Akiba. In making this critical analysis, we shall take into consideration the views of Gedaliah Allon, in his article, "HaShitah HaSoziologith B'hekar Hattalakhah." Finally, this thesis will state its own position regarding the validity and usefulness of the Ginzberg-Finklestein approach.

The thesis will not cover the entire Talmud. Such a task would be enormous and well beyond the most ambitious limits imagined for any thesis. Thus we shall concern ourselves with the Tannaitic period and particularly with the enactments of Hillel and Shammai and Akiba and Ishmael; as to why these men took the respective positions that they did; and we shall try to determine the role economics played in their legal work.

I want to personally acknowledge my indebtedness and gratitude to Dr. Alexander Guttmann, who to my good fortune consented to serve as my thesis advisor. His help to me cannot be measured, and I am deeply appreciative. Also, I wish to thank Dr. Ellis Rivkin, who, although not officially my advisor on this work unselfishly gave me of his time and knowledge in providing me with fresh insights and considerations.

For Dr. Ginzberg, Hillel was the champion of the poor and Shammai was the representative of the rich. This distinction between the two men is basic in his analysis of the different positions that Hillel and Shammai took on questions of Jewish law. Dr. Ginzberg selects many Mishnaic statements in which the reason why Hillel differed with Shammai cannot be apparently explained; but providing the insight of his thesis that the men represented different class interests, he sheds light on the questions.

The range of topics covered by the Hillel-Shammai decisions is very wide, and in itself provides us with some understanding of the life of the times. Let us first look at the areas of ritual law and the laws of purity. This should provide us with a good foundation into understanding Dr. Ginzberg's method, its force and its possible limitations.

The argument between Hillel and Shammai over which blessing is recited first in the Kiddush, the blessing over the day or the blessing over the wine is well known. Shammai states that the blessing over the day (kiddush hayom) should precede. Hillel says that the blessing over the wine (bo-rei p'ri hagafen) should. ^{M.} (Ber. VIII:8) What is the reason for their difference? Dr. Ginzberg's explanation is as follows: The wealthy had wine at every meal and, therefore, a cup of wine was not a symbol of a festive occasion. Thus, Shammai, reflecting the position of the wealthy classes declared that the blessing over the day should come first. On the contrary, Hillel, representing the interests of the poorer classes, who had no wine on their tables in the middle of the week, and for whom the wine was a sign of festivity, ruled that the blessing of the wine should be recited before the blessing over the day.

Dr. Ginzberg's interpretation on the basis of different economic levels is fresh and unique. The commentary of Bertinoro gives the following reasons for the differences between Hillel and Shammai. Shammai reasoned that the day was the *raison d'etre* for the bringing of the wine to the table. Hillel reasons that the wine (or bread) are prerequisites for the kiddush. If there is no wine (or bread) the kiddush can not be made.

Similarly, Shammai says that one recites the blessing over the wine and then recites the grace after meals; but Hillel maintains that one says the grace after meals, first, and then recites the blessing over the wine. Dr. Ginzberg explains this divergency between the two as follows. For Shammai and his group, wine was served as a matter of natural course after a meal. Thus they said the blessing over the wine first and then the grace. For Hillel and his group, wine was considered as an extra delicacy. Therefore, they said the grace first, and then the blessing over the wine. The Bertinoro explains the difference in a different manner. Shammai did not consider a cup of wine to be necessary for saying grace and Hillel did.

We observe the following from merely citing two examples of Dr. Ginzberg's method. First, that the traditional commentaries do not provide us with explanations based on economic or social considerations (either the Bertinoro or the Tosephoth Yom Tov). The question, with which we are immediately confronted, is on what grounds does Dr. Ginzberg bring his method of analysis to bear. First, Dr. Ginzberg rejects the thesis that Hillel disagreed with Shammai on the basis that the former was "lenient" in his approach to Jewish law and the latter was "strict."

He shows that in one case Shammai was actually the more lenient than Hillel; and there were cases in which Hillel's judgement was the stricter.¹ Regarding the possibility that the differences between the two men and subsequently between the two schools rested on their different approaches to Jewish law, Dr. Ginzberg says the following:

"There are those among the scholars of most recent times who have not yet entirely emancipated themselves from the casuistry of the old houses of study: just as the acute casuists of former times were able to connect all the various opinions of Abaye and Raba into one system and "establish" their differences with respect to the question of unconscious resignation of property hinged on their disagreement concerning a pole that is put up accidentally (not with the intention of making it a Sabbath mark), so we find in contemporary writings comparable "systemizations" of the School of Shammai and the School of Hillel. Not being myself a casuist, I do not believe in such "systemizations." It is clear to me that not one, but many factors cause these differences. It is, indeed, quite evident that the School of Hillel employed the method of inference from Biblical texts to a much greater extent than the School of Shammai, but it would be an error to ascribe the bulk of their differences to the fact that the former made use of the rules of inference and the latter did not. We find not only that the School of Shammai operated with many inferences from the Biblical text (they are the first to use the expression "analogy," "gezerah shawah") (see M. Bezah I,6), but also that Shammai, himself, made use of inferences from the Biblical text. 'See Kiddushin 43,a). - ²

¹ See Louis Ginzberg, On Jewish Law and Lore, Meridian Books, 1962, pp 23 and 24.

² Ginzberg, ibid, pp 89-90.

In another passage, Dr. Ginzberg clearly states his approach:

".....but it is my view of the development of the Halacha from the period of the first Pair (Jose ben Joezer and Jose ben Johanan 170-162 B.C.E.) to the time of the two schools (Hillel and Shammai) that the disagreements between the two wings of the Pharisees were not matters of personal temperament, but were caused by economic and social differences. An analytical approach to many of the decisions on which the Schools of Shammai and Hillel disagreed will reveal that, in all their discussions and decisions, the former spoke for the wealthy and the Patrician class as over against the latter who reflected the needs of the lower social classes..... It is my theory that the adherents of the School of Shammai and the Conservatives who preceded them belonged to the upper or middle classes, whereas the adherents of the School of Hillel were mostly of the lower classes; the former asserts that the Torah should not be taught to anyone except a man who is wise, modest, HIGH BORN and RICH; whereas the latter maintains, that it should be taught to everyone without discretion. (See Avoth de Rabbi Nathan, beginning of chapter three). ¹

Dr. Ginzberg provides us with his thesis but he does not show us how he arrived at it. One would have to guess that he bases his theory on historical grounds; but he does not provide us with either the historical background or his understanding of it. In another essay, "An Introduction to the Palestinian Talmud"² he points out that history played a role in the passing of certain laws in the area of ritual purity.

1

Ginzberg, *ibid*, p. 103 (Note: It is Dr. Ginzberg's contention that the Pharisees originally was composed of two wings, a conservative and a liberal. This later was manifested in the "zugoth" where the "Nasi" and the "Ab Beth Din" always represented one of the wings. (See Ginzberg, particularly p. 92)

2

Ginzberg, On Jewish Law and Lore, *op. cit.*

We shall look at his interpretation of these enactments as an indication to his methodology; but in his discussion of the differences between Shammai and Hillel, he does not supply us with the historical information. Thus what we are left with is Dr. Ginzberg's hypothesis. If it is true then all of his examples are true. We shall try to evaluate his hypothesis using Dr. Allon's criticism of Dr. Finklestein's methodology, which is similar to Dr. Ginzberg's as well as making our own observations as to its validity.

We shall now attempt to classify the material utilized by Drs. Ginzberg and Finklestein. The material, itself, covers a wide area of economic and social concern; but we shall divide it all under four categories: class structure - division according to the distinction of rich and poor; ritual impurity; vows; and "economic boycotts."

Ginzberg cites as the reason that the Jews were forbidden to sell large cattle to the "goyim" (and in some places they did not even sell small cattle for example sheep and goats) was because the rabbis sought to strengthen the Jewish community against the Gentile community.¹ A large section of Palestine was in the hands of the "Goyim" during the time of the Second Temple. The rabbis offered as their reason for making the law was against the fear of "tryouts" that is an animal sold to a Gentile on trial was returned after three days and there was the fear that the animal had worked on the Sabbath. According to Ginzberg,

¹

See Pesachim IV, 3 and Avodah Zarah I, 6 and 7b.

the Amoraim were really perplexed as to the reason for this enactment. They searched and searched and finally came up with this reason.¹ This law would have the effect of forcing the "Goyim" to sell their fields to the Jews for farming was virtually impossible without large cattle. Similarly, Ginzberg labels the enactment against selling or renting houses to the "Goyim."²

Under the category of class distinction or "rich-poor" we have already cited the differences between Beth Shammai and Beth Hillel regarding the Kiddush and the Grace after Meals. In addition to these disputes, there is a list of others which are as follows:

1. If one recites a Berakhah over bread, he need not recite it over side dishes... but if one recites a Berakhah over side dishes, he is not exempt from saying it over bread. This is the opinion of Beth Hillel. Beth Shammai says that not even cooked foods are included. Beth Hillel considered bread to be the main part of a poor man's meal. Beth Shammai did not; and, furthermore, he says that not even cooked foods are included in the blessing over the bread.³

¹
See Yer. Pesachim IV, 3 and Avodah Zorah 15a.

²
Avodah Zorah I, 8.

³
See M. Berachoth VI, 5.

2. B. Hillel permitted the baking of twists, thick loaves of bread on holidays; because to poor, coarse bread, as well as white bread, main food during a week day and even on a Sabbath or festival. Beth Shammai forbade it, for according to Ginzberg's reasoning, the wealthy had other savory dishes to eat on the holidays and they did not need additional bread.¹
3. Beth Shammai permitted the digging up of earth on holidays to cover blood of slaughtered animal or bird. Beth Hillel said that there should be no slaughter unless the earth was made ready from before the holiday.² The reasoning behind the decision of Beth Hillel is that the poor rarely had game or birds for a holiday. Thus, they would prepare any meat that they expected to consume on the holiday before the holiday began. Therefore, Beth Hillel ruled that if there was any slaughtering to be done on Yom Tov, the earth had to be prepared before hand. In comparison, for the rich who were used to having a lot of game and fowl on the holidays the preparation of the earth before hand would have posed as an inconvenience.

¹
Bezah II, 6.

²
Bezah, I, 2.

4. Beth Hillel ruled that a poor man who designated a supply of fruit to be eaten on the Sabbath, had to tithe it. The reason being that in the case of the poor man there was no question that he would definitely eat it. But in the case of a rich man there was not the same degree of certainty present. For the latter would continue, in theory, to search for the best possible fruit until the last minute. Therefore Beth Shammai said no tithes.¹ (Although there is the possibility that the rich man had tithed the fruit which he actually ate.)
5. Similarly, in the area of tithes, Beth Hillel required that spiced oil, which was made into perfume to be smelled or applied to the body, did not have to be tithed. Beth Shammai said that it did. Beth Shammai regarded the spice oil as a "food-stuff" since it was considered as a necessity by the members of the wealth class.²
6. Requirement of ritual fringes on a sheet. Beth Shammai said that there was no necessity. Beth Hillel said, 'yes.'³ Everyone agreed that night

¹
Maasroth IV, 2.

²
Demai I, 3.

³
Eduyoth IV, 7.

coverings (used only as night coverings) were free from ritual fringes. Therefore, if poor man possessed only one sheet which he used both for day and night wear, Beth Hillel permitted him to have ritual fringes.

7. The proper measurement of a Succah. If a man had his head and most of his body in the Succah: Beth Shammai says 'No'; Beth Hillel - 'Yes.' The reason which Ginzberg offers in explanation of Beth Hillel's ruling is that a poor man very often had to live in a narrow room without a table.¹ The law is according to Beth Shammai. Bertinoro tells us that the reason Beth Shammai ruled in this manner is that they were afraid that a man would be "drawn after his table," that is, he might be drawn to sit outside of his Succah.²
8. The influence of their class membership can be seen also in the measurements that the two groups used. For example: in the cases of distances from objects which could cause ritual impurity like a tomb vault! Beth Shammai says that the distance must be four ells; Beth Hillel says four handbreadths are

¹
Succah II,7.

²
Ibid, See the commentary of Bertinoro ad loc.

sufficient. In Beth Shammai's mind anything less than four ells could not be regarded as an independent place; and, thus would be regarded as part of the grave.¹

9. The question of the removal of store shutters on a holiday. Beth Shammai says that it is forbidden and Beth Hillel says that it is permitted. Beth Shammai argued his position in light of the fact that the rich would buy all that they needed before the holiday; but Beth Hillel reasoned from the viewpoint of the poor who were not always able to get everything that they needed before the holiday. And, therefore, they would require the possibility of a store opening for them on a holiday so that they could get what they needed on credit.²
10. Date for the New Year of the Tress: Beth Shammai said on the first day of the month of Shevat; Beth Hillel on the Fifteenth day. The reason for the earlier date according to Beth Shammai offered by Ginzberg is that the rich had better trees, which ripened earlier.

¹
Ohaloth 15:8.

²
Bezah I,5.

11. Amount to be spent on festival and pilgrim sacrifices:

Beth Shammai: Pilgrim sacrifice - at least two pieces of silver.

Festival sacrifice - at least a silver maah.

Beth Hillel: Pilgrim sacrifice - a silver maah

Festival sacrifice - two silver maah.

Pilgrim's sacrifice, one in which the votive had no share. The rich could pay more. The poor could not afford to pay so much for an offering in which they did not participate in the eating thereof. Interesting, however, is the comment of the Tosephot Yom Tov: Quoting the Gemara, the commentary is that just as the Mishnah says what is fitting for a hedvot, (commoner) to bring, when he comes as a pilgrim; so it says what is fitting for a man of high station to bring. Here, perhaps we see the faint beginnings of an economic interpretation on a Mishnaic law.^{1, 2}

¹
Hagigah I,2.

²
Ibid. Ikar Tosephot Yom Tov.

II.

The revered and honored sage, Rabbi Akiba, (born circa 40 C.E., died 138 C.E.) is the subject of the biographical study by Dr. Louis Finkelstein. His approach to the Akiba material found in the Mishnah and the Talmud is similar to that of Dr. Ginzberg. Dr. Finklestein explains many of Akiba's decisions in social and economic terms. According to him, Akiba represented the "Plebian" interests in society. (The use of the term is Dr. Finklestein's; Dr. Ginzberg does not employ it.) Plebian as used by Dr. Finklestein refers to the lower classes. This group consisted of shepherds, artisans, traders and levites. Opposed to them were the "Patricians," a term also used by Dr. Ginzberg. The patricians, the well-to-do or the power class consisted of farmers, nobles, and priests. In the time of Akiba, both of these groups were found as part of the Pharisees, "separatists" or "purists." This group were the spiritual successors of the Hasideans of Maccabean times. The Pharisees were opposed by the Sadducees, a group sympathetic to the high priest. Thus the struggle between plebian and patrician was one carried on within the Pharisaic order, itself.

According to Dr. Finklestein, the plebian group within the Pharisaic order were the direct descendants of the Hillites. As has already been stated, Akiba represented these plebian interests. His chief opponent was Rabbi Eliezer ben Hyrkanos, "the foppist, rich land owner who, reared as an am ha-arez (an unlearned person), had fled from his father's house in order to study the Torah, and had finally attained such proficiency that Johanan (ben Zakkai) had compared him to 'a well-

lined cistern which never loses a drop."¹

However, even before his arguments with Eliezer, Akiba's "plebian" point of view was manifested in his differences with his teacher, Rabbi Tarfon. Priests who could not use all of their heave offering would plant the remainder. According to Rabbinic law, whatever grew from such seeds inherited their sacredness and therefore could be eaten only by the priests. Thus, Tarfon argued, only the poor priests could gather the gleanings, (leket) of these fields. Akiba protested and said that this was a violation of the other poor, who made up the vast majority. Akiba suggested a solution. The ordinary poor could collect the gleanings and sell it to the priests.²

An interesting digression is Dr. Finklestein's observation that even Akiba's (and thus Nahum of Gimzo's) method of interpreting each jot and tittle of the Torah reflected his plebian interests. "Absurd as this must seem to us, it appeared altogether logical to Nahum, Akiba, and their followers, who could not attribute to the Scriptures anything but perfect economy of expression. In this represented the plebian tradition of the day and the mental bias of the trading groups, which true to type, placed high value on the virtues of thrift, craftsmanship, and efficiency."³

¹ Finklestein, Louis, Akiba, Meridan Books, Philadelphia, 1962, p 77.

² Temurah IX:2

³ Finklestein, Akiba, *ibid.*, p. 89.

Akiba said that anyone living within a radius of fifteen miles from Jerusalem was obligated to come to the city for the three pilgrim festivals. In stating this opinion, Akiba was protecting the interests of the plebian class in the holy city. This group had vested interests in having large crowds because of the ensuing trade which resulted. The farmers who found the thrice-annual trip a hardship were interested in containing the distance as close to the city as possible. The Temple priests who were wearied by the countless number of sacrifices that had to be offered on these days were inclined to agree with them. The patrician nobles preferred peace and quiet on the holidays also concurred with a more limited concept. Eliezer's opinion reflects the interests of the latter group, the patrician interest. "Only a person who is within the Temple area and yet declines to offer the Passover sacrifice is under the penalty of the Law."¹

Another interesting difference of opinion between the two scholars arose over the question as to whether or not tephilin had to be checked on an annual basis. The question dated back to the days of Hillel and Shammai. The Hillites, according to Dr. Finklestein, passed a judgment that annual inspection was required, because they, being of moderate means, used an inferior brand of parchment and ink in their tephilin; whereas the Shammaites who could afford a better brand ordained that an annual inspection was not necessary. Akiba supported the plebian view and declared for a yearly check. In support of his position he

¹

Pesahim 9:2; Tosefta, ibid. 8:2; Sifre Num. 69, Sifre Zuta 9:13.

brought forth the verse, "Thou shalt therefore keep this ordinance in its season from year to year" (Exod. 13:9). This proves, said Akiba, that the phylacteries, which are the sign upon the hand and the memorial between the eyes, must be examined each year in the proper season. Eliezer representing the old Shammaite position which was now the Patrician interest, declared that the verse deals only with the observance of Passover which is the main subject of the chapter.¹

In the area of ritual impurity, Eliezer declared that liquids are not susceptible to any form of impurity. The reason behind his action was that the heave offerings to the Temple priests were in danger of being severely restricted, if most of the Galilean olive oil, for example, were to be declared ritually impure. Akiba was not moved by the plight of the priests.² This controversy, also, had its roots back in the days of Hillel and Shammai. Then the problem arose over the fact that it was difficult for the Galileans to come to Jerusalem to ritually purify themselves with the ashes of the red heifer after having come into contact with the dead. If the Galileans were very often found to be ritually unclean this would affect the purity of the olives that they grew. Shammai found a solution to the problem and cited a verse from the Book of Leviticus (II:34) which says that foods can become ritually impure only if they are moistened; and since olives are moistened only

¹
Mekilte Bo, Pisha, chap. 17.

²
Sifra Shemini, par. 8:5, 55b; B. Pesahim 16a.

with their own juice, this is not sufficient to render them ritually impure. The Hillites countered by asking why the juice of grapes should render them susceptible to ritual impurity and not olives. To this question there was no answer forthcoming.¹

In the area of civil law, the following difference of opinion arose between the two Rabbis; and, once again their respective positions reflect their class differences. If a lender loses a pledge for a loan, according to Eliezer, he can recover the loan by taking an oath. Akiba, on the other hand, held the view that the poor ought not to be forced to return a loan for which their pledge has been lost.²

Eliezer's and Akiba's positions with regard to marrying captive women point to different class orientations. The patricians and the provincials still practiced polygamy; and the plebians monogamy. Eliezer interpreted, literally, the passage in Deut. 21:12 which permits an Israelite to take a captive woman for his wife after a month's time (yerach yamim). Akiba, however, interpreted the thirty day period required before the marriage could take place as an opportunity for the first wife to win her husband's affections.³

¹
Eduyot 4:6.

²
B. Baba Mezia 81b.

³
Sifre Deut. 133; B. Yebamot 47b; Semahot 6:13.

Interesting, also, is the passage in the Passover service which relates how once, Eliezer, Joshua, Eleazar b. Azariah, Akiba, and Tarfon spent the Seder together. They became so engrossed that they lost all consciousness of time and stayed up the entire night until finally they were called to the morning service. This, says Dr. Finklestein, shows the city man's habit for keeping late hours as compared to the provincial's early-to-bed habits.¹ In the above passage from the Haggadah, Rabbis Tarfon and Eliezer represent patrician points-of-view.

Dr. Finklestein acknowledges this fact but explains that "so engrossed did even the patrician members of the group become in the conversation which ensued that they forgot their early to bed principles and they remained awake until they were called to the morning service."²

Dr. Finklestein also attributes Akiba's and Eliezer's class associations as the basis of some of their differences in Scriptural interpretation. For example, it says in the Bible, "In booths shall ye dwell seven days, for I caused the children of Israel to dwell in booths when I brought them forth from the land of Egypt" (Lev. 23:24). Eliezer said that the booths of the wilderness were covered with leaves and branches. Akiba said that the booths of the wilderness were not trees at all; they were the "clouds of honor" which followed the Israelites in their wanderings through the desert. Akiba was concerned about Eliezer's

1

This passage from the Haggadah appears in no other place in Rabbinic literature. But cf. also Tosefta Pesahim 10:12 and also B. Berakot 7b.

2

Finklestein, op. cit. pp. 100-101.

interpretation because he knew that the "poor plebians" could not build booths similar to the leafy tabernacles of the wealthy "Patricnas." The booths of the poor were roughly built board-covered huts, rooms big enough for a man's head and not his body; or tents built upon the back of a wagon, or makeshift structures of which one wall was a tethered ox or cow. Thus Dr. Finklestein tries to give meaning to Akiba's opinion that any covering would suffice for the booth seeing that it represented the "clouds of honor" which was a thin vaporous material.¹

Eliezer rejected the literal account found in the Bible concerning Nadab and Abihu (Lev. 10:1). Eliezer said that they died outside the sanctuary or else how could the Levites, whose entrance into the holy precinct was forbidden and the priests, whose contact with the dead bodies would have resulted in their own contemination, have removed them? Akiba replied that iron hooks were thrown over the dead bodies and they were dragged outside, where the Levites could approach them. Eliezer was disturbed by the fire which came from before the Lord and consumed the two rebellious priests. Holding a pro-priestly, pro-patrician point of view, Eliezer was interested in minimizing Nadab's and Abihu's guilt.^{2, 3}

¹
Finklestein, pp. 102-103.

²
Sifra, Shemini, miluim, 35, 45d.

³
Finklestein, pp. 103-104.

A case involving Akiba and Tarfon concerned the private pool of a man named Diskos in Yabneh. This pool, which was located in the man's cellar contained just enough water to meet the ritual requirement for immersion. However, it happened on one occasion, that upon checking the pool it was found to be deficient in the required amount of water. The question arose as to whether or not the people who had recently used the pool were ritually clean. Tarfon said 'yes,' arguing that "The mikveh (pool for ritual immersion and purification) retains its approved status until it is demonstrated to be inadequate." Akiba took a more rigorous position and said that all the people who had used the pool since the last time that it was known to have been full were ritually impure. "The man who enters a bath is presumptively impure, he remains in that status until he is certain that he has bathed in an adequate amount of water." Akiba did not see why he should grant special privileges to those who were too proud to use the public pools whose water standard was constantly checked and maintained.^{1, 2}

The next example involves the case of a legal-fiction. The Bible states that earthenware pots and ovens which have become defiled, as for instance, by contact with a dead insect, be broken (Lev. II:23). The patricians invented a legal fiction (a way to circumvent the letter of the law) by building a stove that could be taken apart and reassembled.

1

Tosefta Mikvaot, I:17; B. Kiddushin 66b.

2

Finklestein, pp. 109-110.

These stoves were called "serpent stoves" because it was made of tiles, joined together by loose layers of earth; and which could be taken apart and put together again. This practice was upheld by Eliezer, but the poorer scholars who had to use much inferior ovens resented the legal fiction.¹

An interesting digression from our consideration of specific cases involving differences between the plebian and patrician attitudes as reflected in the decisions of Akiba, Eliezer, and others is the difference in approach to the teaching of the laws of forbidden marriages. The plebians had a rule which was formulated by Akiba: "It is forbidden to discuss the laws of forbidden marriages with so many as three disciples, or the creation with so many as two, or the Heavenly chariot even with one, unless he be particularly gifted so that he will follow without too much interpretation."² This rule, says Dr. Finklestein, was necessary for the plebians to follow because the doors of their school were open to anyone. The patricians, on the other hand, who had a more select student body had no need for such a rule. This difference is also seen in the different Midrashim produced by the schools of Akiba and Ishmael. The Midrash on Leviticus from the former school contains no discussion on the eighteenth and twentieth chapters of the Book of Leviticus; whereas the latter's commentary does.

1

B. Baba Mezia 59b; Yer. Moed Katan 3:1, 81d.

2

Tosefta Shekalim 2:1-2.

See Appendices for additional examples of Dr. Finklestein' method of interpreting decisions handed down by Rabbi Akiba and his patrician opponents.

III.

Gedaliah Allon's Criticism of the "Sociological Method" used by
Dr. Finklestein in his work on Akiba

Gedalia Allon has written a sharp criticism of Dr. Finklestein's historical biography on Akiba. In fact, there is very little that Dr. Finklestein has said that Dr. Allon approves of. To say the least, Dr. Allon is skeptical of the approach which takes into consideration economic and social conditions of the times. He analyzes the examples which Dr. Finklestein has gathered and many of which we have outlined in section two of this paper and in Appendix B; and, attempts to show, practically in every case, that there were other reasons for Rabbi Akiba deciding the way he did other than social and economic reasons.

Dr. Allon is correct when he states at the outset of his essay, "HaShittah HaSozialogith B'heker HaHalakhah,"¹ that Dr. Finklestein never defined what he understands to mean by the terms "plebian" and "patrician," as they would be applied to the Palestinian Jews. The difficulty arises when Dr. Finklestein applies the term "patrician" to the farmers (particularly the farmers of the Galil). According to Dr. Allon, 'it is a well known fact that the people of the Galil were farmers and were not of the upper-classes'*² (This argument can be refuted, however, when we take

¹
Allon, Gedaliah, "HaShittah HaSoziologith B'heker HaHalakhah,"
Tarbitz, vol. 10, pp. 241-282, (1938-1939)

²
Allon, op. cit., p. 243.

* As the Allon article is in Hebrew, translations as literal but as clear as possible will be given. These quotations will be enclosed in apostrophes.

into consideration the fact that most of the lands held in Palestine at the time of Rabbi Akiba were in the hands of large landowners, like Josephus, whose principal holdings were in the Galil.¹ According to the common understanding of the terms pleb^eian and patrician, Josephus would be called a patrician.)

But, Dr. Allon's main disagreement with Dr. Finklestein is over the fact that he feels that the latter has exaggerated his application of economic and social reasons to Rabbi Akiba's judgments (as well as those of other tannaim). He gives many examples of "Dr. Finklestein's errors" throughout his article. Dr. Allon's way of refuting Dr. Finklestein is to cite other passages from the Talmudic literature which seemingly contradict what Dr. Finklestein has written. Dr. Allon maintains that it is possible in many instances (by virtue of his method of using cross-references from the Talmudic sources) to call Rabbi Akiba a "patrician" when Dr. Finklestein has called him a "pleb^eian." Dr. Allon brings the following example from Mishnah Peah 4:10. We shall quote the reference in full and see how Dr. Allon analyzes it:

"What constitutes gleanings? Whatever (ears of corn) fall during the time of reaping. If he had reaped a handful or plucked a fistful, and a thorn pricked him so that it (the corn) fell from his hand to the ground, it (still) belongs to the owner. (If it falls from) within his hand or from the inside of the sickle, it belongs to the poor. (Should it fall from) the

1

Rostovtzeff, M., The Social and Economic History of the Roman Empire, Oxford at the Clarendon Press, 1926, p. 249.

back of the hand, or the sickle, it belongs to the owner. (Should it fall from) the tips of the hand or the sickle, R. Ishmael says, "It belongs to the poor." R. Akiba maintains, ("It belongs) to the owner."¹

According to Dr. Allon, the fact that Rabbi Akiba supports the "Ba'al Ha Sadeh," the field owner, in this mishnah makes him a "patrician" supporter.² The reason offered by the Bertinoro for Rabbi Akiba's opinion is that the latter considered the case of corn which falls from the tips of the hand or the sickle to be like the case of corn which falls from the back of the hand or the back of the sickle. (See Mishnah quoted immediately above) Thus the fact that Rabbi Akiba, employing an analogy, defers corn which fell from the top of the hand or sickle to the field owner, does not mean that he always supported patrician interests.

Whether or not we are to seek an economic or social reason behind Rabbi Akiba's judgment is not at issue here. It seems, however, that Dr. Allon is being overly critical of Dr. Finklestein's methodology and is trying to renounce it by rendering it absurd. Dr. Finklestein, nowhere in his work says that Rabbi Akiba passed judgments only on the basis of social and economic concerns; and this is what Dr. Allon tends to imply. It may be that Dr. Finklestein went too far in some of his analysis; but, this fact does not refute his whole approach.

¹
Translation quoted from, Fishman, Isadore, Gateway to the Mishnah, London, Jack Mazin LTD, 1955, pp. 31-32.

²
Allon, op. cit. p. 247, paragraph two.

On the other hand, Dr. Allon frequently acknowledges, throughout his essay, that there is merit to taking into consideration social and economic forces in trying to understand the background for a particular piece of Talmudic legislation or arguments; but, he invariably says, 'we do not know enough as yet to give this approach any real credence.' For example, Dr. Allon's analysis of Dr. Finklestein's assertion that the Temple priests were involved in using the surplus of Temple funds for investment purposes (Appendix B, p. 3, no. 7, in this paper): 'There is no need to say that there is a place to study the history of consecrated property in the time of the Temple, But on the basis of what we have at hand from the tradition, we cannot conclude that there was in existence any form of "government enterprise"¹ or anything similar; and, therefore, Rabbi Akiba's words are to be understood merely from a moral and religious point of view."² Also in the closing paragraph of his essay, Dr. Allon repeats that his criticism of the "sociological method" is not to deny it any place in understanding the history of the Halakah; for in some instances, the method probably approaches the truth. But, Dr. Allon argues, this method should not be overly emphasized at the expense of taking other method of interpretation into consideration. And in applying this statement to Dr. Finklestein's work, Dr. Allon is undoubtedly right. Dr. Allon concludes: 'We have here only signs of possible directions, which when combined with other

¹
See Finklestein, op. cit., p. 283, Section B.

²
Allon, op. cit., p. 253, footnote 30.

methods similar to it will place us on the path to understanding the development of the Halakah, of which most is still hidden from the eye.¹

In summary of Dr. Allon's criticism of Dr. Finklestein's methodology in Akiba, we list some of his other conclusions:

- 1) There is still a lack of a good social history of the Jews in the Akiba period.
- 2) Lack of adequate signs that would provide us with an exact social image of the sages.
- 3) Dr. Finklestein's lack of attention to the ways in which the Halakah developed.
- 4) Dr. Finklestein's lack of perspicacity in not taking into consideration the general framework in which the individual Halakoth, with which he dealt, are found.

It does not seem as if Dr. Allon has been fair to Dr. Finklestein or to his scholarship in his critical essay on the latter's work. Dr. Allon never meets Dr. Finklestein on his grounds, that is in terms of the social and economic dynamics that "may" have been involved in the decision-making of Rabbi Akiba and his opponents. As we have seen, Dr. Allon has tried to refute Dr. Finklestein on the basis of citing other passages from the Rabbinic literature which would appear to be contradictory to the opinion held by Dr. Finklestein. Dr. Allon's critical method appears to be highly "pilpulistic." We should not forget that Dr. Finklestein's main objective in his work was to write a biography of Akiba, as reflected in the pages of the Talmud; and, not a dialectical work.

¹

Allon, *ibid.* p. 282.

If Dr. Finklestein is wrong about his division of society in Rabbi Akiba's time into plebeian and patrician levels, he will have to be disproved on historical grounds. On the other hand, although the nomenclature may be artificial, there is every evidence of this kind of social-stratification during Akiba's time and in the time of Hillel and Shammai (to refer back to Dr. Ginzberg's essay, "The Significance of the Halakah," which we covered in the first section of the thesis).

Rostovtzeff, based on information gathered from Josephus, mentions the different class groups in Palestinian society: "large-landowners," "the turbulent proletariat of the cities"; and "the peasants."¹

Ralph Turner, in his work, The Great Cultural Traditions of the Roman Empire (McGraw Hill, New York, 1941, p. 918), also refers to the class divisions to be found in the Roman provinces, which included Palestine.

Thus, there is not a lack of material on the social and economic conditions of Palestinian life in the time of Rabbi Akiba and Hillel and Shammai. The Talmud, itself, is a source of reference, although not a systematic one. The task of anyone, therefore, who wishes to interpret Tannaitic material from a social and historical point of view is a difficult one but within the realm of the possible. This much even Dr. Allon acknowledges. What we fail to see, however, in both Dr. Ginzberg's and Dr. Finklestein's work is the historical foundations or even possible historical foundations for their interpretation of the

¹
Rostovtzeff, op. cit., p. 568, footnote 30.

Hillel-Shammai and Akiba, Eliezer and Ishmael material. Both works would have benefited from the inclusion of such historical material and it would have rid them of an air of artificiality that can be detected in parts. (For example, see Dr. Finklestein's interpretation of Rabbi Akiba's method of Torah exegesis, p. 12 of this thesis.) Dr. Allon is right in asserting that Dr. Finklestein tends to hang the Akiba material on the easy pegs of plebeian versus patrician interests.

In terms of the thesis, which both Dr. Ginzberg and Finklestein have advanced, it would seem that Hillel and Akiba represented one tradition and Shammai, Eliezer, and Ishmael another. It is possible to say that the former defended the interests of the poor or plebeian classes and the latter, the interests of the wealthy or the patrician classes. It is also possible, as Dr. Allon has demonstrated to make out a case whereby it is deduced that Akiba, for example, is defending the rights of the patrician interests (although in the one example analyzed in this thesis, it was demonstrated that it was possible to refute Dr. Allon's cross examination of Dr. Finklestein's hypothesis. (See page 22.)

In testing out the Ginzberg-Finklestein social and economic approach, one would have to take all the cases in which Hillel, Shammai, Akiba, Eliezer, and Ishmael were involved; and see whether the predominant amount of cases (and not a simple majority) would be explained by it. If the great majority of cases would show that Akiba, for example, actually favored patrician interests, then, Dr. Finklestein would be refuted. But to say that Akiba or Hillel or Shammai were uninfluenced by social and economic forces would be to deny the validity of modern day

historical scholarship and, also, one may venture to say, of empirical evidence as to what motivates man in making his decisions.

It is well known that both Akiba and Ishmael functioned according to specific rules of interpreting Scripture which was the key for formulating post-Biblical laws.¹ But this does not eliminate the possibility that each man was influenced consciously or unconsciously by social and economic forces.²

Dr. Ginzberg and Dr. Finklestein have made use of social and economic modes of interpretation in order to shed light on many cases in Tannaitic literature, which, in some instances defied all explanation on the part of Rabbinic commentators. Whether or not the two scholars are correct in every case may be debated; but, nevertheless, they have provided us with a good example of a viable method of understanding Tannaitic and post-Tannaitic material that is exciting and quite tenable.

We may conclude with Dr. Allon that there is as yet much material in the development of the Halakah that is "hidden from the eye." But, it is the conclusion of this thesis, at least, that an important breakthrough has been made.

1

See Finklestein, op. cit., p. 308 ff. (Appendix, section F.)

2

For the influence of economic and social forces on Rabbinic decision, see

Appendix A

List of other Mishnaic passages covered by Dr. Ginzberg; and indicating the differences between Beth Hillel and Beth Shammai.

Subject	Mishnaic reference
1. "Eruv Tavshilin"	Bezah II,1
2. Exchanging the money of the second tithe in Jerusalem	Maaser Sheni, II,9
3. Exchanging money of the second tithe at a distance from Jerusalem	Ibid.
4. Exchanging money of the second tithe for gold dinarii	Ibid.
5. Liability of ritual impurity in reference to black cumin	Ukzin III,6
6. Liability of ritual impurity in reference to hard olives and grapes	Pesachim 28b on "guhorka," which is a kind of hard olive
7. Question of ritual immersion after one had anointed himself with ritually pure oil	Eduyot IV,6
8. Liability of ritual impurity to Torah scrolls, ornamented or non-ornamented	Kelim 28,4 (See Bertinoro's comment, where emphasis is placed on "kavanah" - intention.)
9. Liability of ritual impurity in relation to a candelabrum standing on a well, with its apex projecting out.	Ohaloth XI,8
10. Amount of priest's truman	Terumoth IV,3 and Tosephta, Terumoth V,3,8
11. Amount of dough to be given to the priests	Eduyoth I,2
12. Measure of "Leketh"	Peah VI,5

Appendix B

List of additional Talmudic and Midrashic examples of Dr. Finklestein's method of interpreting decisions handed down by the 'plebeian defender,' Rabbi Akiba and his patrician opponents. In this list, Akiba's main opponent will be Ishmael.

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
1. Normal size of a house lot	4 cubits by 6 (about 7 feet by 10½)	small house: 6 cubits by 8 large house: 8 cubits by 10

- Ishmael considered Akiba's specifications appropriate for the size of a stable. Akiba's smaller measurements indicates his plebeian modesty.¹

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
2. Division of property among heirs	A quarter of a Kab in area (750 sq. ft.)	Half a Kab in area (1,500 sq. ft.)

- The patricians considered that no garden could be cultivated profitably unless it was at least a half Kab in area; thus they set this as the minimum standard for division of shares among heirs. Akiba followed the lower standard set by the poor.²

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
3. Lost and found articles (in the case of an animal, the owner of which is known, but which must be fed in the meantime.)	Animal can be sold, but finder cannot use the money; but if he loses it, he is not liable.	Animal can be sold; finder can use the money; if he loses it, then he is liable.

¹
Bava Bathra 6:4

²
Ibid. 1:6

- The patrician opinion, (R. Tarfon), indicates that the patricians had no fear of securing new funds to replace the lost money; whereas the plebeians did.¹

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
4. Mixed planting	Practically abolished prohibition in the case of small landowners; and restricted its application to large fields (patrician fields). In the case of the latter, he was most severe. ²	

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
5. Peah - (Borders)	"Any land, no matter how small, must have some part set aside for the poor."	Peah limited to large farms (Joshua) (although Eliezer and Tarfon had included small farms).

- This is an exceptional case, in which Akiba assumes a rigorous position in relation to the poor.³

¹
Bava Mezia 2:7

²
Kelim 1:3; 3:3; 3:6; 6:2; 7:5; also Shabbath 9:2

³
Sheviith 4:6; Peah 4:10

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
6. Levitical tithes	<p>Practically abolishes them (because since the time of the Destruction of the Temple Levites had no official function.)</p> <p>a) Grain not garnered in time is free from tithes.¹</p> <p>b) Grain free from tithes unless stored in a protected barn; if stored in a court to which two people have keys, it is unprotected and not subject to tithes.²</p>	

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
7. Commercial use of sanctuary funds	"Temple funds and charity funds must not be used commercially."	Ishmael defended practice.

- Akiba defended the rights of the private traders of Jerusalem. Temple investments in oil, flour, and wine, which were later sold to pilgrims at a profit, had a higher prestige value than products sold by ordinary merchants. Akiba ruled to curtail the Temple officials commercial practices entirely.³

¹
Ma'asroth 3:5

²
Ma'aser Sheni 4:8

³
Sheqalim 4:3

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
8. Use of second-tithes for the payment of rent by tenant-farmers	Opposed	Ishmael permitted

- Following this practice, the tenant-farmers would be excused from the payment of the second tithe and the consequent journey to Jerusalem to spend the money. Akiba interested in protecting the Jerusalem commercial interests.¹

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
9. Destroying the leaven by burying it, tossing it into the sea, or grounding it into dust.	Opposed the practice; insisted that leaven had to be burned.	Permitted.

- The practice of burying the leaven, tossing it into the sea, or grounding it into dust was practiced by the farmers living in the lowlands as compared with the Jerusalemites who burned their leaven. The reason for the latter's practice was that at Passover time it was still cold in Jerusalem and fires were burning. In the lowlands, it was now considerably warmer; and fires were not needed.²

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
10. The meaning of Sukkoth	Essentially time for praying for rains yet to come.	Patrician view - time for Thanksgiving for the ingathering of the wheat.

¹
Demai 6:4

²
B. Pesahim 5a

- Akiba's opinion is based on the climatic conditions of Jerusalem where the rainy season begins some weeks later than in the lowlands; and, also on scriptural interpretation.^{1, 2}

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
11. Water which has become turgid either through clay or mud	Water still ritually fit for immersion.	Water unfit - Ishmael

- Akiba was influenced by the scarcity of wells in Jerusalem.³

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
12. Use of melted snow for ritual immersion	Permitted	Opposed

- Jerusalem to this day has snow on occasion; but, in the lowlands snow is practically unknown.⁴

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
13. Freeing exported grain from the law of Hallah: (Numbers 15:19) - the separation of the first of the dough as a gift to the priest	Opposed	Eliezer permitted

- Akiba protects the local commercial interests. If imported grain subject to law of Hallah, no advantage in purchasing it.

¹
See Finklestein, op. cit., Appendix II, E, p. 307

²
Ibid., pp. 285-286

³
Parah 8:11

⁴
Miqwaoth 7:1

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
14. Damages due, when an ox had strayed into a neighbor's field; based on Biblical verse which says that farmer is to be recompensed "Of the best of his vineyard." (Exod. 22:4)	Interpreted verse to mean "best" of defendant's field	Interpreted "best" to mean best of plaintiff's field. ¹

<u>SUBJECT OF CONTROVERSY</u>	<u>AKIBA'S OPINION</u>	<u>OPPONENT'S OPINION</u>
15. Law of "firstlings" with regard to a sheep which gives birth to twins	Only one belongs to the priest and the shepherd selects which one he wishes to give.	Tarfon agrees with Akiba but says that priest has choice of which sheep (Jose the Galilean says both belong to the priest). ²

- Akiba defends shepherds, whom Dr. Finklestein also considers to be members of the plebeian class.

¹
Bava Qamma 7a.

²
Bekhoroth 2:6 cf. also 2:7,8

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